

STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

NOTICE OF PROPOSED RULES CHANGES

The Rules Committee has submitted its One Hundred Seventy-First Report to the Court of Appeals, transmitting thereby proposed amendments to Rules 3-306, 3-308, 3-509, 4-353, 4-354, 7-208, 8-204, 8-421, 8-502, 8-503, 8-504, 8-521, 16-101, 16-110, 16-204, 16-309, 16-714, and 16-902; Rules 3.8, 5.5, and 6.5 of the Maryland Lawyers' Rules of Professional Conduct; Rule 14 of the Rules Governing Admission to the Bar of Maryland; and Appendix: Forms for Special Admission of Out-of-State Attorneys, Forms RGAB-14/M and RGAB-14/O.

The Committee's One Hundred Seventy-First Report and the proposed amendments are set forth below.

Interested persons are asked to consider the Committee's Report and proposed rules changes and to forward on or before August 15, 2011 any written comments they may wish to make to:

Sandra F. Haines, Esq.  
Reporter, Rules Committee  
2011-D Commerce Park Drive  
Annapolis, Maryland 21401

BESSIE M. DECKER  
Clerk  
Court of Appeals of Maryland

July 1, 2011

The Honorable Robert M. Bell,  
Chief Judge  
The Honorable Glenn T. Harrell, Jr.  
The Honorable Lynne A. Battaglia  
The Honorable Clayton Greene, Jr.  
The Honorable Joseph F. Murphy, Jr.  
The Honorable Sally D. Adkins  
The Honorable Mary Ellen Barbera,  
Judges  
The Court of Appeals of Maryland  
Robert C. Murphy Courts of Appeal Building  
Annapolis, Maryland 21401

Your Honors:

The Rules Committee submits this, its One Hundred Seventy-First Report and recommends that the Court adopt the new Rules and the amendments to existing Rules transmitted with this Report. The Report consists of seven categories.

**Category One** consists of an amendment to Bar Admission Rule 14 and amendments to Bar Admission Forms (RGAB) 14-M and 14-O. These amendments were prompted by the enactment of 2011 Md. Laws, Ch. 129, which (1) requires the State Court Administrator to assess a \$100 fee for the special admission of out-of-State attorneys under Code, Business Occupations and Professions Article, §10-215 and (2) directs that \$75 of that fee be paid to the Janet L. Hoffman Loan Assistance Repayment Program established under Code, Education Article, §18-1502. The amendments merely call attention to the \$100 fee.

**Category Two** consists of an amendment to Rule 7-208 to permit hearings in judicial review actions to be conducted by electronic means, subject to certain conditions. This is the second phase of a broader study by the Rules Committee into the extent to which certain judicial proceedings may properly be

conducted by electronic means. The first phase consisted of new Rules 2-513 and 3-513, recommended by the Committee in its One Hundred Sixty-Third Report and adopted by the Court, that authorize a court to permit testimony by telephone in non-jury civil cases.

The amendments to Rule 7-208 allow hearings in judicial review actions to be conducted by remote electronic means. Pursuant to a May 29, 2009 Administrative Order of the Chief Judge of the Court of Appeals, this currently is being done in the Circuit Courts for Anne Arundel, Somerset, and Washington Counties in actions to review decisions of the Inmate Grievance Commission. Like most judicial review actions, these are determined based on the record made before the agency; no new evidence is taken in the court proceeding. The Committee is advised that a split-screen television device, with good clarity, is used, which allows both sides to participate meaningfully but avoids the need (1) to transport prisoners to court and (2) for attorneys for the State to travel to distant counties for such proceedings.

The proposed amendments would, of course, apply to the broad range of non-evidentiary judicial review actions, not just inmate grievance cases, and could permit electronic proceedings to be conducted other than by video conferencing. To ensure fairness, the amendments place a number of conditions on this procedure designed to make certain that it is not used inappropriately and that it is not used at all in those actions in which additional evidence may be taken, unless agreed to by the parties.

**Category Three** consists of amendments to Rules 4-353 and 4-354, which emanate from a request and information supplied by the Executive Director of the Governor's Office of Crime Control and Prevention (GOCCP) and the Chair of the State Board of Victim Services. Code, Courts Article, §7-409 requires the assessment of a special cost, in addition to general court costs, to be paid by persons convicted of certain crimes and traffic offenses. The special assessment is modest - currently \$45 in the circuit courts, \$35 in the District Court, and \$3 for traffic offenses. Money collected from the assessment of those costs is allocated, in the proportions set forth in §7-409, to the State Victims of Crime Fund created under Code, Criminal Procedure Article, §11-916, the Victim and Witness Relocation Fund created under §11-905 of that Article, and the Criminal Injuries Compensation Fund. Code, Courts Article, §7-405 provides that the court may not waive those special costs unless "the defendant establishes indigency as provided in the Maryland Rules."

Other than Rule 1-325, which deals with filing fees and costs that must be prepaid in order to have access to the courts and requires a separate affidavit establishing indigence, and

Rule 2-603 (e), which provides for a waiver of masters' fees and other costs in a divorce case and also requires an affidavit, at present there appears to be no provision in the Rules that addresses how a court establishes indigency, or at least no provision that would apply to these post-trial special assessments. Evidence supplied by GOCCP shows a remarkable and inexplicable disparity throughout the State in both the assessment and the collection of these costs, at both the circuit court and District Court level. See the charts attached as Exhibit A to this Report.

It appears that the disparity and the resulting under-collection, which has hampered the three recipient Funds in carrying out their legislative missions, arises in part from inappropriate waivers by judges and in part from a lack of any clear direction as to how the costs that are assessed should be collected. The amendments to Rule 4-353 deal with the assessment issue. The amendments to Rule 4-354 address the related issue of collection.

Given the lack of guidance in the implementation of Courts Article, §7-405 and the fact that no separate affidavit of indigence is required as with Rules 1-325 and 2-603 (e), some judges are waiving the assessment of these special costs (1) if the defendant is represented by the Public Defender or is self-represented, apparently on the assumption that, if the defendant qualifies for Public Defender representation or is self-represented, he or she must be indigent; (2) when the defendant is placed on probation, because the judge does not want to face the prospect of later violating the probation and incarcerating the defendant due to non-payment of \$45 or \$35; (3) when they waive costs generally, not realizing that these costs are separate; or (4) when imposing a long prison sentence, on the assumption that, as a result, the defendant will remain unable to pay whatever costs are imposed.

The Committee is of the view that, while the fourth reason may have merit, the other three generally do not. An inability to afford private counsel does not mean that the defendant is or will remain unable to pay \$45 or \$35; nor does payment of costs as a condition of probation require violation of the probation as the only means of collecting those costs. Judges are accustomed to waiving costs generally, without realizing that these costs are separately assessed and that the waiver of the more substantial costs assessed in a criminal case, which the Committee was advised may amount to \$150 or more, does not require the waiver of the costs that benefit victims.

The second aspect of the problem - under-collection of costs that are assessed - is dealt with in the amendments to Rule 4-354. Although costs imposed in civil cases are routinely entered as a civil judgment and Code, Courts Article, §7-505 (a) provides that unpaid costs may be levied, executed on, and collected in the same manner as judgments in civil cases, costs assessed in criminal cases ordinarily are not entered as civil judgments. If payment of costs is a condition of probation, clerks may rely on the Division of Parole and Probation to collect them. If there is no probation, there appears to be no uniformity in the effort clerks make to collect costs themselves. Pursuant to a letter agreement between the Administrative Office of the Courts (AOC) and the Central Collection Unit (CCU), a unit within the State Department of Budget and Management, circuit court clerks may assign the debt to CCU. There appears to be no similar agreement applicable to the District Court.

Information presented to the Committee made clear that the problem of how court costs are to be collected goes beyond the collection of §7-409 costs, and, with the assistance of AOC, CCU, the Division of Parole and Probation, and other interested agencies and persons, the Committee proposes to examine that larger problem. The Committee does believe, however, that, at a minimum, court costs in criminal cases, in conformance with Code, Courts Article, §7-505, should be entered as civil judgments, which have an initial life of twelve years, and that they should be enforced both in the manner that any civil judgment may be enforced as well as in accordance with the statutory procedures for collecting a debt due to the State, *i.e.*, referral to CCU. The proposed amendments to Rule 4-354 are to that effect.

**Category Four** proposes an addition to Rule 16-714 (a), which creates the Disciplinary Fund. The proceeds of that Fund finance the operations of the Attorney Grievance Commission (AGC), which is created by Rule. Each year, lawyers are required to pay a fee, not to exceed \$20, to fund the operations of the Client Protection Fund of the Bar of Maryland (CPF) and a fee to be set by the Court of Appeals, which currently is \$125, principally to fund the operations of AGC. The entire \$145 fee is paid to CPF, which deducts \$20 for its operations and remits the balance to AGC. At several times over the past twenty years, a dispute has arisen over the exact nature and purposes of the Fund. The proposed addition is intended to clarify and better articulate what traditionally has been the Court's view.

**Category Five** consists of proposed amendments to Rules 16-101 b. and 16-101 d.3. The amendment to Rule 16-101 b. fills a gap in the law regarding who performs the administrative duties

of the Chief Judge of the Court of Special Appeals when the Chief Judge is temporarily unable to perform them. The amendment applies the same approach as the Maryland Constitution in Art. IV, §18 (b) (5) applies in the case of the Chief Judge of the Court of Appeals, *i.e.*, that those administrative duties are to be performed by the senior judge present in the Court.

The amendment to Rule 16-101 d.3. was requested by the Administrative Judge of the Circuit Court for Baltimore City and the judge in charge of the criminal docket in that court. As the Court is aware, the Circuit Court for Baltimore City operates from two locations - the Clarence M. Mitchell Courthouse and Courthouse East, across Calvert Street from one another. Criminal cases are set for trial in both courthouses.

Except for cases reaching the Circuit Court from the District Court by reason of an appeal or demand for jury trial, Rule 16-101 d. permits an administrative judge to authorize only one other judge to postpone criminal cases. In Baltimore City, there currently is no ability for a proceeding on a request for postponement to be conducted by remote electronic means. Requests for postponement therefore often require defendants and counsel who are present for trial in one of the courthouses to travel to the other for a proceeding before the designated postponement judge. Although the travel distance is not great, the Committee was advised that transporting defendants, who often are under pretrial incarceration, from one courthouse to another, in light of the security issues, has proven to be a time-consuming and disruptive problem. The proposed amendment would allow the Administrative Judge to authorize one judge sitting in the Mitchell Courthouse and one judge sitting in Courthouse East to postpone criminal cases set for trial in their respective courthouses.

**Category Six** consists of amendments to Rules 3-306, 3-308, and 3-509. These amendments are designed to address a problem that has received national attention and has generated concern in Maryland by the Commissioner of Financial Regulation, the Office of the Attorney General, and the District Court, namely, the flood of thousands of judgment by affidavit cases filed in the District Court by companies that purchase, usually in bulk and with little supporting documentation, consumer debt that has been charged off by the original creditor.

The Rules Committee held a number of subcommittee and full Committee meetings and hearings regarding the problem and received from all of the stakeholders a great deal of information, including an investigative Report by the Federal

Trade Commission and responses in several other States. In a nutshell, the great majority of these cases - some estimate as much as 95% of them - emanate from credit card debt. The credit card companies nearly always are subsidiaries or affiliates of national banks or other kinds of federally chartered financial institutions. The companies are incorporated in States, such as South Dakota or Delaware, that permit them to charge high rates of interest, late fees, and other costs, and to compound those costs (so that interest is charged on interest) that substantive Maryland law would not permit. Federal law controls, however. It allows the subsidiary or affiliate to charge nationally whatever is permitted by the State of its incorporation, and preempts inconsistent law of other States.

Federal regulations require the credit card companies to charge-off balances after six months of delinquency. That creates the market for companies to purchase that debt at a very substantial discount. The charged-off accounts usually are purchased in bulk - sometimes thousands of accounts at a time - and the buyers normally receive only minimal information regarding each debt and debtor unless they are willing to pay more for additional material, which, in the trade, is called "media." In many instances, the initial debt buyers sell all or large parts of what they have purchased to other debt buyers. The ultimate owner of the account may be the fifth, sixth, or seventh buyer in that stream of commerce, often with less information than the initial buyer had and certainly less information than the initial buyer could have obtained from the credit card company.

Both nationally and in Maryland, there have been a multitude of cases in which the ultimate owner of the account sues the person it believes to be the debtor, knowing from experience that the defendant often does not file a notice of intention to defend or appear for trial. In Maryland, judgment by affidavit pursuant to Rule 3-306 is sought. The problem, which has been well-documented by judges, the few attorneys who represent debtors, and the Commissioner of Financial Regulation, is that the plaintiff often has insufficient reliable documentation regarding the debt or the debtor and, had the debtor challenged the action, he or she would have prevailed. In many instances, when a challenge is presented, the case is dismissed or judgment is denied. In thousands of instances, however, there is no challenge, and judgment is entered on affidavit.

At least in some of the District Courts, those cases - sometimes 100 or more a week - are not placed on a formal docket but are dealt with by the judges when they have spare time.

Based on the information presented, the Committee was convinced that, in order to provide greater transparency in the judicial process, both with respect to credit card debt and other consumer debt that is purchased by commercial debt buyers, Rule 3-306 should be amended to require additional information in judgment-by-affidavit cases.

A new section (a) contains a number of definitions, mostly of terms relevant to the problem area - consumer debt that has been charged off and sold. The proposal adds to what would become section (c) the requirements that (1) if interest is claimed, an interest worksheet substantially in the form prescribed by the Chief Judge of the District Court be attached, and (2) if attorneys' fees are claimed, the affidavit demonstrate that the plaintiff is entitled to such fees and that the amount claimed is reasonable.

The major thrust of the proposed amendments is in a new section (d), which deals specifically with claims arising from assigned consumer debt. With respect to those claims, (1) the affidavit must contain averments or be accompanied by documents that (i) more adequately establish the existence and identification of the debt and the plaintiff's ownership of the debt and (ii) provide specific information if the account was charged off, other information if the debt was not charged off, particular information if the claim is based on a future services contract, and information regarding the licensure of the plaintiff debt buyer, and (2) subject to an exception, if there was a document evidencing the terms and conditions to which the consumer debt was subject, a certified or authenticated copy of that document must be attached.

Subsection (d)(2) contains an important "carve-out" or exception with respect to certain charged-off credit card balances. It emanates from the fact that there is no one document creating or evidencing terms and conditions of a credit card agreement. Many credit card accounts originate from an application or simply from the use of a credit card that is sent to the consumer. The accounts are governed by statements of terms and conditions periodically mailed to, but never signed by, the customer. Some of the actual terms and conditions change, often several times a year, and it is very difficult for anyone to know which ones applied at any given point during the life of the account.

With the general concurrence of the District Court, the Assistant Attorney General representing the Commissioner of Financial Regulation, the Maryland Bankers Association, and the

major debt buyers, the Committee proposes to exempt the plaintiff debt buyer from establishing the terms and conditions of the consumer debt **if**: (1) the consumer debt is the unpaid balance due on a credit card, (2) the original creditor was a financial institution subject to regulation by the Federal Financial Institutions Examination Council or a constituent federal agency of that Council, and (3) the claim does not include a demand or request for attorneys' fees or for interest on the charge-off balance in excess of six percent per annum.

The Committee note following subsection (d)(2)(B) is important. There seems to be a dispute as to whether any part of a charge-off balance in excess of the amount of purchases made by the debtor - *i.e.*, constituting interest, late fees, and other charges added to the account by the credit card company during the life of the account - constitute principal or interest under either federal or Maryland law. That is a substantive issue which, in the Committee's view, cannot be resolved by Rule. If those amounts do constitute interest under Maryland law and the debt buyer does not enjoy the preemption applicable to the credit card company, it may not be able to charge **any** interest on that part of the charge-off balance. The Committee Note is intended to reserve that issue for possible future adjudication and simply make clear, as a matter of **procedure**, that, if the plaintiff does not seek interest on the charge-off balance at more than six percent simple interest, it need not supply all of the documents setting forth the terms and conditions of the account.

The proposed amendments to Rules 3-308 and 3-509 are essentially conforming ones. The amendment to Rule 3-308 is to make clear that, in an assigned consumer debt situation, the plaintiff must supply the information and documents required under Rule 3-306, even in the absence of a demand for proof. The proposed amendment to Rule 3-509, which deals with a trial on default by the defendant, permits the court, in determining liability, to consider the proof requirements of Rule 3-306 but also to consider other competent evidence.

**Category Seven** consists of amendments to Rules 8-204, 8-421, 8-502, 8-503, 8-504, and 16-309 requested by the Chief Judge of the Court of Special Appeals and style amendments to Rules 8-521, 16-110, 16-204, and 16-902, and Maryland Lawyers' Rules of Professional Conduct 3.8, 5.5, and 6.5.

For the further guidance of the Court and the public, following each of 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,

Alan M. Wilner  
Chair

Linda M. Schuett  
Vice Chair

AMW/LMS:cdc

MARYLAND RULES OF PROCEDURE

RULES GOVERNING ADMISSION TO THE BAR OF MARYLAND

AMEND Bar Admission Rule 14 to add a cross reference following section (a) referencing Forms RGAB-14/M and RGAB-14/O as follows:

Rule 14. SPECIAL ADMISSION OF OUT-OF-STATE ATTORNEYS

(a) Motion for Special Admission

A member of the Bar of this State who is an attorney of record in an action pending in any court of this State, or before an administrative agency of this State or any of its political subdivisions, or representing a client in an arbitration taking place in this State involving the application of Maryland law, may move, in writing, that an attorney who is a member in good standing of the Bar of another state be admitted to practice in this State for the limited purpose of appearing and participating in the action as co-counsel with the movant. If the action is pending in a court, the motion shall be filed in that court. If the action is pending before an administrative agency or arbitration panel, the motion shall be filed in the circuit court for the county in which the principal office of the agency is located or in which the arbitration hearing is located or in any other circuit to which the action may be appealed and shall include the movant's signed certification that copies of the motion have been furnished to the agency or the arbitration

panel, and to all parties of record.

Cross reference: For the definition of "arbitration," see Rule 17-102 (b). See Forms RGAB-14/M and RGAB/14-O for the form of a motion and order for the Special Admission of an out-of-state attorney.

. . .

REPORTER'S NOTE

Chapter 129, Laws of 2011 (HB 523) requires the State Court Administrator to assess a \$100 fee for the special admission of an out-of-state attorney, \$75 of which shall be paid to the Janet L. Hoffman Loan Assistance Repayment Program. See Code, Courts and Judicial Proceedings Article, §7-202 (e).

The proposed amendment to Bar Admission Rule 14 adds a cross reference to Forms RGAB-14/M and RGAB-14/O for convenience. A conforming proposed amendment, referencing Code, Courts and Judicial Proceedings Article, §7-202 (e) and adding the dollar amount of the fee, was made to Form RGAB-14/M. A conforming proposed amendment was also made to Form RGAB-14/O, directing the Clerk to return any fee paid if the court denies the Special Admission.

MARYLAND RULES OF PROCEDURE

FORMS OF SPECIAL ADMISSION OF OUT-OF-STATE ATTORNEY

AMEND Form RGAB-14/M to add a new paragraph concerning the fee required by Code, Judicial Proceedings Article, §7-202 (e), as follows:

Form RGAB-14/M. MOTION FOR SPECIAL ADMISSION OF OUT-OF-STATE ATTORNEY UNDER RULE 14 OF THE RULES GOVERNING ADMISSION TO THE BAR OF MARYLAND.

(Caption)

MOTION FOR SPECIAL ADMISSION OF OUT-OF-STATE ATTORNEY UNDER RULE 14 OF THE RULES GOVERNING ADMISSION TO THE BAR OF MARYLAND

I, ....., attorney of record in this case, move that the court admit, ..... of (Name)

....., an (Address)

out-of-state attorney who is a member in good standing of the Bar of ....., for the limited purpose of appearing and participating in this case as co-counsel with me.

Unless the court has granted a motion for reduction or waiver, the \$100.00 fee required by Code, Courts and Judicial Proceedings Article, §7-202 (e) is attached to this motion.

I [ ] do [ ] do not request that my presence be waived under Rule 14 (d) of the Rules Governing Admission to the Bar of Maryland.

.....  
Signature of Moving Attorney

.....  
Name

.....  
Address

.....  
Telephone

Attorney for .....

CERTIFICATE AS TO SPECIAL ADMISSIONS

I, ....., certify on this ..... day of ....., that during the preceding twelve months, I have been specially admitted in the State of Maryland ..... times.

.....  
Signature of Out-of-State Attorney

.....  
Name

.....  
Address

.....  
Telephone

(Certificate of Service)

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 14 of the Rules Governing Admission to the Bar of Maryland.

MARYLAND RULES OF PROCEDURE

FORMS OF SPECIAL ADMISSION OF OUT-OF-STATE ATTORNEYS

AMEND Form RGAB-14/O to add a clause instructing the Clerk to return any fee paid for the Special Admission if the court denies the Special Admission, as follows:

Form RGAB-14-O. ORDER

(Caption)

ORDER

ORDERED, this ..... day of ....., ....., by the ..... Court for ....., Maryland, that

[ ] ..... is admitted specially for the limited purpose of appearing and participating in this case as co-counsel for ..... The presence of the Maryland lawyer [ ] is [ ] is not waived.

[ ] That the Special Admission of ..... is denied for the following reasons: ..... and the Clerk shall return any fee paid for the Special Admission and it is further

ORDERED, that the Clerk forward a true copy of the Motion and of this Order to the State Court Administrator.

.....  
Judge

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 14 of the Rules Governing Admission to the Bar of Maryland.

MARYLAND RULES OF PROCEDURE  
TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW  
IN CIRCUIT COURT  
CHAPTER 200 - JUDICIAL REVIEW OF ADMINISTRATIVE  
AGENCY DECISIONS

AMEND Rule 7-208 to add a new section (c) to allow participation in a hearing by video conferencing or other electronic means under certain circumstances, as follows:

Rule 7-208. HEARING

(a) Generally

Unless a hearing is waived in writing by the parties, the court shall hold a hearing.

(b) Scheduling

Upon the filing of the record pursuant to Rule 7-206, a date shall be set for the hearing on the merits. Unless otherwise ordered by the court or required by law, the hearing shall be no earlier than 90 days from the date the record was filed.

(c) Hearing Conducted by Video Conferencing or Other Electronic Means

(1) Generally

Except as provided in subsection (c) (2) of this Rule, the court, on motion or on its own initiative, may allow one or more parties or attorneys to participate in a hearing by video

conferencing or other electronic means. In determining whether to proceed under this section, the court shall consider:

(A) the availability of equipment at the court facility and at the relevant remote location necessary to permit the parties to participate meaningfully and to make an accurate and complete record of the proceeding;

(B) whether, in light of the issues before the court, the physical presence of a party or counsel is particularly important;

(C) whether the physical presence of a party is not possible or may be accomplished only at significant cost or inconvenience;

(D) whether the physical presence of fewer than all parties or counsel would make the proceeding unfair; and

(E) any other factors the court finds relevant.

(2) Exceptions and Conditions

(A) The court may not allow participation in the hearing by video conferencing or other electronic means if (i) additional evidence will be taken at the hearing and the parties do not agree to video conferencing or other electronic means, or (ii) such a procedure is prohibited by law.

(B) The court may not allow participation in the hearing by video conferencing or other electronic means on its own initiative unless it has given notice to the parties of its intention to do so and has afforded them a reasonable opportunity to object. An objection shall state specific grounds, and the

court may rule on the objection without a hearing.

~~(e)~~ (d) Additional Evidence

Additional evidence in support of or against the agency's decision is not allowed unless permitted by law.

Cross reference: Where a right to a jury trial exists, see Rule 2-325 (d). See *Montgomery County v. Stevens*, 337 Md. 471 (1995) concerning the availability of prehearing discovery.

Source: This Rule is in part derived from former Rules B10 and B11 and in part new.

REPORTER'S NOTE

Electronic proceedings in Maryland that are already in place include video conferencing of bail review hearings, electronic hearings to set conditions on a stay of a foreclosure sale, and video conferencing pilot programs authorized by a May 12, 2009 Administrative Order of the Chief Judge of the Court of Appeals. To address the issue of electronic proceedings in a broader range of judicial proceedings, the Rules Committee recommends starting with allowing appearance by video conferencing or other electronic means in proceedings for judicial review of administrative agency decisions. The Committee proposes amending Rule 7-208 to allow one or more parties or attorneys to appear from a remote location by video conferencing or other electronic means if certain conditions are met.

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

AMEND Rule 4-353 to add a new section (b) regarding indigency and the waiver of court costs assessed pursuant to Code, Courts Article, §7-409; to add a Committee note stating that costs assessed pursuant to that statute should be assessed separately and should be waived only in extraordinary circumstances; to add a cross reference at the end of section (b); and to make stylistic changes; as follows:

Rule 4-353. COSTS

(a) Generally

Unless otherwise ordered by the court, ~~¶~~ a judgment of conviction, an order accepting a plea of nolo contendere, or a disposition by probation before judgment or an accepted plea of nolo contendere shall include an assessment of court costs against the defendant unless otherwise ordered by the court.

(b) Special Costs

Costs assessed pursuant to Code, Courts Article, §7-409 shall be assessed separately from other costs and shall not be waived by the court except upon an express finding stated on the record that the defendant is not likely to be able to pay any significant part of those costs within the succeeding twelve years.

Committee note: This Rule requires the court to consider a defendant's ability to pay court costs assessed pursuant to Code, Courts Article §7-409 separately from the defendant's ability to pay all other court costs. In doing so, the court must make clear whether it is waiving costs under subsection (a) of this Rule, subsection (b) of this Rule, or both.

Code, Courts Article, §7-405 directs that §7-409 costs may not be waived "unless the defendant establishes indigency as provided in the Maryland Rules." Coupled with Rule 4-354, the Rule addresses the fact that indigence, for purposes of these special costs, should not be found merely because a defendant may be indigent for other purposes. The special costs are modest in amount; they are not part of the sentence but are instead enforceable as a civil judgment which, subject to renewal, is valid for 12 years; and they are not in the nature of pre-paid costs and do not have to be paid at the time of sentencing unless the court so directs. By statute, these costs are used solely to support victim services.

Source: This Rule is derived in part from former Rule 764 and former M.D.R. 764 and is in part new.

#### REPORTER'S NOTE

The proposed amendment stems from correspondence from the Governor's Office of Crime Control and Prevention (GCCP), the State Board of Victim Services, and a meeting with judicial and executive branch officials.

Code, Courts Article, §7-409 requires the assessment of a special cost to be paid by persons convicted of certain crimes. The cost currently is \$45 in a circuit court, \$35 in the District Court, and \$3 for certain traffic offenses. These costs are allocated by §7-409 to victim services funds and the Criminal Injuries Compensation Fund. Code, Courts Article, §7-405 precludes judges from waiving those costs unless the defendant establishes indigency, as provided in the Maryland Rules. At present, there is no definition of indigency for that purpose. Under Code, Courts Article, §7-505, costs are not part of the sentence, and the defendant may not be imprisoned if they are not paid.

Information supplied by the GCCP shows that there is no uniformity in the criteria used by judges in deciding whether to waive these costs. It appears that some judges may be waiving these costs (1) when the defendant is represented by the Public Defender on the theory that, if the defendant is represented by the Public Defender, he or she must be indigent, (2) when the defendant appears to be indigent and is placed on probation, (3)

when the judge sentences the defendant to incarceration, (4) when all costs (which may approach \$200) are waived generally, or (5) when the defendant or counsel requests a waiver. Many judges may be unaware that these costs are not part of the sentence, are modest in amount, support victim services, and do not have to be waived merely because other costs are waived. The purpose of the proposed amendment is to eliminate what may be an unknowing frustration of the legislative purpose.

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

AMEND Rule 4-354 to add to section (a) provisions regarding the collection of court costs and language pertaining to statutory procedures for the collection of a debt due to the State or a State agency, to correct an obsolete statutory reference, to delete the words "imposition of," and to add a cross reference following section (a), as follows:

Rule 4-354. ENFORCEMENT OF MONEY JUDGMENT

(a) Generally

A money judgment or other order for payment of a sum certain entered in a criminal action in favor of the State, including court costs, ~~imposition of~~ a fine, forfeiture of an appearance bond, and adjudication of a lien pursuant to Code, ~~Article 27A, §7~~ Criminal Procedure Article, §16-212, may be enforced in the same manner as a money judgment entered in a civil action or in accordance with statutory procedures for the collection of a debt due to the State or a State agency.

Cross reference: See Code, Courts Article, §7-505 and Code, State Finance and Procurement Article, §§3-301 through 3-307.

(b) Judgment of Restitution

A judgment of restitution may be enforced in the same manner as a money judgment entered in a civil action.

Cross reference: See Code, Criminal Procedure Article, §11-613 (d) and *Grey v. Allstate Insurance Company*, 363 Md. 445 (2001).

Source: This Rule is derived in part from former M.D.R. 620 a and in part new.

REPORTER'S NOTE

The proposed amendments to Rule 4-354 add to section (a) an express reference to court costs and language pertaining to statutory procedures for the collection of a debt due to the State or a State agency. Additionally, an obsolete statutory reference in section (a) is corrected. The deletion of the words "imposition of" is stylistic, only.

Pursuant to an agreement between the Judiciary and the State Central Collection Unit ("CCU"), the CCU is authorized to collect unpaid court costs. A cross reference to statutes pertaining to the CCU and the collection of unpaid costs and fines is added following section (a).

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 - DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

AMEND Rule 16-714 to add clarifying and descriptive language concerning the creation, administration, contents, and purposes of the Disciplinary Fund and to make stylistic changes, as follows:

Rule 16-714. DISCIPLINARY FUND

(a) Payment by Attorneys

There is a Disciplinary Fund. ~~As to which, as~~ a condition precedent to the practice of law, each attorney shall pay annually ~~to the Fund the sum that~~ an amount prescribed by the Court of Appeals prescribes. The ~~sum~~ amount shall be ~~paid~~ in addition to and paid by the same date as other sums required to be paid pursuant to Rule 16-811. The Disciplinary 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 Lawyers' Rules of Professional Conduct adopted by the Court. The Fund consists of contributions made by lawyers as a condition of their right to practice law in Maryland and income from those contributions. The principal and income of the Fund shall be dedicated exclusively to the purposes established by the Rules in this Title.

(b) Collection and Disbursement of Disciplinary Fund

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.

(c) Audit

There shall be an independent annual audit of the Disciplinary Fund. The expense of the audit shall be paid out of the Fund.

(d) Enforcement

Enforcement of payment of annual assessments of attorneys pursuant to this Rule is governed by the provisions of Rule 16-811 (g).

Source: This Rule is derived from former Rules 16-702 d (BV2 d) and 16-703 b (vii) (BV3 b (vii)).

REPORTER'S NOTE

The proposed amendment to Rule 16-714 adds to section (a) clarifying and descriptive language concerning the creation, administration, contents, and purposes of the Disciplinary Fund. Additionally, stylistic changes are made.

MARYLAND RULES OF PROCEDURE  
TITLE 16 - COURTS, JUDGES, AND ATTORNEYS  
CHAPTER 100 - COURT ADMINISTRATIVE STRUCTURE,  
JUDICIAL DUTIES, ETC.

AMEND Rule 16-101 to make the provisions of the Rule applicable to the senior judge present in the Court of Special Appeals in the absence of the Chief Judge of that Court, to allow the administrative judge of the Circuit Court for Baltimore City to authorize one judge in each courthouse for that Court to postpone certain criminal cases under certain circumstances, and to make stylistic changes, as follows:

Rule 16-101. ADMINISTRATIVE RESPONSIBILITY

. . .

b. Chief Judge of the Court of Special Appeals

The Chief Judge of the Court of Special Appeals ~~shall~~, subject to the direction of the Chief Judge of the Court of Appeals~~7~~, and pursuant to the provisions of this Title, shall be responsible for the administration of the Court of Special Appeals. ~~With respect to the administration of the Court of Special Appeals, and to the extent applicable~~ In fulfilling that responsibility, the Chief Judge of the Court of Special Appeals shall possess, to the extent applicable, the authority granted to a County Administrative Judge in section d of this Rule. In the absence of the Chief Judge of the Court of Special Appeals, the

provisions of this Rule shall be applicable to the senior judge present in the Court of Special Appeals.

. . .

d. County Administrative Judge

. . .

3. Power to Delegate

(i) A County Administrative Judge may delegate to any judge, to any committee of judges, or to any officer or employee any of the administrative responsibilities, duties and functions of the County Administrative Judge.

(ii) In the implementation of Code, Criminal Procedure Article, §6-103 and Rule 4-271 (a), a County Administrative Judge may ~~authorize~~ (A) with the approval of the Chief Judge of the Court of Appeals, authorize one or more judges to postpone criminal cases on appeal from the District Court or transferred from the District Court because of a demand for jury trial, and (B) except as provided in subsection d.3.(iii) of this Rule, authorize not more than one judge at a time to postpone all other criminal cases.

(iii) The administrative judge of the Circuit Court for Baltimore City may authorize one judge sitting in the Clarence M. Mitchell Courthouse to postpone criminal cases set for trial in that Courthouse and one judge sitting in Courthouse East to postpone criminal cases set for trial in that courthouse.

. . .

REPORTER'S NOTE

In addition to stylistic changes, the proposed amendments to Rule 16-101 are twofold.

(1) If the Chief Judge of the Court of Special Appeals becomes temporarily unable to perform the administrative duties and functions of Chief Judge, he or she may delegate those functions. See Rule 16-101 b. and d. 3. Rule 16-101 contains no provisions concerning performance of those functions if the Chief Judge can neither perform nor delegate them. Using language borrowed from Article IV, Section 18 (b)(5) of the Maryland Constitution that is applicable to the absence of the Chief Judge of the Court of Appeals, the proposed amendment to Rule 16-101 b. fills the gap in the Rule by making the provisions of the Rule applicable to the senior judge present in the Court of Special Appeals in the absence of the Chief Judge of that Court.

(2) Rule 16-101 d. 3. (ii)(A) allows a county administrative judge, with the approval of the Chief Judge of the Court of Appeals, to authorize one or more judges to postpone criminal cases on appeal from the District Court or transferred from the District Court because of a demand for a jury trial. For all other criminal cases, subsection d.3. (ii)(B) allows the county administrative judge to authorize not more than one judge at a time to grant postponements. This causes problems in Baltimore City, which has two courthouses. The proposed amendment to subsection d. 3. allows the administrative judge of the Circuit Court for Baltimore City to authorize one judge in each courthouse to postpone cases set for trial in that courthouse.

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

AMEND Rule 3-306 to add a new section (a) containing definitions, to divide current section (a) into sections (b) and (c), to change the tagline of new section (b), to add the words "in the amount claimed" to new section (b), to add a new tagline to new section (c), to require that an interest worksheet in a certain form accompany the affidavit if interest is claimed, to add a new subsection (c) (4) (C) pertaining to attorneys' fees, to add a new section (d) pertaining to claims arising from assigned consumer debt, to delete from new subsection (e) (2) (A) the words "section (a) of," to add the words "or other credit" to new section (f), to add the word "latest" to new section (g), and to make stylistic changes, as follows:

Rule 3-306. JUDGMENT ON AFFIDAVIT

(a) Definitions

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

(1) Charge-off

"Charge-off" means the act of a creditor that treats an account receivable or other debt as a loss or expense because payment is unlikely.

(2) Charge-off Balance

"Charge-off balance" means the amount due on the account or debt at the time of charge-off.

(3) Consumer Debt

"Consumer debt" means a secured or unsecured debt that is for money owed or alleged to be owed and arises from a consumer transaction.

(4) Consumer Transaction

"Consumer transaction" means a transaction involving an individual seeking or acquiring real or personal property, services, future services, money, or credit for personal, family, or household purposes.

(5) Original Creditor

"Original creditor" means the lender, provider, or other person to whom a consumer originally was alleged to owe money pursuant to a consumer transaction. "Original creditor" includes the Central Collection Unit, a unit within the State Department of Budget and Management.

(6) Original Consumer Debt

"Original consumer debt" means the total of the consumer debt alleged to be owed to the original creditor, consisting of principal, interest, fees, and any other charges.

Committee note: If there has been a charge-off, the amount of the "original consumer debt" is the same as the "charge-off balance."

(7) Principal

"Principal" means the unpaid balance of the funds

borrowed, the credit utilized, the sales price of goods or services obtained, or the capital sum of any other debt or obligation arising from a consumer transaction, alleged to be owed to the original creditor. It does not include interest, fees, or charges added to the debt or obligation by the original creditor or any subsequent assignees of the consumer debt.

(8) Future Services

"Future services" means one or more services that will be delivered at a future time.

(9) Future Services Contract

"Future services contract" means an agreement that obligates a consumer to purchase a future service from a provider.

(10) Provider

"Provider" means any person who sells a service or future service to a consumer.

~~(a) (b) Time for Demand - Affidavit and Supporting Documents~~  
Demand for Judgment by Affidavit

In an action for money damages a plaintiff may file a demand for judgment on affidavit at the time of filing the complaint commencing the action. The complaint shall be supported by an affidavit showing that the plaintiff is entitled to judgment as a matter of law in the amount claimed.

(c) Affidavit and Attachments - General Requirements

The affidavit shall:

(1) be made on personal knowledge~~;~~i

(2) ~~shall~~ set forth such facts as would be admissible in evidence~~;~~i ~~and shall~~

(3) show affirmatively that the affiant is competent to testify to the matters stated in the affidavit~~;~~i~~.~~ ~~The affidavit shall~~

(4) include or be accompanied ~~(1)~~ by:

(A) supporting documents or statements containing sufficient detail as to liability and damages, including the precise amount of the claim and any interest claimed~~;~~ ~~and (2);~~

(B) if interest is claimed, an interest worksheet substantially in the form prescribed by the Chief Judge of the District Court;

(C) if attorneys' fees are claimed, sufficient proof evidencing that the plaintiff is entitled to an award of attorneys' fees and that the fees are reasonable; and

(D) ~~If~~ if the claim is founded upon a note, security agreement, or other instrument, ~~by~~ the original or a photocopy of the executed instrument, or a sworn or certified copy, unless the absence thereof is explained in the affidavit. ~~If interest is claimed, the plaintiff shall file with the complaint an interest worksheet.~~

(d) If Claim Arises from Assigned Consumer Debt

If the claim arises from consumer debt and the plaintiff is not the original creditor, the affidavit also shall include or be accompanied by (i) the items listed in this section, and (ii)

an Assigned Consumer Debt Checklist, substantially in the form prescribed by the Chief Judge of the District Court, listing the items and information supplied in or with the affidavit in conformance with this Rule. Each document that accompanies the affidavit shall be clearly numbered as an exhibit and referenced by number in the Checklist.

(1) Proof of the Existence of the Debt or Account

Proof of the existence of the debt or account shall be made by a certified or otherwise properly authenticated photocopy or original of at least one of the following:

(A) a document signed by the defendant evidencing the debt or the opening of the account;

(B) a bill or other record reflecting purchases, payments, or other actual use of a credit card or account by the defendant;  
or

(C) an electronic printout or other documentation from the original creditor establishing the existence of the account and showing purchases, payments, or other actual use of a credit card or account by the defendant.

(2) Proof of Terms and Conditions

(A) Except as provided in subsection (d) (2) (B) of this Rule, if there was a document evidencing the terms and conditions to which the consumer debt was subject, a certified or otherwise properly authenticated photocopy or original of the document actually applicable to the consumer debt at issue shall accompany the affidavit.

(B) Subsection (d) (2) (A) of this Rule does not apply if (i) the consumer debt is an unpaid balance due on a credit card; (ii) the original creditor is or was a financial institution subject to regulation by the Federal Financial Institutions Examination Council or a constituent federal agency of that Council; and (iii) the claim does not include a demand or request for attorneys' fees or interest on the charge-off balance in excess of the Maryland Constitutional rate of six percent per annum.

Committee note: This Rule is procedural only, and subsection (d) (2) (B) (iii) is not intended to address the substantive issue of whether interest in any amount may be charged on a part of the charge-off balance that, under applicable and enforceable Maryland law, may be regarded as interest.

Cross reference: See Federal Financial Institutions Examination Council Uniform Retail Credit Classification and Account Management Policy, 65 Fed. Reg. 36903 - 36906 (June 12, 2000).

### (3) Proof of Plaintiff's Ownership

The affidavit shall contain a statement that the plaintiff owns the consumer debt. It shall include or be accompanied by:

(A) a chronological listing of the names of all prior owners of the debt and the date of each transfer of ownership of the debt, beginning with the name of the original creditor; and

(B) a certified or other properly authenticated copy of the bill of sale or other document that transferred ownership of the debt to each successive owner, including the plaintiff.

Committee note: If a bill of sale or other document transferred debts in addition to the consumer debt upon which the action is based, the documentation required by subsection (d) (3) (B) of this Rule may be in the form of a redacted document that provides the general terms of the bill of sale or other document and the

document's specific reference to the debt sued upon.

(4) Identification and Nature of Debt or Account

The affidavit shall include the following information:

(A) the name of the original creditor;

(B) the full name of the defendant as it appears on the original account;

(C) the last four digits of the social security number for the defendant appearing on the original account, if known;

(D) the last four digits of the original account number;

and

(E) the nature of the consumer transaction, such as utility, credit card, consumer loan, retail installment sales agreement, service, or future services.

(5) Future Services Contract Information

If the claim is based on a future services contract, the affidavit shall contain facts evidencing that the plaintiff currently is entitled to an award of damages under that contract.

(6) Account Charge-off Information

If there has been a charge-off of the account, the affidavit shall contain the following information:

(A) the date of the charge-off;

(B) the charge-off balance;

(C) an itemization of any fees or charges claimed by the plaintiff in addition to the charge-off balance;

(D) an itemization of all post-charge-off payments received and other credits to which the defendant is entitled; and

(E) the date of the last payment on the consumer debt or of the last transaction giving rise to the consumer debt.

(7) Information for Debts and Accounts not Charged Off

If there has been no charge-off, the affidavit shall contain:

(A) an itemization of all money claimed by the plaintiff, (i) including principal, interest, finance charges, service charges, late fees, and any other fees or charges added to the principal by the original creditor and, if applicable, by subsequent assignees of the consumer debt and (ii) accounting for any reduction in the amount of the claim by virtue of any payment made or other credit to which the defendant is entitled;

(B) a statement of the amount and date of the consumer transaction giving rise to the consumer debt, or in instances of multiple transactions, the amount and date of the last transaction; and

(C) a statement of the amount and date of the last payment on the consumer debt.

(8) Licensing Information

The affidavit shall include a list of all Maryland collection agency licenses that the plaintiff currently holds and provide the following information as to each:

(A) license number,

(B) name appearing on the license, and

(C) date of issue.

~~(b)~~ (e) Subsequent Proceedings

(1) When Notice of Intention to Defend Filed

If the defendant files a timely notice of intention to defend pursuant to Rule 3-307, the plaintiff shall appear in court on the trial date prepared for a trial on the merits. If the defendant fails to appear in court on the trial date, the court may proceed as if the defendant failed to file a timely notice of intention to defend.

(2) When No Notice of Intention to Defend Filed

(A) If the defendant fails to file a timely notice of intention to defend, the plaintiff need not appear in court on the trial date and the court may determine liability and damages on the basis of the complaint, affidavit, and supporting documents filed pursuant to ~~section (a)~~ of this Rule. If the defendant fails to appear in court on the trial date and the court determines that the pleading and documentary evidence are sufficient to entitle the plaintiff to judgment, the court shall grant the demand for judgment on affidavit.

(B) If the court determines that the pleading and documentary evidence are insufficient to entitle the plaintiff to judgment on affidavit, the court may deny the demand for judgment on affidavit or may grant a continuance to permit the plaintiff to supplement the documentary evidence filed with the demand. If the defendant appears in court at the time set for trial and it is established to the court's satisfaction that the defendant may have a meritorious defense, the court shall deny the demand for judgment on affidavit. If the demand for judgment on affidavit

is denied or the court grants a continuance pursuant to this section, the clerk shall set a new trial date and mail notice of the reassignment to the parties, unless the plaintiff is in court and requests the court to proceed with trial.

Cross reference: Rule 3-509.

~~(c)~~ (f) Reduction in Amount of Damages

Before entry of judgment, the plaintiff shall inform the court of any reduction in the amount of the claim by virtue of any payment or other credit.

~~(d)~~ (g) Notice of Judgment on Affidavit

When a demand for judgment on affidavit is granted, the clerk shall mail notice of the judgment promptly after its entry to each party at the latest address stated in the pleadings. The notice shall inform (1) the plaintiff of the right to obtain a lien on real property pursuant to Rule 3-621, and (2) the defendant of the right to file a motion to vacate the judgment within 30 days after its entry pursuant to Rule 3-535 (a). The clerk shall ensure that the docket or file reflects compliance with this section.

Source: This Rule is derived as follows:

Section (a) is new.

Section ~~(a)~~ (b) is derived from former M.D.R. 610 a.

Section (c) is derived from former M.D.R. 610 a.

Section (d) is new.

Section ~~(b)~~ (e) is derived from former M.D.R. 610 b, c and d.

Section ~~(c)~~ (f) is derived from former M.D.R. 610 e.

Section ~~(d)~~ (g) is derived from former M.D.R. 610 d.

## REPORTER'S NOTE

In the last 10 years, many debt collection cases seeking judgment on affidavit pursuant to Rule 3-306 have been filed on behalf of Consumer Debt Purchasers (CDP's), which are entities that purchase consumer claims in default at the time of acquisition from the original creditor or from an assignee of the original creditor, which may also be a CDP. Problems with the cases filed by CDP's have arisen, including: failure of the CDP to be licensed, the wrong party being named as plaintiff, filing after the statute of limitations period has run, lack of personal knowledge by the affiant, lack of supporting documentation containing sufficient detail as to liability and damages, failure of the CDP to prove it owns the debt, and incorrect identification of the amount claimed.

To ensure fairness to all parties, to make the claim transparent, to adopt best practices used in other states, and to conform the Rules to current practice in collection-related litigation, the Maryland Attorney General proposed changes to Rules 3-306, 3-308, 3-509, and 5-902. After hearing from members of the debt collection bar and others, the Rules Committee considered the changes proposed by the Attorney General. The Committee recommends amendments to Rules 3-306, 3-308, and 3-509. Proposals concerning Rule 5-902 have been referred to the Committee's Evidence Subcommittee.

In the proposed amendments to Rule 3-306, section (a) is new. Subsections (a)(1) and (a)(2) are derived from Black's Law Dictionary and a regulation of the Federal Financial Institutions Examination Council. Subsection (a)(3) is derived from portions of the Maryland Collection Agency Licensing Act, Code, Business Regulation Article, §7-101 (c) and Code, Commercial Law Article, §§14-201 and 15-701. Subsection (a)(4) is derived from Code, Commercial Law Article, §14-201. Subsection (a)(7) is derived from Black's Law Dictionary. Subsections (a)(8), (a)(9), and (a)(10) are derived from Virginia House Bill No. 852 (offered January 22, 1996), Chapter 178.

In relettered section (b), the words "in the amount claimed" are added to clarify that the affidavit must be sufficient to show not only the defendant's liability but also the amount of the judgment to which the plaintiff is entitled.

In section (c), the existing requirement that the plaintiff file with the complaint an interest worksheet is amended to require that an interest worksheet in the form prescribed by the Chief Judge of the District court accompany the affidavit. Also in section (c), a new subsection (c)(4)(C) is added to require proof of entitlement to, and reasonableness of, attorneys' fees

if such fees are sought.

Section (d) is new. It is derived in part from (1) Fairfax County, Va. Purchased-Debt Default Judgment Checklist; (2) North Carolina Gen. Stat. §58-70-150-(2); (3) Connecticut Superior Court - Procedures in Civil Matters, §24-24 (b)(1)(A); (4) FTC Report (July 2010) ("Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration"); (5) North Carolina Gen. Stat. §58-70-155 (b); (6) Connecticut Proposed Small Claims Judgment Checklist for Magistrates, provided in the July 2010 FTC Report; (7) recommendations arising from prior Maryland State regulatory actions; (8) New York City Administrative Code, Title 20, Chapter 2, Subchapter 30 (Debt Collection Agencies) §§20-488 - 20-494.1; and (8) recommendations from the District Court Committee on Civil Procedure.

For claims arising from assigned consumer debt, section (d) lists eight categories of information (Proof of the Existence of Account; Proof of Terms and Conditions; etc.) to be included, as applicable, in the affidavit or accompanying documents. Section (d) also requires that the plaintiff complete an Assigned Consumer Debt Checklist substantially in the form prescribed by the Chief Judge of the District Court, number all documents that accompany the plaintiff's affidavit, and make reference to the documents by number in the checklist.

In section (e), the words "section (a) of" are deleted.

In section (f), the words "or other credit" are added.

In section (g), the word "latest" is added.

Also, stylistic changes to the Rule are made.

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

AMEND Rule 3-308 by adding a Committee note, as follows:

Rule 3-308. DEMAND FOR PROOF

When the defendant desires to raise an issue as to (1) the legal existence of a party, including a partnership or a corporation, (2) the capacity of a party to sue or be sued, (3) the authority of a party to sue or be sued in a representative capacity, (4) the averment of the execution of a written instrument, or (5) the averment of the ownership of a motor vehicle, the defendant shall do so by specific demand for proof. The demand may be made at any time before the trial is concluded. If not raised by specific demand for proof, these matters are admitted for the purpose of the pending action. Upon motion of a party upon whom a specific demand for proof is made, the court may continue the trial for a reasonable time to enable the party to obtain the demanded proof.

Committee note: This Rule does not affect the proof requirements set forth in Rules 3-306 (d) and 3-509 (a) that are applicable to claims arising from consumer debt when the plaintiff is not the original creditor.

Source: This Rule is derived from former M.D.R. 302 a.

REPORTER'S NOTE

The proposed Committee note to Rule 3-308 makes clear that the proof requirements of Rules 3-306 (d) and 3-509 (a) are not waived by a failure to make a demand under Rule 3-308.

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

AMEND Rule 3-509 to add provisions concerning assigned consumer debt, as follows:

Rule 3-509. TRIAL UPON DEFAULT

(a) Requirements of Proof

When a motion for judgment on affidavit has not been filed by the plaintiff, or has been denied by the court, and the defendant has failed to appear in court at the time set for trial:

(1) if the defendant did not file a timely notice of intention to defend, the plaintiff shall not be required to prove the liability of the defendant, but shall be required to prove damages; except that for claims arising from consumer debt, as defined in Rule 3-306 (a) (3), when the plaintiff is not the original creditor, as defined in Rule 3-306 (a) (5), the court (A) may require proof of liability, (B) shall consider the requirements set forth in Rule 3-306 (d), and (C) may also consider other competent evidence;

(2) if the defendant filed a timely notice of intention to defend, the plaintiff shall be required to introduce prima facie evidence of the defendant's liability and to prove damages. For claims arising from consumer debt, as defined in Rule 3-306

(a) (3), when the plaintiff is not the original creditor, as defined in Rule 3-306 (a) (5), the court shall consider the requirements set forth in Rule 3-306 (d) and may also consider other competent evidence.

(b) Property Damage - Affidavit

When the defendant has failed to appear for trial in an action for property damage, prima facie proof of the damage may be made by filing an affidavit to which is attached an itemized repair bill, or an itemized estimate of the costs of repairing the damaged property, or an estimate of the fair market value of the property. The affidavit shall be made on personal knowledge of the person making such repairs or estimate, or under whose supervision such repairs or estimate were made, and shall include the name and address of the affiant, a statement showing the affiant's qualification, and a statement that the bill or estimate is fair and reasonable.

(c) Notice of Judgment

Upon entry of a judgment against a defendant in default, the clerk shall mail notice of the judgment to the defendant at the address stated in the pleadings and shall ensure that the docket or file reflects compliance with this requirement.

Cross reference: For default judgments relating to citations issued for certain record-keeping violations, see Code, Transportation Article, §15-115.

Source: This Rule is derived from former M.D.R. 648.

REPORTER'S NOTE

Amendments to Rule 3-509 are proposed in conjunction with amendments to Rule 3-306 concerning assigned consumer debt.

In a trial upon default in an assigned consumer debt action when the defendant did not file a timely notice of intention to defend, the amendments to subsection (a)(1) of Rule 3-509 state that the court shall consider the requirements set forth in Rule 3-306 (d). The amendments also allow the court to require in those actions proof of liability.

In a trial upon default when the defendant did file a timely notice of intention to defend, the existing requirements of subsection (a)(2) are that the plaintiff must introduce prima facie evidence of the defendant's liability and prove damages. The amendments to subsection (a)(2) state that, in an assigned consumer debt action, the court also shall consider the requirements set forth in Rule 3-306 (d).

In both circumstances, other competent evidence also may be considered by the court.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 200 - OBTAINING REVIEW IN COURT OF SPECIAL APPEALS

AMEND Rule 8-204 to add a sentence to section (c) requiring the clerk to notify parties of the transmittal of the record and application and to change the time period to respond in section (d) to 15 days after the clerk has sent out the notice of transmittal, as follows:

Rule 8-204. APPLICATION FOR LEAVE TO APPEAL TO COURT OF SPECIAL APPEALS

. . .

(c) Record on Application

(1) Time for Transmittal

The clerk of the lower court shall transmit the record, together with the application, to the Court of Special Appeals  
~~within~~ within (A) five days after the filing of an application by a victim for leave to file an interlocutory appeal pursuant to Code, Criminal Procedure Article, §11-103, (B) 30 days after the filing of an application for leave to appeal in any other case, or (C) such shorter time as the appellate court may direct, ~~the clerk of the lower court shall transmit the record, together with the application, to the Court of Special Appeals.~~ The clerk shall notify each party of the transmittal.

. . .

(d) Response

Within 15 days after ~~service of the application~~ the clerk of the lower court sends the notice that the record and application have been transmitted to the Court of Special Appeals, any other party may file a response in the Court of Special Appeals stating why leave to appeal should be denied or granted, except that any response to an application for leave to appeal with regard to bail pursuant to Code, Courts Article, §3-707 or with regard to an interlocutory appeal by a victim pursuant to Code, Criminal Procedure Article, §11-103 shall be filed within five days after service of the application.

. . .

REPORTER'S NOTE

An attorney pointed out that as Rule 8-204 is structured, an opposing party can respond to the application for leave to appeal before the Court of Special Appeals has even received the application. He suggested that to avoid this situation, the clerk of the lower court should be required to notify the parties that the application and record had been sent to the Court of Special Appeals, and then the other parties would respond within 15 days after the clerk transmitted the application and record to the court instead of within 15 days after service of the application. The Rules Committee agrees with this suggestion.

MARYLAND RULES OF PROCEDURE  
TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS  
AND COURT OF SPECIAL APPEALS  
CHAPTER 400 - PRELIMINARY PROCEDURES

AMEND Rule 8-421 (a) to delete the third sentence, as follows:

Rule 8-421. DOCKETING OF APPEALS

(a) Generally

The Clerk need not docket an appeal until the record in the action has been received in the Clerk's office. In the Court of Special Appeals the Clerk need not docket the appeal until the filing fee provided by Rule 8-201 (b) has been received by the Clerk or waived. ~~Ordinarily, the Clerk shall docket appeals in the order in which the records are received.~~ When the record is received on or after March first in any term, the Clerk shall place the appeal on the docket for the next term.

(b) Separate Appeals on Same Record

All appeals on the same record, whether in the same action or in two or more actions consolidated in the lower court, shall be docketed as one action on appeal.

Source: This Rule is derived from former Rules 1004 and 804.

REPORTER'S NOTE

An appeal in the Court of Special Appeals is docketed when the monthly report under Rule 16-309 is submitted by the circuit court or when the information report or an early-filed motion is

filed. Because the records are not necessarily received in the order in which the appeals were docketed, the Chief Judge of the Court of Special Appeals has requested that the third sentence of section (a) of Rule 8-421 be deleted. The Rules Committee agrees with this deletion.

MARYLAND RULES OF PROCEDURE  
TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS  
AND COURT OF SPECIAL APPEALS  
CHAPTER 500 - RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-502 (c) by adding a new sentence addressing the number of briefs and record extracts that self-represented incarcerated and institutionalized parties shall file, as follows:

Rule 8-502. FILING OF BRIEFS

. . .

(c) Filing and Service

In an appeal to the Court of Special Appeals, 15 copies of each brief and 10 copies of each record extract shall be filed, unless otherwise ordered by the court. Incarcerated or institutionalized parties who are self-represented shall file nine copies of each brief and nine copies of each record extract.

In the Court of Appeals, 20 copies of each brief and record extract shall be filed, unless otherwise ordered by the court. Two copies of each brief and record extract shall be served on each party pursuant to Rule 1-321.

. . .

REPORTER'S NOTE

Because of the difficulty that self-represented incarcerated and institutionalized parties have making copies of briefs, the Chief Judge of the Court of Special Appeals has requested that

the number of briefs required to be filed by those parties be lowered from 15 copies to nine copies. The Rules Committee recommends changing the number of briefs and also changing the number of record extracts that must be filed to conform to the requested change.

MARYLAND RULES OF PROCEDURE  
TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS  
AND COURT OF SPECIAL APPEALS  
CHAPTER 500 - RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-503 (c) to add white as a color for the briefs of self-represented incarcerated or institutionalized parties and to add that certain information be required for the cover page, as follows:

Rule 8-503. STYLE AND FORM OF BRIEFS

. . .

(c) Covers

A brief shall have a back and cover of the following color:

(1) In the Court of Special Appeals:

(A) appellant's brief - yellow;

(B) appellee's brief - green;

(C) reply brief - light red;

(D) amicus curiae brief - gray;

(E) briefs of incarcerated or institutionalized parties who are self-represented - white.

(2) In the Court of Appeals:

(A) appellant's brief - white;

(B) appellee's brief - blue;

(C) reply brief - tan;

(D) amicus curiae brief - gray.

The cover page shall contain the name of the appellate court, the caption of the case on appeal, and the case number on appeal, as well as the name, address, telephone number, and e-mail address, if available, of at least one attorney for a party represented by an attorney or of the party if not represented by an attorney. If the appeal is from a decision of a trial court, the cover page shall also name the trial court and each judge of that court whose ruling is at issue in the appeal. The name typed or printed on the cover constitutes a signature for purposes of Rule 1-311.

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#### REPORTER'S NOTE

To make the appellate process easier for self-represented incarcerated and institutionalized parties, the Chief Judge of the Court of Special Appeals has suggested that they be allowed to file briefs and record extracts with white covers and backs. The Rules Committee agrees with this suggestion. The Chief Judge also recommends that more information be added to the cover page of briefs, including the name of the appellate court, the caption of the case on appeal, and the case number on appeal. The Rules Committee agrees with these changes.

MARYLAND RULES OF PROCEDURE  
TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS  
AND COURT OF SPECIAL APPEALS  
CHAPTER 500 - RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-504 to add language to subsection (a) (5) to add a statement of the applicable standard of review to the contents of a brief, as follows:

Rule 8-504. CONTENTS OF BRIEF

(a) Contents

A brief shall comply with the requirements of Rule 8-112 and include the following items in the order listed:

(1) A table of contents and a table of citations of cases, constitutional provisions, statutes, ordinances, rules, and regulations, with cases alphabetically arranged. When a reported Maryland case is cited, the citation shall include a reference to the official Report.

Cross reference: Citation of unreported opinions is governed by Rule 1-104.

(2) A brief statement of the case, indicating the nature of the case, the course of the proceedings, and the disposition in the lower court, except that the appellee's brief shall not contain a statement of the case unless the appellee disagrees with the statement in the appellant's brief.

(3) A statement of the questions presented, separately numbered, indicating the legal propositions involved and the

questions of fact at issue expressed in the terms and circumstances of the case without unnecessary detail.

(4) A clear concise statement of the facts material to a determination of the questions presented, except that the appellee's brief shall contain a statement of only those additional facts necessary to correct or amplify the statement in the appellant's brief. Reference shall be made to the pages of the record extract supporting the assertions. If pursuant to these rules or by leave of court a record extract is not filed, reference shall be made to the pages of the record or to the transcript of testimony as contained in the record.

Cross reference: Rule 8-111 (b).

(5) A concise statement of the applicable standard of review for each issue, which may appear in the discussion of the issue or under a separate heading placed before the argument.

~~(5)~~ (6) Argument in support of the party's position on each issue.

~~(6)~~ (7) A short conclusion stating the precise relief sought.

~~(7)~~ (8) The citation and verbatim text of all pertinent constitutional provisions, statutes, ordinances, rules, and regulations except that the appellee's brief shall contain only those not included in the appellant's brief.

~~(8)~~ (9) If the brief is prepared with proportionally spaced type, the font used and the type size in points shall be stated on the last page.

Cross reference: For requirements concerning the form of a brief, see Rule 8-112.

. . .

REPORTER'S NOTE

The Chief Judge of the Court of Special Appeals has suggested that a "standard of review" statement be added to the contents of the appellate brief in Rule 8-504 (a). This would help in focusing the arguments before the appellate courts, and it is in conformance with federal practice. See Fed.R.App.P.28 (a) (9) (B). The Rules Committee agrees with this suggestion.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 300 - CIRCUIT COURT CLERKS' OFFICES

AMEND Rule 16-309 to add language authorizing electronic transmission of the circuit clerk's list of cases to the Court of Special Appeals and to add items to the list, as follows:

Rule 16-309. NOTICE TO COURT OF SPECIAL APPEALS

By the third working day of each month, the clerk shall send or electronically transmit to the Clerk of the Court of Special Appeals a list of all cases in which, during the preceding calendar month, (1) a notice of appeal to the Court of Special Appeals has been filed, (2) a timely motion pursuant to Rule 2-532, 2-533, or 2-534 has been filed after the filing of a notice of appeal, (3) an application for leave to appeal has been filed, or (4) a notice of appeal or an application for leave to appeal ~~or (3) an appeal~~ to the Court of Special Appeals has been stricken pursuant to Rule 8-203. The list shall include the title and docket number of the case, the name and address of counsel for appellant(s), and the date on which the notice of appeal, the motion, or the dismissal was filed.

Source: This Rule is derived from former Rule 1219.

REPORTER'S NOTE

The Chief Judge of the Court of Special Appeals has asked that language be added to Rule 16-309 to clarify that the required list may be electronically transmitted.

The Chief Judge of the Court of Special Appeals also has requested that cases in which an application for leave to appeal has been filed and cases in which the circuit court has stricken an application for leave to appeal be added to the list of cases that the clerk of the circuit court sends to the Clerk of the Court of Special Appeals each month.

Rule 16-309 is proposed to be amended in accordance with the suggested changes.

MARYLAND RULES OF PROCEDURE  
TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS  
AND COURT OF SPECIAL APPEALS  
CHAPTER 500 - RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-521 to make a stylistic change, as follows:

Rule 8-521. ASSIGNMENT OF CASES

. . .

(b) Advancement or Postponement of Case

A case may be advanced or postponed on motion of a party or on the Court's own initiative. Argument will not be postponed because of the absence of an attorney or a ~~pro se~~ self-represented party on either side unless the absence is caused by sickness or other sufficient cause. Unless briefs have already been filed, an order advancing argument shall fix the times for filing briefs.

Source: This Rule is derived from former Rules 1045 and 845.

REPORTER'S NOTE

In Rules 8-521, 16-204, and 16-902 and 3.8, 5.5, and 6.5 of the Maryland Lawyers' Rules of Professional Conduct, the term "pro se" is proposed to be replaced by the term "self-represented." The change is stylistic, only.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 100 - COURT ADMINISTRATIVE STRUCTURE, JUDICIAL  
DUTIES, ETC.

AMEND Rule 16-110 to correct the internal numbering in  
section (d), as follows:

Rule 16-110. CELL PHONES; OTHER ELECTRONIC DEVICES; CAMERAS

. . .

(d) Notice

Notice of the provisions of sections (b) and (c) of this  
Rule shall be:

~~(A)~~ (1) posted prominently at the court facility;

~~(B)~~ (2) included on the main judiciary website and the  
website of each court; and

~~(C)~~ (3) disseminated to the public by any other means  
approved in an administrative order of the Chief Judge of the  
Court of Appeals.

Source: This Rule is new.

REPORTER'S NOTE

The amendment to Rule 16-110 (d) is stylistic, only.

MARYLAND RULES OF PROCEDURE  
TITLE 16 - COURTS, JUDGES, AND ATTORNEYS  
CHAPTER 200 - THE CALENDAR - ASSIGNMENT AND DISPOSITION  
OF MOTIONS AND CASES

AMEND Rule 16-204 to make a stylistic change, as follows:

Rule 16-204. FAMILY DIVISION AND SUPPORT SERVICES

(a) Family Division

. . .

(3) Family Support Services

Subject to the availability of funds, the following family support services shall be available through the family division for use when appropriate in a particular action:

(A) mediation in custody and visitation matters;

(B) custody investigations;

(C) trained personnel to respond to emergencies;

(D) mental health evaluations and evaluations for alcohol and drug abuse;

(E) information services, including procedural assistance to ~~pro se~~ self-represented litigants;

Committee note: This subsection is not intended to interfere with existing projects that provide assistance to ~~pro se~~ self-represented litigants.

(F) information regarding lawyer referral services;

(G) parenting seminars; and

(H) any additional family support services for which funding is provided.

. . .

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 8-521.

MARYLAND RULES OF PROCEDURE  
TITLE 16 - COURTS, JUDGES, AND ATTORNEYS  
CHAPTER 900 - PRO BONO LEGAL SERVICE

AMEND Rule 16-902 to make a stylistic change, as follows:

Rule 16-902. LOCAL PRO BONO COMMITTEES AND PLANS

. . .

(c) Local Pro Bono Action Plans

. . .

(2) Contents

The Local Pro Bono Action Plan shall address the following matters:

. . .

(F) methods of informing lawyers about the ways in which they may provide pro bono legal service;

Committee note: Ways in which lawyers may provide pro bono legal service include assisting in the screening and intake process; interviewing prospective clients and providing basic consultation; participating in ~~pro se~~ self-represented clinics or other programs in which lawyers provide advice and counsel, assist persons in drafting letters or documents, or assist persons in planning transactions or resolving disputes without the need for litigation; representing clients through case referral; acting as co-counsel with legal service providers or other participating attorneys; providing consultation to legal service providers for case reviews and evaluations; training or consulting with other participating attorneys or staff attorneys affiliated with a legal service provider; engaging in legal research and writing; and, if qualified through training and experience, serving as a mediator, arbitrator, or neutral evaluator.

. . .

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 8-521.

MARYLAND RULES OF PROCEDURE

APPENDIX: THE MARYLAND LAWYERS' RULES OF PROFESSIONAL CONDUCT

ADVOCATE

AMEND Rule 3.8 to make a stylistic change, as follows:

Rule 3.8. SPECIAL RESPONSIBILITIES OF A PROSECUTOR

. . .

COMMENT

. . .

[2] Paragraph (c) does not apply to an accused appearing ~~pro se~~ self-represented with the approval of the tribunal. Nor does it forbid the lawful questioning of a suspect who has knowingly waived the rights to counsel and silence.

. . .

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 8-521.

MARYLAND RULES OF PROCEDURE

APPENDIX: THE MARYLAND LAWYERS' RULES OF PROFESSIONAL CONDUCT  
LAW FIRMS AND ASSOCIATIONS

AMEND Rule 5.5 to make a stylistic change, as follows:

Rule 5.5. UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL  
PRACTICE OF LAW

. . .

COMMENT

. . .

[3] A lawyer may provide professional advice and instruction to nonlawyers whose employment requires knowledge of law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. Lawyers also may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services. In addition, a lawyer may counsel nonlawyers who wish to proceed ~~pro se~~ self-represented.

. . .

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 8-521.

MARYLAND RULES OF PROCEDURE

APPENDIX: THE MARYLAND LAWYERS' RULES OF PROFESSIONAL CONDUCT

PUBLIC SERVICE

AMEND Rule 6.5 to make a stylistic change, as follows:

Rule 6.5. NONPROFIT AND COURT-ANNEXED LIMITED LEGAL SERVICES  
PROGRAMS

. . .

COMMENT

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services - such as advice or the completion of legal forms - that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics, ~~pro se~~ self-represented counseling programs, or programs in which lawyers represent clients on a pro bono basis for the purposes of mediation only, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation.

. . .

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 8-521.