COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Rooms UL4 & 5 of the Judiciary Education and Training Center, 2011-D Commerce Park Drive, Annapolis, Maryland on January 6, 2017.

Members present:

Hon. Alan M. Wilner, Chair

H. Kenneth Armstrong, Esq.
Hon. Yvette M. Bryant
James E. Carbine, Esq.
Hon. John P. Davey
Mary Anne Day, Esq.
Hon. Angela M. Eaves
Hon. JoAnn M. Ellinghaus-Jones
Ms. Pamela Q. Harris
Victor H. Laws, III, Esq.
Bruce L. Marcus, Esq.
Donna Ellen McBride, Esq.
Hon. Danielle M. Mosley
Hon. Douglas R. M. Nazarian
Sen. H. Wayne Norman
Scott D. Shellenberger, Esq.
Steven M. Sullivan, Esq.
Dennis J. Weaver, Clerk
Robert Zarbin, Esq.
Thurman W. Zollicoffer, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
David R. Durfee, Jr., Esq., Assistant Reporter
Sherie B. Libber, Esq., Assistant Reporter
Thomas J. Dolina, Esq., Bodie, Dolina, Hoggs, Friddell & Grenzer, PC
Philip Tyson Bennett, Esq., Chair, Rules of Practice Committee, Maryland State Bar Association
Kim Klein, Anne Arundel County Circuit Court
Glenn Grossman, Esq., Bar Counsel, Attorney Grievance Commission
Brian L. Zavin, Esq., Office of the Public Defender
Hon. Juliet G. Fisher, Baltimore County Orphans' Court

The Chair announced that the previous day, the Court of Appeals held its open meeting on the 192nd Report pertaining to bail reform. The hearing commenced at 1:00 p.m. and ended at

7:30 p.m. The Court deferred action on the Rules until February 7, 2017, when the judges will resume discussion, but will not take any evidence or testimony. Two of the judges wanted some changes. The Chair and the Reporter will consider the questions posed by the Court and draft amendments to the Rules addressing those questions. He said that the revised Rules will be transmitted to the Court and posted to the Judiciary website for comment. The Chair said that he is not sure how the Court will address the comments since it will not hear any testimony.

The Reporter said that the Committee received four sets of Rules Committee meeting minutes for approval. Judge Eaves moved to approve the minutes. The motion was seconded and passed unanimously.

Agenda Item 1. Consideration of proposed amendments to: Rule 1-202 (Definitions), Rule 8-206 (ADR; Scheduling Conference), Rule 1-202 (Definitions), Rule 8-206 (ADR; Scheduling Conference; Order to Proceed), Rule 16-102 (Chief Judge of the Court of Appeals), Rule 16-103 (Chief Judge of the Court of Special Appeals), Rule 16-110 (Judicial Council), Rule 16-601 (Definitions), Rule 17-304 (Qualifications and Selection of Mediators and Settlement Conference Chairs), Rule 17-403 (Prehearing Conference), Rule 17-405 (Qualifications of Court-Designated Mediators), Rule 18-100.2 (Scope), Rule 18-102.9 (Ex Parte Communications), Rule 18-102.11 (Disqualification), Rule 18-103.8 (Appointments to Fiduciary Positions), Rule 18-103.11 (Financial, Business, or Remunerative Activities), Rule 18-103.12 (Compensation for Extra-Judicial Activities), Rule 18-202.9 (Ex Parte Communications), Rule 18-302 (Existence; Membership; Terms), Rule 18-401 (Commission on Judicial Disabilities – Definitions), Rule 18-501 (Scope of Chapter), Rule 18-603 (Financial Disclosure Statement by Judges), and Rule 20-101 (Definitions).

The Chair explained that the proposed amendments in Agenda Item 1 implement the change in terminology from "retired judge" to "senior judge." Mr. Frederick, Chair of the Attorneys and Judges Subcommittee, was unable to attend the meeting today, so the Chair said that he would present the Rules.

The Chair explained that the term "senior judge" has been defined in the Rules. This term appears in two very different contexts: in Rules 16-102 and 16-103, the term refers to the senior judge of the court assuming the authority of the Chief Judge when the Chief is unavailable; in all other Rules, the term replaces "retired judge" to mean a retired or recalled judge.

The Chair noted that another issue arose that was discussed by the Subcommittee. Some of the Rules use the term "retired" or "recalled" judge. Other Rules refer to a "retired judge of the court." It appears that this means a judge who had sat on that court, not just any retired judge. It was not clear what it meant to substitute the term "senior judge" for this.

The Chair commented that the Court of Special Appeals used to have prehearing conferences that were basically settlement conferences. Occasionally, when it was clear that a case was not going to be settled, a prehearing conference was used to see if there was a way to expedite the appeal. The Chair noted that

the Court of Appeals did not itself have the authority to do the prehearing conferences, but the Court of Special Appeals had the authority. The Court of Appeals could then take a case and save about 11 months of time between the two courts. The Chair explained that later, the Court of Special Appeals shifted almost all of its emphasis to mediation. The prehearing conferences, although no longer used, are still provided for in the Rules (e.g. Rule 17-403). When the Alternative Dispute Resolution Rules were drafted for the Court of Special Appeals, the conferences were relabeled as "scheduling conferences." Rule 17-403 permits the judge, with the parties, to work out an expedited treatment of the case. When the Rule was drafted, Judge Peter Krauser, then-Chief Judge of the Court of Special Appeals, and the Judge Robert Zarnoch, then a judge on the Court, advised the Committee that only retired judges who had sat on the Court of Special Appeals should be appointed to conduct these conferences. Rule 8-206 provides for a retired judge of the Court to conduct a scheduling conference, not just any retired judge.

The Chair said that the Committee has options for how to update the terminology for retired judges in this context. One possibility is to add to the definition of the term "senior judge" a clarifying definition of "senior judge of the court" to mean a senior judge who was an incumbent judge of a particular

court and has been designated to sit on that court. When the Court of Appeals issues a recall, it designates which courts the judge is recalled to sit on, if asked to do so by the Administrative Judge of that court. The Chair told the Committee that he wanted to raise this issue, though it may not be worth worrying about it at this time, on the theory that if a senior judge has not been on a particular court, the judge may not be recalled to sit on that court. If the Committee prefers to be more specific about it, the term "senior judge of the court" can be defined.

Judge Nazarian commented that in section (b) of Rule 8-206, the definition of "senior judge of the court" may not be needed, because the Chief Judge of the Court of Special Appeals or the Chief Judge's designee is the one who is directing the other judges to have a meeting and the one who will assign the judge who will be presiding at the meeting. If the Chief Judge or the designee does not wish to have a judge who is retired from another court, he or she can assign someone else. The Chair remarked that the definition is not needed there, and it may not be needed anywhere.

The Chair presented Rule 1-202, Definitions, for the Committee's consideration.

TITLE 1 – GENERAL PROVISIONS

CHAPTER 200 – CONSTRUCTION, INTERPRETATION,

AND DEFINITIONS

AMEND Rule 1-202 to add a definition of the term "senior judge" and a related cross reference, as follows:

Rule 1-202. DEFINITIONS

In these rules the following definitions apply except as expressly otherwise provided or as necessary implication requires:

. . .

(z) Senior Judge

"Senior judge" means: (1) in Rules 16-103 and 16-601, an incumbent judge with the longest continuous period of incumbency on the court in which the judge serves, and (2) in all other Rules, an individual who (A) once served as a judge on the District Court, a circuit court, or an appellate court of this State, (B) retired from that office voluntarily or [by operation of law] [because of having attained the age of 70 years], and (C) has been approved for recall to sit as a judge pursuant to Md. Constitution, Art. IV, §3A and Code, Courts Article, §1-302.

Cross reference: For a use of the term "senior judge" consistent with the definition in Rule 1-202 (z)(1), see Md. Constitution, Art. IV, §18 (b)(5).

~~(z)~~ (aa) Sheriff

"Sheriff " means the sheriff or a deputy sheriff of the county in which the proceedings are taken, any elisor appointed to perform the duties of the sheriff, and, with respect to the District Court, any court constable.

~~(aa)~~ (bb) Subpoena

"Subpoena" means a written order or writ directed to a person and requiring attendance at a particular time and place to take the action specified therein.

~~(bb)~~ (cc) Summons

"Summons" means a writ notifying the person named in the summons that (1) an action against that person has been commenced in the court from which the summons is issued and (2) in a civil action, failure to answer the complaint may result in entry of judgment against that person and, in a criminal action, failure to attend may result in issuance of a warrant for that person's arrest.

~~(cc)~~ (dd) Writ

"Writ" means a written order issued by a court and addressed to a sheriff or other person whose action the court desires to command to require performance of a specified act or to give authority to have the act done.

Source: This Rule is derived as follows:

. . .

Section (z) is new.

Section ~~(z)~~ (aa) is derived from former Rule 5 cc.

Section ~~(aa)~~ (bb) is derived from former Rule 5 ee.

Section ~~(bb)~~ (cc) is new.

Section ~~(cc)~~ (dd) is derived from former Rule 5 ff.

Rule 1-202 was accompanied by the following Reporter's note:

> An Administrative Order by Chief Judge Mary Ellen Barbera dated August 25, 2016 directed that certain retired judges who had been referred to as "recalled judges" would henceforth be referred to as "senior judges."
>
> To conform terminology in the Maryland Rules with the Administrative Order, Rule 1-202 is proposed to be amended by adding a new section defining the term "senior judge." Because the term "senior judge" presently is used in Md. Const. Art. IV, §18 (b)(5) and Rules 16-103 and 16-601, the proposed definition in Rule 1-202 (z) reflects both the existing and the new usages of the term.
>
> Conforming amendments are proposed to Rules 8-206, 16-102, 16-103, 16-110, 16-601, 17-304, 17-403, 18-100.2, 18-102.9, 18-102.11, 18-103.8, 18-103.9, 18-103.11, 18-103.12, 18-202.9, 18-302, 18-401, 18-501, 18-603, and 20-101.
>
> In Rules 18-302, 18-603, and 20-101, judges who are approved for recall are referred to as "former judges." Conforming amendments are proposed to those Rules as well to refer to those judges as senior judges.

The Chair asked whether anyone had a comment on the proposed definition of "Senior Judge." The Chair said that as a pure style matter, the phrase in subsection (z)(1) that reads "in which the judge serves" should be "on which the judge serves." By consensus, the Committee approved the amendment.

Mr. Carbine pointed out that there were bracketed options in subsection (z)(2)(B) of Rule 1-202. The Chair said that the language would either be "retired from that office voluntarily or by operation of law" or "retired from that office voluntarily because of having attained the age of 70 years." When a judge turns 70, retirement is not voluntary, but a judge can be retired by operation of law as a result of a judicial disabilities matter. The Chair explained that he inserted the second bracket referring to attaining the age of 70. Mr. Carbine said that he preferred the second bracket.

Mr. Zarbin remarked that the legislature could change the judicial retirement age and asked whether it be simpler to refer to the Constitutional provision instead of the specific age. The Chair agreed. Judge Bryant pointed out that the language "by operation of law" would cover either situation. The Chair suggested that the language could be "by operation of law by reason of age." By consensus, the Committee approved the amendment.

By consensus, the Committee approved Rule 1-202 as amended.

The Chair presented Rule 8-206, ADR; Scheduling Conference; Order to Proceed, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 8 – APPELLATE REVIEW IN THE COURT OF

APPEALS AND COURT OF SPECIAL APPEALS

AMEND Rule 8-206 to substitute the word "senior" for the word "retired," as follows:

Rule 8-206. ADR; SCHEDULING CONFERENCE; ORDER TO PROCEED

(a) ADR

Upon the filing of an appellant's information report pursuant to Rule 8-205, the Court of Special Appeals may enter an order referring the parties, their attorneys, or both to a prehearing conference or mediation pursuant to the Rules in Title 17, Chapter 400.

(b) Scheduling Conference

(1) Order to Attend

Upon the filing of any appeal to the Court of Special Appeals, the Chief Judge or a judge designated by the Chief Judge, on motion of a party or on the judge's own initiative, may enter an order directing the parties, their attorneys, or both, to appear before an incumbent or ~~retired~~ senior judge of the Court at a time and place specified in the order or to be determined by the designated judge.

(2) Purposes

The primary purposes of a scheduling conference are to identify and attempt to resolve any special procedural issues and to examine ways to expedite the appeal, if practicable. The participants may discuss:

(A) any claim that the appeal is not timely, that there is no final or otherwise appealable judgment, that the appeal is

moot, or that an issue sought to be raised in the appeal is not preserved for appellate review and, in the absence of an agreement to dismiss the appeal or limit the issues, whether it is feasible for any such issue to be presented to the Court in an appropriate preliminary motion;

(B) whether there are any problems with or any dispute over the record and how any such problem or dispute may be resolved;

(C) if there will be no substantial disagreement as to the relevant facts, whether it is feasible to proceed on an agreed statement of the case in lieu of a record and record extract, pursuant to Rule 8-413 (b);

(D) if there are multiple parties raising similar issues, whether one or more consolidated briefs may be feasible and whether any adjustments to the timing and length of such briefs may be useful;

(E) if the appeal will hinge on one or two issues of Statewide importance, whether a petition to the Court of Appeals for certiorari may be useful;

(F) whether, because of existing or anticipated circumstances, further proceedings in the Court of Special Appeals should be expedited or delayed; and

(G) any other administrative matter or issue that may make the appellate process more efficient or expeditious.

(3) Implementing Order

Within 30 days after conclusion of a scheduling conference, the parties or the judge may present to the Chief Judge a proposed order to implement any agreements or determinations made at the conference. The Chief Judge shall review a proposed

order and proceed in the manner set forth in Rule 17-404 (f)(2) and (3).

(4) Sanctions

Upon the failure of a party or attorney to comply with an order entered under subsection (b)(1) of this Rule, the Court, after an opportunity for a hearing, may impose any appropriate sanction, including (A) dismissal of the appeal, (B) assessing against the party or attorney the reasonable expenses caused by the failure, including reasonable attorney's fees, and (C) assessing against the party or attorney all or part of the appellate costs.

(c) Order to Proceed

The Court shall enter an order to proceed with the appeal in conformance with the Rules in this Title if (1) the Court does not enter an order under section (a) or (b) of this Rule, or (2) at the conclusion of ADR ordered pursuant to section (a) or a scheduling conference ordered pursuant to section (b), it appears that the appeal will not be dismissed.

Source: This Rule is new.

Rule 8-206 was accompanied by the following Reporter's note:

See the Reporter's note to Rule 1-202.

There being no motion to amend or reject the proposed amendment to Rule 8-206, it was approved as presented.

The Chair presented Rule 16-102, Chief Judge of the Court of Appeals, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 100 – COURT ADMINISTRATIVE STRUCTURE

AMEND Rule 16-102 to substitute the word "senior" for the word "retired," as follows:

Rule 16-102. CHIEF JUDGE OF THE COURT OF APPEALS

The Chief Judge of the Court of Appeals is the administrative head of the Maryland judicial system and has overall responsibility for the administration of the courts of this State. In the execution of that responsibility, the Chief Judge:

(a) may exercise the authority granted by the Maryland Constitution, the Maryland Code, the Maryland Rules, or other law;

(b) shall appoint a State Court Administrator to serve at the pleasure of the Chief Judge;

(c) may delegate administrative duties to other persons within the judicial system, including ~~retired~~ senior judges recalled pursuant to Code, Courts Article, §1-302; and

(d) may assign judges pursuant to Rule 16-108 (b).

Source: This Rule is derived from former Rule 16-101 a (2016).

Rule 16-102 was accompanied by the following Reporter's note:

See the Reporter's note to Rule 1-202.

There being no motion to amend or reject the proposed amendment to Rule 16-102, it was approved as presented.

The Chair presented Rule 16-103, Chief Judge of the Court of Special Appeals, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 100 – COURT ADMINISTRATIVE STRUCTURE

AMEND Rule 16-103 to add a cross reference to Rule 1-202 (z)(1), as follows:

Rule 16-103. CHIEF JUDGE OF THE COURT OF SPECIAL APPEALS

Subject to the provisions of this Chapter, other applicable law, and the direction of the Chief Judge of the Court of Appeals, the Chief Judge of the Court of Special Appeals is responsible for the administration of the Court of Special Appeals and, with respect to that court and to the extent applicable, has the authority of a County Administrative Judge. 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.

Cross reference: For the definition of a "senior judge" as used in this Rule, see Rule 1-202 (z)(1).

Source: This Rule is derived from former Rule 16-101 b (2016).

Rule 16-103 was accompanied by the following Reporter's note:

See the Reporter's note to Rule 1-202.

The Chair told the Committee that a cross reference to Rule 1-202 (z)(1) was added.

There being no motion to amend or reject the proposed amendment to Rule 16-103, it was approved as presented.

The Chair presented Rule 16-110, Judicial Council, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 100 – COURT ADMINISTRATIVE STRUCTURE

AMEND Rule 16-110 to substitute the word "senior" for "retired" in the name of a certain Committee and in the Committee note, as follows:

Rule 16-110. JUDICIAL COUNCIL

(a) Existence

There is a Judicial Council.

(b) Membership; Chair

The Judicial Council consists of:

(1) the Chief Judge of the Court of Appeals, who is the Chair of the Judicial Council;

(2) the Chief Judge of the Court of Special Appeals;

(3) the Chair and Vice Chair of the Conference of Circuit Judges;

(4) the Chief Judge of the District Court;

(5) the State Court Administrator;

(6) the Chair and Vice Chair of the Conference of Circuit Court Clerks;

(7) the Chair and Vice Chair of the Conference of Circuit Court Administrators;

(8) the Chair of the Court of Appeals Standing Committee on Rules of Practice and Procedure;

(9) the Chief Clerk of the District Court; and

(10) the Chair of the Retired and ~~Recalled~~ Senior Judges Committee; and

(11) three circuit court judges, three District Court judges, and two District Administrative Clerks appointed by the Chief Judge of the Court of Appeals.

Committee note: The Conference of Circuit Court Clerks, the Conference of Circuit Court Administrators, and the Conference of ~~Retired~~ and ~~Recalled~~ Senior Judges Committee are created and exist only by Administrative Order of the Chief Judge of the Court of Appeals. The inclusion of their Chairs or

Vice Chairs on the Judicial Council is not intended to affect the authority of the Chief Judge to alter or revoke those Administrative Orders.

(c) Terms of Appointed Members; Vacancies

(1) The term of each member appointed by the Chief Judge of the Court of Appeals is two years, subject to reappointment for one additional term of two years.

(2) If a vacancy occurs because an appointed member dies, resigns, or leaves the judicial office or office as an administrative clerk that the member occupied when appointed to the Judicial Council, the Chief Judge may appoint a successor to serve for the balance of the unexpired term.

(d) Duties; Authority

(1) The Judicial Council serves as the principal advisory body to the Chief Judge of the Court of Appeals with respect to the exercise of the Chief Judge's authority as the administrative head of the State judicial system.

Cross reference: See Article IV, §18 of the Maryland Constitution.

(2) The Chief Judge, as Chair of the Judicial Council, may create committees, subcommittees, and work groups:

(A) to consider matters relevant to the functioning and improvement of the Maryland Judiciary and the administration of justice in the State; and

(B) to make appropriate recommendations to the Judicial Council.

(3) The Chair of the Judicial Council shall make an annual report.

(e) Secretary

The Chief Judge of the Court of Appeals shall designate an individual to serve as Secretary to the Judicial Council.

(f) Meetings

(1) The Judicial Council shall meet on the call of the Chief Judge of the Court of Appeals.

(2) Unless impracticable due to exigent circumstances, the Secretary to the Judicial Council shall cause notice of all meetings of the Council to be posted on the Judiciary's website, and, subject to reasonable space limitations, all such meetings shall be open to the public. Minutes shall be kept of all meetings and posted on the Judiciary website.

Source: This Rule is derived from former Rule 16-802 (2016).

Rule 16-110 was accompanied by the following Reporter's note:

See the Reporter's note to Rule 1-202.

The Reporter said that Assistant Reporter Durfee had some information about the history of the Committee of Retired and Recalled Judges, which is mentioned in subsection (b)(10) and the Committee note following section (b). Mr. Durfee noted that this Committee has changed its title to "Retired and Senior Judges Committee." Ms. Harris remarked that the Committee changed its name because the Chief Judge of the Court of Appeals

issued an administrative order. Judge Nazarian added that the Judiciary website has not updated the name. Mr. Durfee said that he spoke to Judge James A. Kenney, III, who is the Chair of the Committee. He refers to the Committee as the "Retired and Senior Judges Committee."

The Chair asked why the name uses both "retired" and "senior." Mr. Durfee replied that it is because one can be a senior judge called back to service or a retired judge who has not been called back to service. The Reporter commented that the Committee note after section (b) should be revised because Mr. Durfee found that no administrative order existed pertaining to this Committee; it was only referred to by the resolution of the Judicial Council. Mr. Durfee confirmed that unlike with the Conference of Circuit Court Clerks and the Conference of Circuit Court Administrators, no administrative order established the Committee. The Chair suggested removing the reference to the Committee from the Committee note. The Reporter said that she would verify the name of the Committee as it is used in subsection (b)(10). By consensus, the Committee agreed to remove the reference from the Committee note and to update subsection (b)(10) with the correct name.

There being no further motion to amend or reject the proposed amendments to Rule 16-110, the Rule was approved as amended.

The Chair presented Rule 16-601, Definitions, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 600 - DISPOSITION

AMEND Rule 16-601 to add a cross reference to Rule 1-202 (z)(1), as follows:

Rule 16-601. DEFINITIONS

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

(a) Extended Coverage

"Extended coverage" means the recording or broadcasting of court proceedings by the use of recording, photographic, television, radio, or other broadcasting equipment operated by:

(1) the news media; or

(2) a person engaged in the preparation of an educational film or recording relating to the Maryland legal or judicial system and intended for instructional use in an educational program offered by a public or accredited educational institution.

(b) Local Administrative Judge

"Local Administrative Judge" means the County Administrative Judge of a circuit

court and the District Administrative Judge of the District Court.

(c) Party

"Party" means a named litigant of record who has appeared in the proceeding.

(d) Proceeding

"Proceeding" means any trial, hearing, oral argument on appeal, or other matter held in open court which the public is entitled to attend.

(e) Presiding Judge

(1) "Presiding judge" means a judge designated to preside over a proceeding which is, or is intended to be, the subject of extended coverage.

(2) Where action by a presiding judge is required by the Rules in this Chapter, and no judge has been designated to preside over the proceeding, "presiding judge" means the Local Administrative Judge.

(3) In an appellate court, "presiding judge" means the Chief Judge of that court or the senior judge of a panel of which the Chief Judge is not a member.

Cross reference: For the definition of a "senior judge" as used in this Rule, see Rule 1-202 (z)(1).

Source: This Rule is derived from former Rule 16-109 a (2016.)

Rule 16-601 was accompanied by the following Reporter's note:

See the Reporter's note to Rule 1-202.

The Chair pointed out that in Rule 16-601 the name of Chapter 600 in the caption should be "Extended Coverage of Court Proceedings" and not "Disposition." A cross reference to Rule 1-202 (z)(1) has been added at the end of Rule 16-601.

There being no motion to amend or reject the proposed amendment to Rule 16-601, it was approved as presented, subject to the correction in the Chapter title.

The Chair presented Rule 17-304, Qualifications and Selection of Mediators and Settlement Conference Chairs, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 300 – PROCEEDINGS IN THE DISTRICT COURT

AMEND Rule 17-304 to change a certain reference from a retired judge approved for recall to a senior judge, as follows:

Rule 17-304. QUALIFICATIONS AND SELECTION OF MEDIATORS AND SETTLEMENT CONFERENCE CHAIRS

(a) Qualifications of Court-designated Mediator

To be designated by the court as a mediator, an individual shall:

(1) unless waived by the parties, be at least 21 years old;

(2) have completed at least 40 hours of basic mediation training in a program meeting the requirements of (A) Rule 17-104 or (B) for individuals trained prior to January 1, 2013, former Rule 17-106;

(3) be familiar with the Rules in Title 17 of the Maryland Rules;

(4) submit a completed application in the form required by the ADR Office;

(5) attend an orientation session provided by the ADR Office;

(6) unless waived by the ADR Office, observe, on separate dates, at least two District Court mediation sessions and participate in a debriefing with the mediator after each mediation;

(7) unless waived by the ADR Office, mediate on separate dates, at least two District Court cases while being reviewed by an experienced mediator or other individual designated by the ADR Office and participate in a debriefing with the observer after each mediation;

(8) agree to volunteer at least six days in each calendar year as a court-designated mediator in the District Court day-of-trial mediation program;

(9) abide by any mediation standards adopted by the Court of Appeals;

(10) submit to periodic monitoring by the ADR Office;

(11) in each calendar year complete four hours of continuing mediation-related education in one or more of the topics set forth in Rule 17-104; and

(12) comply with the procedures and requirements posted on the ADR Office's website relating to diligence and quality assurance.

(b) Qualifications of Court-designated Settlement Conference Chair

To be designated by the court as a settlement conference chair, an individual shall be:

(1) a judge of the District Court;

(2) a ~~retired judge approved for recall for service under Maryland Constitution, Article IV, §3A~~ senior judge; or

(3) an individual who, unless the parties agree otherwise, shall:

(A) abide by any applicable standards adopted by the Court of Appeals;

(B) submit to periodic monitoring of court-ordered ADR by a qualified person designated by the ADR Office;

(C) be a member in good standing of the Maryland Bar and have at least three years experience in the active practice of law;

(D) unless waived by the court, have completed a training program of at least six hours that has been approved by the ADR Office; and

(E) comply with the procedures and requirements posted on the ADR Office's website relating to diligence and quality assurance.

(c) Procedure for Approval

(1) Filing Application

An individual seeking designation to mediate or conduct settlement conferences in the District Court shall submit to the ADR Office a completed application substantially in the form required by that Office. The application shall be accompanied by documentation demonstrating that the applicant has met the applicable qualifications required by this Rule.

Committee note: Application forms are available from the ADR Office and on the Maryland Judiciary's website, www.mdcourts.gov/district/forms/general/adr001.pdf.

(2) Action on Application

After such investigation as the ADR Office deems appropriate, the ADR Office shall notify the applicant of the approval or disapproval of the application and the reasons for a disapproval.

(3) Court-approved ADR Practitioner and Organization Lists

The ADR Office shall maintain a list:

(A) of mediators who meet the qualifications of section (a) of this Rule;

(B) of settlement conference chairs who meet the qualifications set forth in subsection (b)(3) of this Rule; and

(C) of ADR organizations approved by the ADR Office.

(4) Public Access to Lists

The ADR Office shall provide to the Administrative Clerk of each District a copy of each list for that District maintained pursuant to subsection (c)(3) of this Rule. The clerk shall make a copy of the list available to the public at each District

Court location. A copy of the completed application of an individual on a list shall be made available by the ADR Office upon request.

(5) Removal from List

After notice and a reasonable opportunity to respond, the ADR Office may remove a person as a mediator or settlement conference chair for failure to maintain the applicable qualifications of this Rule or for other good cause.

Source: This Rule is new.

Rule 17-304 was accompanied by the following Reporter's note:

See the Reporter's note to Rule 1-202.

The Chair pointed out that subsection (b)(2) of Rule 17-304 changes the language "a retired judge approved for recall for service under Maryland Constitution Article IV, §3A" to "senior judge."

There being no motion to amend or reject the proposed amendment to Rule 17-304, it was approved as presented.

The Chair presented Rule 17-403, Prehearing Conference, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 400 – PROCEEDINGS IN THE COURT OF

AMEND Rule 17-403 to substitute the word "senior" for the word "retired," as follows:

Rule 17-403. PREHEARING CONFERENCE

(a) Purpose

The purpose of a prehearing conference is for the parties, their attorneys, or both to meet with an incumbent or ~~retired~~ senior judge of the Court designated by the Chief Judge to discuss:

(1) settlement of the case, in whole or in part;

(2) methods of implementing any settlement;

(3) clarifying or limiting the issues on appeal; and

(4) if settlement cannot then be agreed upon, whether (A) proceedings should be stayed for a specified period of time to allow further discussions among the parties or attorneys, or (B) it would be useful for the case to be referred to mediation pursuant to Rule 17-404 or for the parties to engage in an ADR process that is not under the auspices of the ADR division.

(b) Order of Chief Judge

An order of the Chief Judge referring the appeal to a prehearing conference shall direct the parties, their attorneys, or both to appear before a designated incumbent or retired judge of the Court at a time and

place specified in the order or to be determined by the designated judge.

(c) Scheduling Conference

If the parties are unable to achieve any of the objectives set forth in section (a) of this Rule but agree that a scheduling conference pursuant to Rule 8-206 would be useful, the Chief Judge may authorize the judge who conducted the prehearing conference to conduct a scheduling conference or direct the parties, their attorneys, or both to appear before another judge of the Court designated by the Chief Judge for that purpose.

(d) Order on Completion of Prehearing Conference

(1) In General

Within 30 days after conclusion of a prehearing conference, the parties or the judge may present to the Chief Judge a proposed order to implement any agreements or determinations made at the conference. The Chief Judge shall review the proposed order and proceed in the manner set forth in Rule 17-404 (f)(2) and (3).

(2) Scheduling Conference

Any order implementing actions to be taken pursuant to a scheduling conference conducted pursuant to Rule 8-206 shall be entered in accordance with the procedures set forth in subsection (b)(3) of that Rule.

(3) Copies

The clerk shall send a copy of an order entered under this section to each party.

(e) Sanctions

Upon the failure of a party or attorney to comply with an order entered under section (b) of this Rule, the Court, after an opportunity for a hearing, may impose any appropriate sanction, including (1) dismissal of the appeal, (2) assessing against the party or attorney the reasonable expenses caused by the failure including reasonable attorney's fees, and (3) assessing against the party or attorney all or part of the appellate costs.

(f) Recusal

A judge who conducts a prehearing conference under this Rule may not sit as a member of a panel, including an in banc panel, assigned to hear the appeal if it proceeds, and shall not participate in any court conference regarding a judicial resolution of the appeal or whether an opinion in the appeal should be designated as reported.

Source: This Rule is new.

Rule 17-403 was accompanied by the following Reporter's note:

See the Reporter's note to Rule 1-202.

The Chair pointed out that in section (a), the word "retired" was changed to the word "senior."

There being no motion to amend or reject the proposed amendment to Rule 17-403, it was approved as presented.

The Chair presented Rule 17-405, Qualifications of Court-Designated Mediators, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 400 - PROCEEDINGS IN THE COURT OF SPECIAL APPEALS

AMEND Rule 17-405 to substitute the word "senior" for the word "retired," as follows:

Rule 17-405. QUALIFICATIONS OF COURT-DESIGNATED MEDIATORS

(a) Initial Approval

To be approved as a mediator by the Chief Judge, an individual shall:

(1) be (A) an incumbent judge of the Court of Special Appeals; (B) a ~~retired~~ senior judge of the Court of Appeals, the Court of Special Appeals, or a circuit court ~~approved for recall for service under Code, Courts Article, 1-302~~; or (C) a staff attorney from the Court of Special Appeals designated by the Chief Judge;

(2) have (A) completed at least 40 hours of basic mediation training in a program meeting the requirements of Rule 17-104, or (B) conducted at least two Maryland appellate mediations prior to January 1, 2014 and completed advanced appellate mediation training approved by the ADR Division;

(3) unless waived by the ADR Division, have observed at least two Court of Special Appeals mediation sessions and have participated in a debriefing with a staff mediator from the ADR Division after the mediations; and

(4) be familiar with the Rules in Titles 8 and 17 of the Maryland Rules;

(b) Continued Approval

To retain approval as a mediator by the Chief Judge, an individual shall:

(1) abide by mediation standards adopted by the Court of Appeals, if any;

(2) comply with mediation procedures and requirements established by the Court of Special Appeals;

(3) submit to periodic monitoring by the ADR Division of mediations conducted by the individual; and

(4) unless waived by the Chief Judge, complete in each calendar year four hours of continuing mediation-related education in one or more topics set forth in Rule 17-104 or any other advanced mediation training approved by the ADR Division.

Source: This Rule is derived from former Rule 17-403 (a) (2015).

Rule 17-405 was accompanied by the following Reporter's note:

See the Reporter's note to Rule 1-202.

The Chair noted that the changes to subsection (a)(1) exclude former District Court judges.

There being no motion to amend or reject the proposed amendment to Rule 17-405, it was approved as presented.

The Chair presented Rule 18-100.2, Scope, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 100 – MARYLAND CODE OF JUDICIAL CONDUCT

AMEND Rule 18-100.2 to change a certain reference from a retired judge approved for recall to a senior judge, as follows:

Rule 18-100.2. SCOPE

The Rules in this Chapter apply to:

(a) Incumbent judges of the Court of Appeals, the Court of Special Appeals, the circuit courts, and the District Court;

(b) Except as otherwise expressly provided in specific Rules, incumbent judges of the Orphans' Courts;

(c) Except as otherwise expressly provided in specific Rules, ~~retired judges who are approved for recall for temporary service pursuant to Code, Courts Article, §1-302~~ senior judges; and

(d) Candidates and applicants for judicial office as defined in Rule 18-104.1, to the extent that a Rule expressly applies to such candidates or applicants.

Source: This Rule is derived from paragraph A-109 of former Rule 16-813 (2016).

Rule 18-100.2 was accompanied by the following Reporter's note:

See the Reporter's note to Rule 1-202.

The Chair said that the language in section (b) of Rule 18-100.2 that read "retired judges who are approved for recall for temporary service pursuant to Code, Courts Article, §1-302" has been replaced by the language "senior judges."

There being no motion to amend or reject the proposed amendment to Rule 18-100.2, it was approved as presented.

The Chair presented Rule 18-102.9, Ex Parte Communications (ABA Rule 2.9), for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 100 – MARYLAND CODE OF JUDICIAL CONDUCT

AMEND Rule 18-102.9 to change a certain reference from a retired judge approved for recall to a senior judge, as follows:

Rule 18-102.9. EX PARTE COMMUNICATIONS (ABA Rule 2.9)

(a) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge out of the presence of the parties or their attorneys, concerning a pending or impending matter, except as follows:

(1) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law to do so.

(2) When circumstances require, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:

(A) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and

(B) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.

(3) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding if the judge (A) makes provision promptly to notify all of the parties as to the expert consulted and the substance of the advice, and (B) affords the parties a reasonable opportunity to respond.

(4) A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, provided the judge does not decide a case based on adjudicative facts that are not made part of the record, and does not abrogate the responsibility personally to decide the matter.

Cross reference: See Comment [1] to Rule 18-103.9, permitting a judge to engage in prehearing and settlement conferences.

(5) With the consent of the parties, a judge may confer separately with the parties and their attorneys as part of a prehearing or settlement conference conducted pursuant to the Rules in Title 17.

(6) When serving in a problem-solving court program of a circuit court or the

District Court pursuant to Rule 16-207, a judge may initiate, permit, and consider ex parte communications in conformance with the established protocols for the operation of the program if the parties have expressly consented to those protocols.

(b) If a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.

(c) A judge shall not investigate adjudicative facts in a matter independently, and shall consider only the evidence in the record and any facts that may properly be judicially noticed.

(d) A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this Rule is not violated by court staff, court officials, and others subject to the judge's direction and control.

COMMENT

[1] To the extent reasonably possible, all parties or their attorneys shall be included in communications with a judge.

[2] Whenever the presence of a party or notice to a party is required by this Rule, it is the party's attorney, or if the party is self-represented, the party, who is to be present or to whom notice is to be given.

[3] The proscription against communications concerning a proceeding includes communications with attorneys, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted by this Rule.

[4] A judge may consult with other judges on pending matters, including a ~~retired judge approved for recall~~ senior judge, but must avoid ex parte discussions of a case with judges who have previously been disqualified from hearing the matter, and with judges who have appellate jurisdiction over the matter.

[5] The prohibition against a judge investigating adjudicative facts in a matter extends to information available in all mediums, including electronic.

[6] A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge's compliance with this Code. Such consultations are not subject to the restrictions of subsection (a)(2) of this Rule.

Committee note: This Rule does not regulate judicial notice of so-called "legislative facts" (facts pertaining to social policy and their ramifications) or of law.

Cross reference: See Rule 5-201.

Source: This Rule is derived from former Rule 2.9 of Rule 16-813 (2016).

Rule 18-102.9 was accompanied by the following Reporter's note:

See the Reporter's note to Rule 1-202.

The Chair noted that a change was made to Comment 4 in Rule 18-102.9, substituting the language "senior judge" for the language "retired judge approved for recall."

There being no motion to amend or reject the proposed amendment to Rule 18-102.9, it was approved as presented.

The Chair presented Rule 18-102.11, Disqualification (ABA Rule 2.11), for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 100 – MARYLAND CODE OF JUDICIAL CONDUCT

AMEND Rule 18-102.11 to substitute the word "senior" for the word "retired," as follows:

Rule 18-102.11. DISQUALIFICATION (ABA Rule 2.11).

(a) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's attorney, or personal knowledge of facts that are in dispute in the proceeding.

(2) The judge knows that the judge, the judge's spouse or domestic partner, an individual within the third degree of relationship to either of them, or the spouse or domestic partner of such an individual:

(A) is a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;

(B) is acting as an attorney in the proceeding;

(C) is an individual who has more than a de minimis interest that could be substantially affected by the proceeding; or

(D) is likely to be a material witness in the proceeding.

(3) The judge knows that he or she, individually or as a fiduciary, or any of the following individuals has a significant financial interest in the subject matter in controversy or in a party to the proceeding:

(A) the judge's spouse or domestic partner;

(B) an individual within the third degree of relationship to the judge; or

(C) any other member of the judge's family residing in the judge's household.

(4) The judge, while a judge or a judicial candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(5) The judge:

(A) served as an attorney in the matter in controversy, or was associated with an attorney who participated substantially as an attorney in the matter during such association;

(B) served in governmental employment, and in such capacity participated personally and substantially as an attorney or public official concerning the proceeding, or has publicly expressed in such capacity an

opinion concerning the merits of the particular matter in controversy;

(C) previously presided as a judge over the matter in another court; or

(D) is a ~~retired~~ senior judge who is subject to disqualification under Rule 18-103.9.

Cross reference: See Code, Courts Article, § 1-203 (c) prohibiting a judge from hearing a case in which a partner or employee of the judge's former law firm is an attorney of record during a period in which the judge is receiving a payout of his former interest in the firm.

(b) A judge shall keep informed about the judge's personal and fiduciary economic interests and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse and minor children residing in the judge's household.

(c) A judge subject to disqualification under this Rule, other than for bias or prejudice under subsection (a)(1) of this Rule, may disclose on the record the basis of the judge's disqualification and may ask the parties and their attorneys to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and attorneys agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

COMMENT

[1] Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned,

regardless of whether any of the specific provisions of subsections (a)(1) through (5) apply. In this Rule, "disqualification" has the same meaning as "recusal."

[2] A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.

[3] By decisional law, the rule of necessity may override the rule of recusal. For example, a judge might be required to participate in judicial review of a judicial salary statute or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. When the rule of necessity does override the rule of recusal, the judge must disclose on the record the basis for possible disqualification and, if practicable, use reasonable efforts to transfer the matter to another judge.

[4] A judge should disclose on the record information that the judge believes the parties or their attorneys might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.

[5] This procedure gives the parties an opportunity to waive the recusal if the judge agrees. The judge may comment on possible waiver but must ensure that consideration of the question of waiver is made independently of the judge. A party may act through an attorney if the attorney represents on the record that the party has been consulted and consents. As a practical matter, a judge may request that all parties and their attorneys sign a waiver agreement.

Source: This Rule is derived from former Rule 2.11 of Rule 16-813 (2016).

Rule 18-102.11 was accompanied by the following Reporter's note:

See the Reporter's note to Rule 1-202.

The Chair commented that in subsection (a)(5)(D) of Rule 18-102.11, the word "retired" has been changed to the word "senior."

There being no motion to amend or reject the proposed amendment to Rule 18-102.11, it was approved as presented.

The Chair presented Rule 18-103.8, Appointments to Fiduciary Positions (ABA Rule 3.8), for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 100 – MARYLAND CODE OF JUDICIAL CONDUCT

AMEND Rule 18-102.11 to substitute the word "senior" for the word "retired," as follows:

Rule 18-102.11. DISQUALIFICATION (ABA Rule 2.11).

(a) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be

questioned, including the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's attorney, or personal knowledge of facts that are in dispute in the proceeding.

(2) The judge knows that the judge, the judge's spouse or domestic partner, an individual within the third degree of relationship to either of them, or the spouse or domestic partner of such an individual:

(A) is a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;

(B) is acting as an attorney in the proceeding;

(C) is an individual who has more than a de minimis interest that could be substantially affected by the proceeding; or

(D) is likely to be a material witness in the proceeding.

(3) The judge knows that he or she, individually or as a fiduciary, or any of the following individuals has a significant financial interest in the subject matter in controversy or in a party to the proceeding:

(A) the judge's spouse or domestic partner;

(B) an individual within the third degree of relationship to the judge; or

(C) any other member of the judge's family residing in the judge's household.

(4) The judge, while a judge or a judicial candidate, has made a public statement, other than in a court proceeding,

judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(5) The judge:

(A) served as an attorney in the matter in controversy, or was associated with an attorney who participated substantially as an attorney in the matter during such association;

(B) served in governmental employment, and in such capacity participated personally and substantially as an attorney or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;

(C) previously presided as a judge over the matter in another court; or

(D) is a ~~retired~~ senior judge who is subject to disqualification under Rule 18-103.9.

Cross reference: See Code, Courts Article, § 1-203 (c) prohibiting a judge from hearing a case in which a partner or employee of the judge's former law firm is an attorney of record during a period in which the judge is receiving a payout of his former interest in the firm.

(b) A judge shall keep informed about the judge's personal and fiduciary economic interests and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse and minor children residing in the judge's household.

(c) A judge subject to disqualification under this Rule, other than for bias or prejudice under subsection (a)(1) of this Rule, may disclose on the record the basis

of the judge's disqualification and may ask the parties and their attorneys to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and attorneys agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

COMMENT

[1] Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of subsections (a)(1) through (5) apply. In this Rule, "disqualification" has the same meaning as "recusal."

[2] A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.

[3] By decisional law, the rule of necessity may override the rule of recusal. For example, a judge might be required to participate in judicial review of a judicial salary statute or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. When the rule of necessity does override the rule of recusal, the judge must disclose on the record the basis for possible disqualification and, if practicable, use reasonable efforts to transfer the matter to another judge.

[4] A judge should disclose on the record information that the judge believes the parties or their attorneys might reasonably consider relevant to a possible

motion for disqualification, even if the judge believes there is no basis for disqualification.

[5] This procedure gives the parties an opportunity to waive the recusal if the judge agrees. The judge may comment on possible waiver but must ensure that consideration of the question of waiver is made independently of the judge. A party may act through an attorney if the attorney represents on the record that the party has been consulted and consents. As a practical matter, a judge may request that all parties and their attorneys sign a waiver agreement.

Source: This Rule is derived from former Rule 2.11 of Rule 16- 813 (2016).

Rule 18-103.8 was accompanied by the following Reporter's note:

See the Reporter's note to Rule 1-202.

The Chair pointed out that the language in section (e) of Rule 18-103.8 that read "retired judges approved for recall under Code, Courts Article, §1-302" has been changed to "senior judges."

There being no motion to amend or reject the proposed amendment to Rule 18-103.8, it was approved as presented.

The Chair presented Rule 18-103.11, Financial, Business, or Remunerative Activities (ABA Rule 3.11), for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 100 – MARYLAND CODE OF JUDICIAL CONDUCT

AMEND Rule 18-103.11 to change a certain reference from a retired judge approved for recall to a senior judge, as follows:

Rule 18-103.11. FINANCIAL, BUSINESS, OR REMUNERATIVE ACTIVITIES (ABA Rule 3.11)

(a) A judge may hold and manage investments of the judge and members of the judge's family.

(b) Except as permitted by Rule 18-103.7, a judge shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity except that a judge may manage or participate in:

(1) a business closely held by the judge or members of the judge's family; or

(2) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.

(c) A judge shall not engage in financial activities permitted under sections (a) or (b) of this Rule if they will:

(1) interfere with the proper performance of judicial duties;

(2) lead to frequent disqualification of the judge;

(3) involve the judge in frequent transactions or continuing business relationships with attorneys or other

persons likely to come before the court on which the judge serves; or

(4) result in violation of other provisions of this Code.

(d) This Rule does not apply to ~~retired judges approved for recall under Code, Courts Article, §1-302~~ senior judges.

COMMENT

[1] Judges are generally permitted to engage in financial activities, including managing real estate and other investments for themselves or for members of their families. Participation in these activities, like participation in other extrajudicial activities, is subject to the requirements of this Code. For example, it would be improper for a judge to spend so much time on business activities that it interferes with the performance of judicial duties. See Rule 18-102.1. Similarly, it would be improper for a judge to use his or her official title or appear in judicial robes in business advertising, or to conduct his or her business or financial affairs in such a way that disqualification is frequently required. See Rules 18-101.3 and 18-102.11.

[2] As soon as practicable without serious financial detriment, the judge must divest himself or herself of investments and other financial interests that might require frequent disqualification or otherwise violate this Rule.

Source: This Rule is derived from former Rule 3.11 of Rule 16- 813 (2016).

Rule 18-103.11 was accompanied by the following Reporter's note:

See the Reporter's note to Rule 1-202.

The Chair pointed out the change in section (d) of Rule 18-103.11. The language "retired judges approved for recall under Code, Courts Article, §1-302" has been changed to "senior judges."

There being no motion to amend or reject the proposed amendment to Rule 18-103.11, it was approved as presented.

The Chair presented Rule 18-103.12, Compensation for Extra-Judicial Activities (ABA Rule 3.12), for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 100 – MARYLAND CODE OF JUDICIAL CONDUCT

AMEND Rule 18-103.12 to change a certain reference from retired judges approved for recall to senior judges, as follows:

Rule 18-103.12. COMPENSATION FOR EXTRA-JUDICIAL ACTIVITIES (ABA Rule 3.12)

A judge may accept reasonable compensation for extrajudicial activities permitted by this Code or other law unless such acceptance would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

Cross reference: See Rule 18-103.9 requiring certain disclosures and action by ~~retired judges approved for recall~~ senior judges who provide alternative dispute resolution services.

COMMENT

[1] A judge is permitted to accept honoraria, stipends, fees, wages, salaries, royalties, or other compensation for speaking, teaching, writing, and other extrajudicial activities, provided the compensation is reasonable and commensurate with the task performed. The judge should be mindful, however, that judicial duties must take precedence over other activities. See Rule 18-102.1, Code, Family Law Article, §§ 2-406 and 2-410, and Md. Rules 18-501 through 18-504.

[2] Compensation derived from extrajudicial activities may be subject to public reporting. See Rule 18-103.15.

Source: This Rule is derived from former Rule 3.12 of Rule 16- 813 (2016).

Rule 18-103.12 was accompanied by the following Reporter's note:

See the Reporter's note to Rule 1-202.

The Chair noted that a change was made in the cross reference at the end of Rule 18-103.12. The language "retired judges approved for recall" has been changed to "senior judges."

There being no motion to amend or reject the proposed amendment to Rule 18-103.12, it was approved as presented.

The Chair presented Rule 18-202.9, Ex Parte Communications, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 200 – MARYLAND CODE OF CONDUCT FOR JUDICIAL APPOINTEES

AMEND Rule 18-202.9 to change a certain reference from a retired judge approved for recall to a senior judge, as follows:

Rule 18-202.9. EX PARTE COMMUNICATIONS

(a) A judicial appointee shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judicial appointee out of the presence of the parties or their attorneys, concerning a pending or impending matter, except as follows:

(1) A judicial appointee may initiate, permit, or consider any ex parte communication when expressly authorized by law to do so.

(2) When circumstances require, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:

(A) the judicial appointee reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and

(B) the judicial appointee makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.

(3) A judicial appointee may obtain the advice of a disinterested expert on the law applicable to a proceeding if the judicial appointee (A) makes provision promptly to notify all of the parties as to the expert consulted and the substance of the advice, and (B) affords the parties a reasonable opportunity to respond.

(4) A judicial appointee may consult with court staff and court officials whose functions are to aid the judicial appointee in carrying out the judicial appointee's adjudicative responsibilities, or with a judge, provided the judicial appointee does not make a decision based on adjudicative facts that are not made part of the record, and does not abrogate the responsibility personally to decide the matter.

(5) With the consent of the parties, a judicial appointee may confer separately with the parties and their attorneys as part of a settlement conference conducted pursuant to the Rules in Title 17.

(6) When serving in a problem-solving court program of a circuit court or the District Court pursuant to Rule 16-207, a judicial appointee may initiate, permit, and consider ex parte communications in conformance with the established protocols for the operation of the program if the parties have expressly consented to those protocols.

Cross reference: See Rule 4-216 (b) limiting ex parte communications with a District Court Commissioner. To the extent of any inconsistency between that Rule and this one, Rule 4-216 (b) prevails.

(b) If a judicial appointee inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the judicial appointee shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.

(c) Unless expressly authorized by law, a judicial appointee shall not investigate adjudicative facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.

Cross reference: See Code, Courts Article, §2-607 (c)(2) authorizing District Court Commissioners to conduct investigations and inquiries into the circumstances of matters presented to determine if probable cause exists for the issuance of a charging document, warrant, or criminal summons.

(d) A judicial appointee shall make reasonable efforts, including providing appropriate supervision, to ensure that this Rule is not violated by court staff, court officials, and others subject to the judicial appointee's direction and control.

COMMENT

[1] To the extent reasonably possible, all parties or their attorneys shall be included in communications with a judicial appointee.

[2] Whenever the presence of a party or notice to a party is required by this Rule, it is the party's attorney, or if the party is self-represented, the party, who is to be present or to whom notice is to be given.

[3] The proscription against communications concerning a proceeding

includes communications with attorneys, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted by this Rule.

[4] A judicial appointee may consult with judges or other judicial appointees on pending matters, including a ~~retired judge approved for recall~~ senior judge, but must avoid ex parte discussions of a case with judges or judicial appointees who have previously been disqualified from hearing the matter or with a judge whom the judicial appointee knows has been assigned to hear exceptions to the judicial appointee's recommendation in the matter.

[5] The prohibition against a judicial appointee investigating adjudicative facts in a matter extends to information available in all mediums, including electronic.

[6] A judicial appointee may consult ethics advisory committees, outside counsel, or legal experts concerning the judicial appointee's compliance with this Code. Such consultations are not subject to the restrictions of subsection (a)(2) of this Rule.

Committee note: This Rule does not regulate judicial notice of so-called "legislative facts" (facts pertaining to social policy and their ramifications) or of law. Cross reference: See Rule 5-201.

Source: This Rule is derived from former Rule 2.9 of Rule 16-814 (2016).

Rule 18-202.9 was accompanied by the following Reporter's note:

See the Reporter's note to Rule 1-202.

The Chair pointed out that in Comment 4 of Rule 18-202.9, the language "retired judge approved for recall" has been changed to "senior judge."

There being no motion to amend or reject the proposed amendment to Rule 18-202.9, it was approved as presented.

The Chair presented Rule 18-302, Existence; Membership; Terms, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 300 – JUDICIAL ETHICS COMMITTEE

AMEND Rule 18-302 to change a certain reference from retired judges approved for recall to senior judges, as follows:

Rule 18-302. EXISTENCE; MEMBERSHIP; TERMS

(a) Creation

There is a Judicial Ethics Committee.

(b) Membership

The Committee consists of 13 members appointed by the Chief Judge of the Court of Appeals. Of the 13 members:

(1) one shall be a judge of the Court of Special Appeals;

(2) two shall be circuit court judges;

(3) two shall be judges of the District Court;

(4) one shall be a judge of an orphans' court;

(5) three shall be ~~former~~ senior judges ~~who are approved for recall for temporary service under Code, Courts Article, 1-302~~;

(6) one shall be a clerk of a circuit court;

(7) one shall be a judicial appointee as defined in Rule 18- 200.3; and

(8) two shall not be a judge or other official or employee of the Judicial Branch of the State government or an attorney.

(c) Terms

(1) The term of a member is three years and begins on July 1, except that the former judges appointed pursuant to subsection (b)(5) of this Rule shall not have a term and shall serve at the pleasure of the Chief Judge of the Court of Appeals.

(2) The terms of the members shall be staggered so that the terms of not more than four members expire each year.

(3) At the end of a term, a member continues to serve until a successor is appointed.

(4) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed.

(5) A member may not serve more than two consecutive three-year terms.

Source: This Rule is derived from sections (b), (c), and (d) of former Rule 16-812.1 (2016).

Rule 18-302 was accompanied by the following Reporter's note:

See the Reporter's note to Rule 1-202.

The Chair told the Committee that changes have been made to subsection (b)(5) of Rule 18-302. The word "former" has been changed to the word "senior" and the phrase "who are approved for recall for temporary service under Code, Courts Article, §1-302" has been deleted.

There being no motion to amend or reject the proposed amendment to Rule 18-302, it was approved as presented.

The Chair presented Rule 18-401, Commission on Judicial Disabilities – Definitions, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 – JUDICIAL DISCIPLINE

AMEND Rule 18-401 to substitute the word "senior" for the word "retired," as follows:

Rule 18-401. COMMISSION ON JUDICIAL DISABILITIES – DEFINITIONS

The following definitions apply in this Chapter except as otherwise expressly provided or as necessary implication requires:

(a) Address of Record

"Address of record" means a judge's current home address or another address designated in writing by the judge.
Cross reference: See Rule 18-417 (a)(1) concerning confidentiality of a judge's home address.

(b) Board

"Board" means the Judicial Inquiry Board appointed pursuant to Rule 18-403.

(c) Charges

"Charges" means the charges filed with the Commission by Investigative Counsel pursuant to Rule 18-413.

(d) Commission

"Commission" means the Commission on Judicial Disabilities created by Art. IV, §4A of the Maryland Constitution.

(e) Commission Record

"Commission record" means all documents pertaining to the judge who is the subject of charges that are filed with the Commission or made available to any member of the Commission and the record of all proceedings conducted by the Commission with respect to that judge.

Cross reference: See Rule 18-402 (g).

(f) Complainant

"Complainant" means a person who has filed a complaint, and in Rule 18-404 (a), "complainant" also includes a person who has filed a written allegation of misconduct by or disability of a judge that is not under oath or supported by an affidavit.

(g) Complaint

"Complaint" means a written communication under oath or supported by an affidavit alleging that a judge has a disability or has committed sanctionable conduct.

(h) Disability

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

(i) Judge

"Judge" means (1) a judge of the Court of Appeals, the Court of Special Appeals, a circuit court, the District Court, or an orphans' court, and (2) a ~~retired~~ senior judge during any period that the ~~retired~~ judge has been approved for recall.

Cross reference: See Md. Const., Art. 4, §3A and Code, Courts Article, §1-302.

(j) Sanctionable Conduct

(1) "Sanctionable conduct" means misconduct while in office, the persistent failure by a judge to perform the duties of the judge's office, or conduct prejudicial to the proper administration of justice. A judge's violation of any of the provisions of the Maryland Code of Judicial Conduct promulgated by Title 18, Chapter 100 may constitute sanctionable conduct.

(2) Unless the conduct is occasioned by fraud or corrupt motive or raises a substantial question as to the judge's fitness for office, "sanctionable conduct" does not include:

(A) making an erroneous finding of fact, reaching an incorrect legal conclusion, or misapplying the law; or

(B) failure to decide matters in a timely fashion unless such failure is habitual.

Committee note: Sanctionable conduct does not include a judge's simply making wrong decisions - even very wrong decisions - in particular cases.

Cross reference: Md. Const., Art. IV, §4B (b)(1). For powers of the Commission in regard to any investigation or proceeding under §4B of Article IV of the Constitution, see Code, Courts Article, §§13-401 through 13-403.

Source: This Rule is derived from former Rule 16-803 (2016).

Rule 18-401 was accompanied by the following Reporter's note:

See the Reporter's note to Rule 1-202.

The Chair said that in subsection (i)(2) of Rule 18-401, the word "retired" has been deleted twice. The first time it has been replaced by the word "senior." The word "senior" should also be added in place of the word "retired" the second time it was deleted. By consensus, the Committee approved the amendment.

By consensus, the Committee approved Rule 18-401 as amended.

The Chair presented Rule 18-501, Scope of Chapter, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 500 – MARRIAGE CEREMONIES

AMEND Rule 18-501 to change a certain reference from retired judges approved for recall to senior judges, as follows:

Rule 18-501. SCOPE OF CHAPTER

The Rules in this Chapter apply to:

(a) judges of the District Court, a circuit court, the Court of Special Appeals, and the Court of Appeals; and

(b) ~~retired judges approved for recall pursuant to Code, Courts Article, § 1-302~~ senior judges.

Cross reference: See Code, Family Law Article, §2-406, which also contains a list of other officials authorized to perform marriage ceremonies.

Source: This Rule is derived from former Rule 16-821 (2016).

Rule 18-501 was accompanied by the following Reporter's note:

See the Reporter's note to Rule 1-202.

The Chair noted that in Rule 18-501, the term "senior judges" replaces the language "retired judges approved for recall pursuant to Code, Courts Article, §1-302."

There being no motion to amend or reject the proposed amendment to Rule 18-501, it was approved as presented.

The Chair presented Rule 18-603, Financial Disclosure Statement by Judges, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 600 – MISCELLANEOUS PROVISIONS

AMEND Rule 18-603 to delete a definition of the term "former judge," to revise the definition of the term "judge" by changing a reference from a former judge to a senior judge, and to make stylistic changes, as follows:

Rule 18-603. FINANCIAL DISCLOSURE STATEMENT BY JUDGES

(a) Definition~~s~~

In this Rule, "judge" means ~~the following definitions apply:~~

~~(1) Former Judge~~

~~"Former judge" means an individual who previously served as a judge and has been approved for recall for temporary service under Code, Courts Article, § 1-302.~~

~~(2) Judge~~

~~"Judge" means~~ (A) an incumbent judge of the Court of Appeals, the Court of Special Appeals, a circuit court, the District Court, or an orphans' court and (B) an individual who, in the preceding calendar year, served as an incumbent judge of one of those courts or was a ~~former~~ senior judge.

(b) Requirement

Each judge and ~~each former~~ senior judge shall file with the State Court Administrator a financial disclosure statement in the form prescribed by the Court of Appeals. When filed, a financial disclosure statement is a public record.

(c) When Due; Period Covered

(1) Generally

Except as provided in subsection (c)(2) of this Rule, the statement shall be filed on or before April 30 of each year and shall cover the preceding calendar year or that portion of the preceding calendar year during which the individual was a judge or a ~~former~~ senior judge, except that a newly appointed or elected judge or a judge who leaves office shall file a statement within the time set forth in the instructions to the financial disclosure statement form.

(2) Exception

If a judge or other individual who files a certificate of candidacy for nomination for an election to an elected judgeship has filed a statement pursuant to Code, General Provisions Article, §5-610, the individual need not file a financial disclosure statement under this Rule for the same period of time. The State Court Administrator is designated as the individual to receive statements from the State Administrative Board of Election Laws

pursuant to Code, General Provisions Article, §5- 610.

(3) Presumption of Filing

A judge's or ~~former~~ senior judge's financial disclosure statement is presumed to have been filed unless the State Court Administrator, no later than five days after the statement was due, notifies the judge or ~~former~~ senior judge that the statement for the preceding calendar year or portion thereof was not received.

(d) Extension of Time for Filing

(1) Application

Except when required to file a statement pursuant to Code, General Provisions Article, §5-610, a judge or ~~former~~ senior judge may apply to the State Court Administrator for an extension of time for filing the statement. The application shall be submitted prior to the deadline for filing the statement and shall set forth in detail the reasons an extension is requested and the date when a completed statement will be filed.

(2) Decision

For good cause, the State Court Administrator may grant a reasonable extension of time for filing the statement. Whether the request is granted or denied, the State Court Administrator shall furnish the judge or ~~former~~ senior judge and the Judicial Ethics Committee with a written statement of the reasons for the decision and the facts upon which the decision was based.

(3) Review by Judicial Ethics Committee

A judge or ~~former~~ senior judge may seek review of the State Court

Administrator's decision by the Judicial Ethics Committee by filing with the Committee, within ten days after the date of the decision a statement of reasons for the judge's or ~~former~~ senior judge's dissatisfaction with the decision. The Committee may take the action it deems appropriate with or without a hearing or the consideration of additional documents.

(e) Failure to File Statement; Incomplete Statement

(1) Notice; Referral to Judicial Ethics Committee

The State Court Administrator shall (A) give written notice to each judge or ~~former~~ senior judge who fails to file a timely statement or who files an incomplete statement and (B) in the notice, set a reasonable time, not to exceed ten days, for the judge or ~~former~~ senior judge to file or supplement the statement. If the judge or ~~former~~ senior judge fails to correct the deficiency within the time allowed, the State Court Administrator shall report the deficiency to the Judicial Ethics Committee.

(2) Duties of Committee

(A) After an inquiry, the Committee shall determine whether (i) the judge or ~~former~~ senior judge was required to file the statement or the omitted information was required to be disclosed, and (ii) if so, whether the failure to file or the omission of the required information was inadvertent or in a good faith belief that the judge or ~~former~~ senior judge was not required to file the statement or to disclose the omitted information.

(B) If the Committee determines that the judge or ~~former~~ senior judge was not required to file the statement or disclose the omitted information, it shall notify the

State Court Administrator and the judge or ~~former~~ senior judge and terminate the inquiry.

(C) If the Committee determines that the statement was required to be filed or that the omitted information was required to be disclosed but that the failure to do so was inadvertent or in a good faith belief that the filing or disclosure was not required, the Committee shall send notice of that determination to the State Court Administrator and the judge or ~~former~~ senior judge and, in the notice, set a reasonable time, not to exceed 15 days, within which the judge or ~~former~~ senior judge shall correct the deficiency.

(D) If the Committee (i) finds that the statement was required to be filed or that the omitted information was required to be disclosed and that failure to file or disclose the omitted information was not inadvertent or in a good faith belief, or (ii) after notice was given pursuant to subsection (e)(2)(C) of this Rule, the judge or ~~former~~ senior judge failed to correct the deficiency within the time allowed, the Committee shall report the matter to the Commission on Judicial Disabilities and notify the State Court Administrator and the judge or ~~former~~ senior judge that it has done so.

(f) Public Record

When filed, a financial disclosure statement is a public record.

Source: This Rule is derived from former Rule 16-815 (2016).

Rule 18-603 was accompanied by the following Reporter's note:

Rule 18-603 is proposed to be amended by deleting the definition of "former judge" and by substituting the term "senior judge" for the term "former judge" in the definition of "judge" and throughout the Rule. See also the Reporter's note to Rule 1-202.

The Chair explained that in Rule 18-603, the definition of "former judge" in subsection (a)(1) has been deleted. The definition of the term "judge" has been changed so that the term "senior judge" replaces the term "former judge." In section (b), the language "each former" has been replaced with the word "senior." Throughout the remainder of Rule 18-603, the word "former" has been replaced with the word "senior" when it modifies the word "judge."

There being no motion to amend or reject the proposed amendments to Rule 18-603, they were approved as presented.

The Chair presented Rule 20-101, Definitions, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-101 to change a certain reference from a former judge to a senior judge, as follows:

Rule 20-101. DEFINITIONS

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

(a) Affected Action

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

Cross reference: For the definition of an "action" see Rule 1-202.

(b) Appellate Court

"Appellate court" means the Court of Appeals or the Court of Special Appeals, whichever the context requires.

(c) Applicable County

"Applicable county" means each county in which, pursuant to an administrative order of the Chief Judge of the Court of Appeals posted on the Judiciary website, MDEC has been implemented.
Committee note: The MDEC Program was implemented in Anne Arundel County on October 14, 2014. It will be installed sequentially in other counties over a period of time by administrative order of the Chief Judge of the Court of Appeals.

(d) Applicable Date

"Applicable date" means the date, specified in an administrative order of the Chief Judge of the Court of Appeals posted on the Judiciary website, from and after which a county is an applicable county.

(e) Business Day

"Business day" means a day that the clerk's office is open for the transaction of business. For the purpose of the Rules in this Title, a "business day" begins at 12:00.00 a.m. and ends at 11:59.59 p.m.

(f) Clerk

"Clerk" means the Clerk of the Court of Appeals, the Court of Special Appeals, or a circuit court, an administrative clerk of the District Court, and authorized assistant clerks in those offices.

(g) Concluded

An action is "concluded" when

(1) there are no pending issues, requests for relief, charges, or outstanding motions in the action or the jurisdiction of the court has ended;

(2) no future events are scheduled; and

(3) the time for appeal has expired or, if an appeal or an application for leave to appeal was filed, all appellate proceedings have ended.

Committee note: This definition applies only to the Rules in Title 20 and is not to be confused with the term "closed" that is used for other administrative purposes.

(h) Digital Signature

"Digital signature" means a secure electronic signature inserted using a process approved by the State Court Administrator that uniquely identifies the signer and ensures authenticity of the signature and that the signed document has not been altered or repudiated.

(i) Facsimile Signature

"Facsimile signature" means a scanned image or other visual representation of the signer's handwritten signature, other than a digital signature.

(j) Filer

"Filer" means a person who is accessing the MDEC system for the purpose of filing a submission.

Committee note: The internal processing of documents filed by registered users, on the one hand, and those transmitted by judges, judicial appointees, clerks, and judicial personnel, on the other, is different. The latter are entered directly into the MDEC System, whereas the former are subject to clerk review under Rule 20-203. For purposes of these Rules, however, the term "filer" encompasses both groups.

(k) Hand-Signed or Handwritten Signature

"Hand-signed or handwritten signature" means the signer's original genuine signature on a paper document.

(l) Hyperlink

"Hyperlink" means an electronic link embedded in an electronic document that enables a reader to view the linked document.

(m) Judge

"Judge" means a judge of the Court of Appeals, Court of Special Appeals, a circuit court, or the District Court of Maryland and includes a ~~former~~ senior judge ~~of any of those courts recalled pursuant to Code, Courts Article, §1-302 and~~ designated to sit in one of those courts.

(n) Judicial Appointee

"Judicial appointee" means a judicial appointee, as defined in Rule 18-200.3.

(o) Judicial Personnel

"Judicial personnel" means an employee of the Maryland Judiciary, even if paid by a county, who is employed in a category approved for access to the MDEC system by the State Court Administrator;

(p) MDEC or MDEC system

"MDEC" or "MDEC system" means the system of electronic filing and case management established by the Maryland Court of Appeals.
Committee note: "MDEC" is an acronym for Maryland Electronic Courts.

(q) Redact

"Redact" means to exclude information from a document accessible to the public.

(r) Registered User

"Registered user" means an individual authorized to use the MDEC system by the State Court Administrator pursuant to Rule 20-104.

(s) Restricted Information

"Restricted information" means information (1) prohibited by Rule or other law from being included in a court record, (2) required by Rule or other law to be redacted from a court record, (3) placed under seal by a court order, or (4) otherwise required to be excluded from the court record by court order.

Cross reference: See Rule 1-322.1 (Exclusion of Personal Identifier Information in Court Filings) and the Rules

in Title 16, Chapter 900 (Access to Court Records).

(t) Scan

"Scan" means to convert printed text or images to an electronic format compatible with MDEC.

(u) Submission

"Submission" means a pleading or other document filed in an action. "Submission" does not include an item offered or admitted into evidence in open court.

Cross reference: See Rule 20-402.

(v) Tangible Item

"Tangible item" means an item that is not required to be filed electronically. A tangible item by itself is not a submission; it may either accompany a submission or be offered in open court.

Cross reference: See Rule 20-106 (c)(2) for items not required to be filed electronically.

Committee note: Examples of tangible items include an item of physical evidence, an oversize document, and a document that cannot be legibly scanned or would otherwise be incomprehensible if converted to electronic form.

(w) Trial Court

"Trial court" means the District Court of Maryland and a circuit court, even when the circuit court is acting in an appellate capacity.

Committee note: "Trial court" does not include an orphans' court, even when, as in

Harford and Montgomery Counties, a judge of the circuit court is sitting as a judge of the orphans' court.

(x) Typographical Signature

"Typographical signature" means the symbol "/s/" affixed to the signature line of a submission above the typed name, address, e-mail address, and telephone number of the signer.

Source: This Rule is new.

Rule 20-101 was accompanied by the following Reporter's note:

See the Reporter's note to Rule 1-202.

The Chair noted that in section (m) of Rule 20-101, the word "former" has been replaced by the word "senior," and the language "of any of those courts recalled pursuant to Code, Courts Article, §1-302" has been deleted.

There being no motion to amend or reject the proposed amendments to Rule 20-101, they were approved as presented.

Agenda Item 2. Consideration of proposed amendments to Rule 19-711 (Complaint; Investigation by Bar Counsel)

The Chair presented Rule 19-711, Complaint; Investigation by Bar Counsel, for the Committee's consideration.

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

ADMINISTRATIVE PROCEDURES

AMEND Rule 19-711 to permit Bar Counsel, with the approval of the Attorney Grievance Commission, to decline to take action upon a complaint when the complaint is duplicative of a complaint already before Bar Counsel, to defer action on a complaint when an investigation of substantially similar or related facts by certain authorities is under way, to defer action on a complaint when there are related allegations in a pending civil or criminal action, and make changes in certain terms, and to make stylistic changes, as follows:

Rule 19-711. COMPLAINT; INVESTIGATION BY BAR COUNSEL

(a) Who May Initiate

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

(b) Review of Complaint

(1) Bar Counsel shall make an appropriate investigation of every complaint that is not facially frivolous, ~~or~~ unfounded, or duplicative.

(2) If Bar Counsel concludes that the complaint is ~~either~~ without merit, ~~or~~ does not allege facts which, if true, would demonstrate either professional misconduct or incapacity, or is duplicative, Bar Counsel shall ~~dismiss~~ decline the complaint and notify the complainant ~~of the dismissal~~. Otherwise, subject to subsection (b)(3) of this Rule, Bar Counsel shall (A) open a file on the complaint, (B) acknowledge receipt of the complaint and explain in writing to the complainant the procedures for investigating and processing the complaint, (C) comply with the notice requirement of section (c) of this Rule, and (D) conduct an investigation to determine whether reasonable grounds exist to believe the allegations of the complaint.

Committee note: Before determining whether a complaint is frivolous or unfounded, Bar Counsel may contact the attorney and obtain an informal response to the allegations.

(3) If Bar Counsel concludes that a civil or criminal action involving material allegations against the attorney substantially similar **[or related]** to those alleged in the complaint is pending in any court of record in the United States, or that substantially similar or related allegations presently are under investigation by a law enforcement, regulatory, or disciplinary agency, Bar Counsel, with the approval of the Commission, may defer action on the complaint pending a determination of those allegations in ~~that~~ the pending action or investigation. Bar Counsel shall notify the complainant of that decision and, during the

period of the deferral, shall report to the Commission, at least every six months, the status of the other action or investigation. The Commission, at any time, may direct Bar Counsel to proceed in accordance with subsection (b)(2) of this Rule.

(c) Notice to Attorney

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

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

(d) Time for Completing Investigation

(1) Generally

Subject to subsection (b)(3) of this Rule or unless the time is extended pursuant to subsection (d)(2) of this Rule, Bar Counsel shall complete an investigation

within 90 days after opening the file on the complaint.

(2) Extension

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

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

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

(3) Sanction

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

Source: This Rule is derived from former Rule 16-731 (2016).

Rule 19-711 was accompanied by the following Reporter's note:

Bar Counsel requested the proposed amendment to Rule 19-711 (b) to be able to address the situation when Bar Counsel is in receipt of complaints against the same lawyer alleging the same misconduct. The proposed amendment would enable Bar Counsel to decline to act upon a duplicative

complaint. It also is being proposed that the word "dismiss" in subsection (b)(2) be replaced by the word "decline," to prevent the misapprehension that a duplicative complaint lacks merit.

Current Rule 19-711 (b)(3) gives Bar Counsel, with the approval of the Commission, the authority to defer action on a complaint when there is a civil or criminal action pending in a court or record involving material allegations against the attorney that are substantially similar to those alleged in the complaint. Bar Counsel has requested the proposed amendments to permit the deferral of action on a complaint when substantially similar or related allegations against an attorney are under investigation by a law enforcement, regulatory, or disciplinary authority.

The amendment requested by Bar Counsel would provide authority to defer action on a complaint when there are "related" allegations that are under investigation. For structural consistency, a similar change is being proposed to allow deferral when there are "related" allegations in a pending civil or criminal action.

The Chair told the Committee that Bar Counsel Glenn Grossman, who will be retiring at the end of the month, was present to provide background on the proposed amendments. Mr. Grossman addressed the Committee. He said that occasionally his office receives multiple complaints that allege substantially the same misconduct against one attorney. The suggestion is to add the words "or is duplicative" to describe complaints in subsection (b)(1) of Rule 19-711, so the Office of Bar Counsel

does not have to open a file every time a complaint comes in if more than one on the same issue is filed. This is the way that the Office of Bar Counsel tries to handle it now, but it would be better to have a Rule so that they can explain it to the complainant.

The Chair noted that the other suggestion was to change the word "dismiss" to the word "decline" in subsection (b)(1). The Chair inquired why the word "decline" would be used. Mr. Grossman replied that the word "dismiss" is too strong. Rule 19-711 permits Bar Counsel to pursue a complaint if he and his colleagues have information from any source that suggests that there may be misconduct. The office would decline to pursue duplicative complaints. The Chair suggested that the language should be "decline to pursue." Judge Eaves remarked that this was the general sense of the change that the Subcommittee wanted.

Mr. Weaver asked whether the word "decline" could be used for those complaints without merit. Mr. Grossman responded that the word "dismiss" has the formality that he likes, but the word "decline" could be used instead. The Reporter said that the language could be "dismiss or decline to pursue." The ones that are completely without merit should be dismissed. Ms. McBride remarked that if more than one complaint is filed about the same issue, the cumulative effect could influence the fact-finder who

is making the determination as to whether an attorney should be disbarred, suspended, reprimanded, etc.

Mr. Grossman commented that the question for the court, assuming the case gets that far, is what the facts are. He said that he was talking about instances where the complainant has no personal knowledge of what happened, but the complainant read in the newspaper that something took place. Ms. McBride asked whether the subject matter is the same and it is the same charge, but it is not a similar situation. Mr. Grossman replied affirmatively. The Chair asked about a situation where three people have been defrauded by the same attorney. Mr. Grossman responded that this is not the same charge.

Mr. Sullivan pointed out that the term "duplicative" would need to be defined. This would explain to the person who brought the duplicative charge why his or her complaint is not going forward. Mr. Grossman said that the central problem is that his office cannot disclose the fact that other complaints have been made about the same situation. If Bar Counsel could just refer to Rule 19-711, it could hint broadly about other complaints. He said that the office cannot thank someone for the complaint and tell the person that there are other complaints because of confidentiality issues. Mr. Weaver remarked that if the Rule is cited, the dismissal could be for other reasons. Mr. Sullivan noted that the complaint could be

frivolous, but it is not frivolous if there are multiple other complaints about the same issue.

Mr. Grossman remarked that he and his colleagues cannot disclose that they have other complainants. The change to Rule 19-711 would give him the authority not to act on duplicative complaints. His office acts now to dismiss complaints, but some people would like to have a rule cited before a complaint is dismissed. Ms. McBride said that she was not sure whether the proposed language of the Rule means duplicative of the same charge or situation or duplicative of the same conduct generally.

Mr. Sullivan pointed out that the same complainant could have filed multiple complaints. Mr. Grossman responded that his office would just add the subsequent complaints to the initial complaint. However, the Rules require his office to handle the complaints filed. People blog about it or put it on social media, and it adversely affects the ability of the Office of Bar Counsel to pursue a matter. He said that his office would like to cut off the duplicate complaint immediately by telling the complainant that the office does not want to pursue the complaint but cannot say that the case has no merit. People who have no personal knowledge should not be kept in the loop.

Ms. McBride suggested that the new language could be "or is the subject of a pending complaint." Judge Eaves commented that

the Subcommittee was trying to strike the balance of not disclosing confidential information but giving Bar Counsel some latitude to take a look at the complaints filed and decide how to handle them. If Rule 19-711 is cited, the complainant who gets a letter may not know the actual reason that the particular complaint is not being pursued, and Bar Counsel does not waste time dealing with the matter and does not disclose confidential information. Ms. McBride suggested that the word "dismiss" should be reinstated, and the words "or decline to pursue the complaint" should be added back in. By consensus, the Committee approved this change.

The Chair pointed out that in subsection (b)(3) of Rule 19-711, the words "or related" have been bolded. The Reporter said that Mr. Durfee added that. He noted that he was trying to get conformity with language on the next page that was added to the same subsection. The Chair remarked that the allegations may be similar but not related to those alleged in the complaint. Mr. Grossman agreed with adding the words "or related." By consensus, the Committee agreed with this change.

Judge Bryant asked about using the term "shall" in subsection (b)(2). This takes away Bar Counsel's discretion. Mr. Grossman said that he and the Chair discussed this issue. If the Office of Bar Counsel gets a complaint, Mr. Grossman may have no personal knowledge of the alleged facts. As long as his

office can investigate an open file, that is appropriate. The word "shall" is appropriate in subsection (b)(2).

The Reporter noted that a complainant could have no personal knowledge when the first complaint is filed, but then someone with personal knowledge could file a complaint. Mr. Grossman said that his office can pursue the matter under the complaint filed by the person who has personal knowledge. The office would write to the individual who has no personal knowledge. If that is the only way the Office of Bar Counsel heard of the allegation, the office would tell the person that Bar Counsel will open a file in the name of Bar Counsel. The Reporter said that someone may have seen an attorney in court and was appalled by the attorney's conduct.

Mr. Grossman commented that Rule 19-711 allows Bar Counsel to open a file in his or her name. The Rules require the Office of Bar Counsel to communicate with the complainant, but the office may not want to communicate if it cannot add anything. Judge Bryant remarked that she just wanted to clarify how this worked.

Mr. Grossman referred to the additional language in subsection (b)(3). This pertains to the deferral of actions on the complaint. Language has been added, which reads that if Bar Counsel concludes "that substantially similar or related allegations presently are under investigation by a law

enforcement, regulatory, or disciplinary agency," Bar Counsel, with the approval of the Commission, may defer action on the complaint. The Chair explained that the Subcommittee added this language. Mr. Grossman expressed his agreement with this addition.

Judge Ellinghaus-Jones pointed out a typographical error in the second paragraph of the Reporter's note – the language "court or record" should be "court of record."

By consensus, the Committee approved Rule 19-711 as amended.

Agenda Item 3. Consideration of proposed amendments to Rule 19-734 (Conservator of Client Matters)

The Chair presented Rule 19-734, Conservator of Client Matters, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS,

RESIGNATION

AMEND Rule 19-734 to delete language from, to add language pertaining to conservatorships and administration of an attorney's estate to, and to add a Committee note pertaining to responsibilities of a conservator and service on a guardian or personal representative to section (a); to delete language from, add a tagline to, and

add language pertaining to a request for emergency relief to subsection (b)(1); to add a new subsection (b)(2) pertaining to service; to add a new subsection (b)(3) pertaining to emergency appointment of a conservator; and to make stylistic changes, as follows:

Rule 19-734. CONSERVATOR OF CLIENT MATTERS

(a) Appointment; When Authorized~~; Service~~

If (1) an attorney dies, disappears, has been disbarred, suspended, or placed on inactive status, or is incapacitated or has abandoned the practice of law, (2) there are open client matters, and (3) and there is not known to exist any personal representative, partner, or other individual who is willing to conduct and capable of conducting the attorney's client affairs, Bar Counsel may file a petition requesting the appointment of a conservator to inventory the attorney's files and to take other appropriate action to protect the attorney's clients. ~~The petition shall be served in accordance with Rule 2-121.~~ A conservatorship may coexist with the administration of the attorney's general estate by a personal representative or guardian.

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

(b) Petition; ~~and~~ Service; Order

(1) Filing

The petition to appoint a conservator may be filed in the circuit court ~~in~~ for any county in which the attorney maintained an office for the practice of law, and may include a request for emergency relief in accordance with subsection (b)(3) of this Rule. ~~Upon such proof of the facts as the court may require, the court may enter an order appointing an attorney approved by Bar Counsel to serve as conservator subject to further order of the court.~~

(2) Service

The petition shall be served on the attorney, the guardian of the attorney, or the personal representative of the attorney, as appropriate, and on any other person the court may require to be served. Service shall be made in the manner described in Rule 2-121, except that if service of the petition pursuant to that Rule is impracticable, the court may permit an alternative method of providing notice to a person required to be served.

(3) Emergency Appointment

Upon sufficient allegations in the petition and a showing by affidavit or other evidence that immediate, substantial, and irreparable harm may result from the attorney's disappearance or inability or unwillingness to deal properly with the attorney's trust accounts or client matters, the court may (A) appoint a temporary emergency conservator with authority to take control of the trust accounts and client files and (B) enjoin the financial institutions holding the trust accounts from transferring any funds except upon the order of the temporary conservator, all pending further order of the court.

(4) Order Appointing Conservator

Upon such proof of the facts as the court may require, the court may enter an order appointing an attorney approved by Bar Counsel to serve as conservator subject to further order of the court.

(c) Inventory

Promptly upon accepting the appointment, the conservator shall take possession and prepare an inventory of the attorney's files, take control of the attorney's trust and business accounts, review the files and accounts, identify open matters, and note the matters requiring action.

(d) Disposition of Files

With the consent of the client or the approval of the court, the conservator may assist the client in finding new counsel, assume responsibility for specific matters, or refer the client's open matters to attorneys willing to handle them.

(e) Sale of Law Practice

With the approval of the court, the conservator may sell the attorney's law practice in accordance with Rule 19-301.17 (1.17) of the Maryland Attorneys' Rules of Professional Conduct.

(f) Compensation

(1) Entitlement

The conservator is entitled to periodic payment from the attorney's assets or estate for reasonable hourly attorney's fees and reimbursement for expenditures reasonably incurred in carrying out the order of appointment.

(2) Motion for Judgment

Upon verified motion served on the attorney at the attorney's last known address or, if the attorney is deceased, on the personal representative of the attorney, the court may order payment to the conservator and enter judgment against the attorney or personal representative for the reasonable fees and expenses of the conservator.

(3) Payment from Disciplinary Fund

If the conservator is unable to obtain full payment within one year after entry of judgment, the Commission may authorize payment from the Disciplinary Fund in an amount not exceeding the amount of the judgment that remains unsatisfied. If payment is made from the Disciplinary Fund, the conservator shall assign the judgment to the Commission for the benefit of the Disciplinary Fund.

(g) Confidentiality

A conservator shall not disclose any information contained in a client's file without the consent of the client, except as necessary to carry out the order of appointment.

Source: This Rule is derived from former Rule 16-777 (2016).

Rule 19-734 was accompanied by the following Reporter's note.

Rule 19-734, which is derived from former Rule 16-777, was adopted, effective July 1, 2016. As part of the revision of the Rule, a provision was added to section (a), requiring service pursuant to Rule 2-121. Bar Counsel pointed out that sometimes the choice of who must be served is not

obvious, such as when an attorney disappears, is incapacitated, or has abandoned the practice of law. If no personal representative has been appointed when an attorney has died, or if the personal representative is not a member of the bar, it is not clear who is to be served.

The Attorneys and Judges Subcommittee recommends amendments to the Rule to take into account the fact that a conservatorship may coexist with the appointment of a personal representative or guardian. A Committee note is added to explain the conservator's authority, as opposed to the authority of the guardian or personal representative.

Provisions pertaining to service are moved from section (a) to section (b), and are amended to provide for service on the attorney, the attorney's guardian, the attorney's personal representative, as appropriate, and on any other person the court may require. Service is to be made pursuant to Rule 2-121 or, if that is impracticable, by an alternative method. This affords flexibility when service pursuant to Rule 2-121 is not possible.

To protect the client's interests and funds, a provision is added to permit the emergency appointment of a temporary conservator if immediate, substantial, and irreparable harm may result from the attorney's disappearance or unwillingness to deal with trust accounts and client files.

Mr. Grossman explained that when an attorney dies, disappears, or is disbarred, the Office of Bar Counsel may need to petition the court to appoint a conservator so that clients are not prejudiced by the fact that they no longer have an

attorney. The question is who gets notice and how is notice given of the fact that a conservator is being sought. He said that almost half the time, an employee of the Office of Bar Counsel locates an attorney who knows the attorney who is no longer practicing to serve as a conservator. The two elements that are the most important are the files themselves – especially for active cases – and the trust account. The personal representative of an attorney who died cannot access that trust account, so it is critical that someone be able to get those funds. Mr. Grossman asked what is the best way to give notice to the appropriate parties but move quickly so that people are not inconvenienced?

The Chair pointed out that current Rule 19-734 has the language that was stricken from sections (a) and (b). It required service pursuant to Rule 2-121, which is personal service. In trying to address this problem, other problems arose. For example, if the attorney has died, there may or may not be a personal representative, but if there is, the personal representative may or may not be an attorney. Someone who is not an attorney should not be dealing with trust funds or client files. However, if the original attorney is incompetent, he or she may need a guardian, which is the same problem as with the personal representative. There could be a situation in which either a probate estate or a guardianship is co-existing with a

conservatorship. The Chair explained that the service issues are complicated by these situations. Proposed new language has been added to sections (a) and (b) of Rule 19-734 to address these issues. The language in section (a) referring to service in accordance with Rule 2-121 has been deleted but it is placed in subsection (b)(2). Language has been added to section (a) providing that a conservatorship may coexist with the administration of the estate by a personal representative or guardian.

The Chair noted that in section (b), language has been added stating that the petition may include a request for emergency relief in accordance with subsection (b)(3) of Rule 19-734. Subsection (b)(2) also provides for service on the attorney, the guardian of the attorney, or the personal representative, as appropriate. Service shall also be on any other person the court may require to account for the prospect that the attorney may have delegated to his or her secretary, spouse, or someone else the ability to take the attorney's files or to handle the trust account.

Mr. Grossman said that he liked the idea of the service provisions and the ability to get emergency relief. The Chair commented that this is patterned on a temporary restraining order where someone can get immediate control over a matter and then serve notices later. Mr. Grossman remarked that there are

situations where an attorney who has been retired for a long period of time dies. It may turn out that old files and possibly a trust account exist. This may not pose any emergency. However, if an attorney dies suddenly, there are going to be immediate issues that have to be addressed.

The Chair referred to the phrase "appoint a temporary emergency conservator" in subsection (b)(3)(A). He asked Mr. Grossman whether the language "approved by Bar Counsel" should be added after the word "conservator." Mr. Grossman commented that in subsection (b)(4), the language "approved by Bar Counsel" appears after the word "attorney." Mr. Grossman said that he did not know why that language was added. His office files the petition, not the conservator, and asks in the petition to appoint someone specifically named. The Chair inquired whether Bar Counsel is the only one who can ask for that. Mr. Grossman answered that Rule 19-734 allows only him to do that.

Mr. Grossman commented that the judge could deny the petition for one person but allow it for another. The Chair noted that Rule 19-734 only refers to Bar Counsel as a conservator, but the issue is that Rule 19-734 would not apply if the attorney either dies or becomes incompetent and the attorney's law partner wants to come in as a conservator. Could the partner come in under general equity principles to seek a

conservatorship? Mr. Grossman responded that the partner could possibly come in under general equity. The Reporter asked whether an associate could come in. Mr. Grossman replied negatively. His office would have to file a petition to ask that the associate be named as a conservator.

Mr. Zarbin observed that, as a solo practitioner, he has an obligation to file a petition to ask for a successor to be named in case something happens to him. Mr. Grossman noted that it could take six to eight days to appoint a successor. On an attorney's Client Protection Fund bill, a place could be added to include the name of an attorney to call in case of an emergency. That person could become the conservator. He noted that the Aging Subcommittee of the Professionalism Center could not figure out a procedure because banks will not allow access to a trust account. Mr. Zarbin said that his disability insurance policy mandates that he name a successor attorney. What if that document also gave a power of attorney to the successor in the case of a disability? Mr. Grossman commented that this would solve many problems, but a succession Rule would be very controversial if it required this.

Mr. Marcus noted that given the complexities of relationships, he could name someone as a successor but then have a disagreement with the person. On top of the reporting requirements, Mr. Marcus would then have a problem trying to

undo the nomination of the person as the one to be his successor. Mr. Zarbin said that his proposal would be that both attorneys sign the form.

The Chair pointed out that with 40,000 attorneys in Maryland, there would be massive noncompliance with any reporting requirement. Mr. Zarbin explained that his proposal would only apply to solo practitioners for when the solo dies or gets sick. This is important especially with the increasing number of solo practitioners. Ms. Day expressed the view that this suggestion is not realistic because of the difficulty of getting attorneys to comply. Mr. Zarbin responded that it would be similar to the penalty for not reporting pro bono hours, which is that the attorney's license could be suspended. The Chair commented that if Mr. Zarbin's suggestion would be approved, it would not go into Rule 19-734. Mr. Grossman reiterated that on the Client Protection Fund document, a place to name a successor attorney could be added. Mr. Zarbin had spoken about a succession plan.

Mr. Laws observed that Bar Counsel being required to approve a temporary emergency conservatorship is not parallel to the procedure for a final conservatorship. The final conservator has to be a person approved by Bar Counsel and has to be an attorney. Was it intentional that the temporary conservator not be an attorney? The Chair responded that the

temporary conservator has to be an attorney. Mr. Laws expressed the opinion that the procedures for the two types of conservators should be parallel.

The Chair pointed out that subsection (b)(4) provides that an attorney is the one to be approved to serve as a conservator. Mr. Sullivan suggested that the attorney referred to in subsection (b)(3) should be approved by Bar Counsel just as the one referred to in subsection (b)(4) is. The Chair asked whether there is any harm in adding this requirement. Judge Bryant answered that it would be helpful because the court could appoint a conservator who has problems that are not necessarily apparent.

Senator Norman said that Mr. Zarbin had mentioned that he stepped in several times when attorneys died or became incapacitated. That may have been done without the approval of Bar Counsel. Several attorneys recently died in Harford County and other attorneys became the conservators without the approval of Bar Counsel. If Bar Counsel has a problem with this, he or she can always voice an opinion. Senator Norman expressed the view that every appointment should not have to be approved by Bar Counsel. Mr. Laws pointed out that the petition for a conservator was started by Bar Counsel. Senator Norman said that the way he read the Rule was that if a guardian or conservator is necessary to protect an attorney's files, the

appointment has to be approved by Bar Counsel. Mr. Grossman noted that section (a) provides that no conservator will be appointed if there is a personal representative, partner, or other individual who is willing to conduct and capable of conducting the attorney's client affairs.

The Chair commented that there is still the issue raised by Senator Norman that a conservatorship could exist outside of Rule 19-734. The Rule only applies when Bar Counsel petitions for a conservatorship. As Mr. Grossman said, if there is someone else able to serve as a conservator, Mr. Grossman would not seek one. Judge Eaves expressed the view that the procedure for emergency conservatorships and final conservatorships could be made parallel by adding the language "an attorney approved by Bar Counsel to serve as" to subsection (b)(3)(A), so that it would read "appoint an attorney approved by Bar Counsel to serve as a temporary emergency conservator with authority to take control of the trust accounts and client files." By consensus, the Committee approved the addition of this language.

The Chair noted that a style issue exists in section (d). Instead of the language "finding new counsel," the language "finding a new attorney" could be substituted. This conforms to the language used in the Rule in other places. By consensus, the Committee agreed to this change.

The Chair referred to the language "refer the client's open matters to attorneys willing to handle them." He asked whether a conservator could do this without the consent of the client. Mr. Shellenberger pointed out that the beginning language of section (d) is "with the consent of the client or the approval of the court." The Chair said that what triggered the question is whether the conservator can tell the court that he or she would like to refer the files of the attorney who can no longer practice to other attorneys. The court may allow this. There is court approval, but the client has not consented. The Reporter noted that it could be a juvenile client or a disabled client unable to consent. Mr. Zarbin commented that it depends on the retainer agreement. His retainer agreement requires the client to approve this. If no retainer agreement exists, it is a problem referring a client to another attorney without the client's approval.

Judge Mosley asked what change to section (d) the Chair was suggesting. The Chair responded that his concern was that the client may not want the attorney referred by the conservator. Mr. Zarbin commented that the client could discharge the new attorney if the client was not happy with him or her. Judge Ellinghaus-Jones pointed out a possible situation where the limitations are about to run in a case, and the attorney cannot contact the client. The client's rights have to be protected.

The Reporter asked whether section (d) has been causing any problems, and Mr. Grossman answered that it has not.

Ms. McBride referred to the last sentence of subsection (b)(3) and said that she was confused by the language "except upon the order of the temporary conservator." She asked whether the word "order" should be the word "recommendation." Judge Eaves suggested the word "direction." The Reporter noted that this is banking terminology. The first order is "pay to the order of." The second time the word "order" appears, it refers to an order of court. Mr. Sullivan suggested that it could be upon the directive of the temporary conservator.

The Reporter commented that this should not be done by making a telephone call; there needs to be a written record of whatever the conservators do. Mr. Laws asked whether the language "draw or order" would be appropriate. Mr. Grossman said that the conservator stands in the shoes of the attorney. He was not sure what language would be appropriate. Judge Eaves suggested the language "upon the written suggestion of the conservator." She asked the Reporter whether her point was that the word "order" is something specific to the banking industry. The Reporter answered that the language "pay to the order of" is used in the banking industry, and there is at least one reference to it in Code, Commercial Law Article, §3-109.

The Chair asked whether trust funds are always in a checking account or whether they can be in some other form of deposit. Mr. Carbine responded that the interest-bearing accounts are the IOLTA accounts. The Chair inquired whether the funds are drawn by check. Mr. Carbine answered affirmatively. Mr. Grossman said that he has never seen conservators use electronic transfers. Judge Nazarian remarked that there is a difference between an electronic transfer for bill-paying out of one's checking account as opposed to a wire transfer by the bank. Mr. Grossman suggested that the word "order" should remain in subsection (b)(3). Ms. McBride reiterated that she found this confusing. Mr. Carbine noted that the consensus of the Committee was not to change the wording.

The Chair referred to section (e), which allows the conservator to sell the attorney's law practice. If there is a guardian or personal representative, would he or she have the authority to sell the practice? This does not refer to the trust accounts; it refers to the assets. Mr. Grossman answered that he believed that the personal representative or the guardian would have the authority. Since this is done with the approval of the court, the guardian would get notice. The Chair asked whether the conservator should be doing this if there is a guardian or personal representative. Mr. Grossman noted that the conservators do not want to do this. It is beyond what the

conservators otherwise would be doing. The Chair asked whether, with the approval of the court and in the absence of a guardian or personal representative, the conservator would take on this responsibility.

Ms. McBride asked whether subsection (a)(1) of Rule 19-734 would apply only if there is no personal representative. The Chair responded that this refers to the filing of the petition. Mr. Zarbin commented that if it is within the province of the personal representative to sell the practice, the practice is not just the business interest, it entails many other items.

The Chair said that he was suggesting that it is possible that there is no guardian or personal representative when the petition is filed. Someone then realizes that the attorney has died, and a personal representative is appointed. The conservator can still deal with trust accounts and files, but if there is a personal representative or guardian, should the conservator be handling the general assets?

Mr. Weaver inquired as to what the conservator does with the assets of the practice. The Reporter asked whether a personal representative who is not an attorney should be handling the assets. Mr. Grossman noted that the first part of the Rule provides that the person has to be capable of conducting the attorney's client affairs. If the person is not an attorney, he or she is not capable. There have been issues

with the personal representatives who like to think of the money in the attorney's trust account as their money. The Chair said that this is a different issue. The personal representative should not be handling trust funds or client files. That is not the issue addressed in Rule 19-734.

Mr. Grossman commented that he did not have a problem with the conservator taking a backseat if there is a guardian or personal representative. The Chair noted that the Rule should state that the conservator can do this in the absence of a guardian or personal representative. The Reporter said that it would have to be in the absence of a qualified guardian or personal representative. Mr. Zarbin pointed out that this assumes that the spouse of the attorney who is unable to practice is not an attorney. He expressed the concern that a conservator might sell the practice to a friend at an amount lower than it is worth. He said that he would like the personal representative to be involved in the valuation of the practice. The Chair asked whether a non-attorney, in valuing the estate, could get into the client files. However, he or she might have to do that anyway to administer the estate.

Mr. Marcus remarked that this situation happens frequently. If the conservator, the personal representative, or the guardian undertakes to sell the law practice without having proper valuation done, that person is subject to being sued for failing

to take the proper steps necessary to make a sale. The same is true with derivatives, options, and many other items that are not easily valued. The need for an expert is not just limited to a law practice. As an attorney, Mr. Marcus said that he has been in the situation where he had to look at another attorney's files. The attorney who looks at another attorney's files stands in the shoes of the first attorney and is subject to the rules of confidentiality. The purpose of looking at the files would be to value them and determine what amount of work has already been done and what work has yet to be done. This is not that different from the work done by any kind of personal representative, attorney, or conservator in making the appropriate valuation as a fiduciary would be required to do.

Mr. Laws suggested adding the language "on motion and notice to any personal representative or guardian" after the word "court" in section (e) of Rule 19-734. The Chair remarked that this would be better than doing nothing. If there is a personal representative already administering an estate, and the conservator is selling the law practice, where does that money from the sale go? Is it received by the conservatorship, or does it go to the personal representative, who, by statute, has to account for the money? Mr. Laws noted that State law does not appear to address the conservatorship.

Ms. McBride suggested that section (e) could be removed, because if a personal representative is in place, then the personal representative will deal with the law firm. Why does the conservator have to be concerned about it? The Chair pointed out that there may not be a personal representative, and then no one else could do it. Ms. Day expressed the view that it cannot be assumed that a personal representative is sophisticated enough to know how to sell a law firm. Many personal representatives are simply the spouse of the decedent, and the individual would not know what to do. Ms. McBride said that the conservator could work with the personal representative.

Judge Bryant noted that Rule 19-301.17, Sale of Law Practice, requires that a law practice be sold to another attorney. Mr. Zarbin remarked that possibly, when an attorney dies and the Register of Wills is given the power to administer the estate, the Register of Wills could consult Bar Counsel on the law practice. The Chair pointed out that there may not be a conservatorship at that point and Bar Counsel is not in the business of managing estates. Mr. Zarbin explained that his point was that Bar Counsel could just be notified. Mr. Grossman observed that the practice is sold with the approval of the court. He does not currently get notice about the sale of a law practice. The Chair inquired whether anyone had a motion to

change the language of Rule 19-734 (e), and no motion was forthcoming.

The Chair referred to subsection (f)(1) and asked whether the language should be "the conservator, other than Bar Counsel, may assist the client." Mr. Grossman responded that the petition is not titled "Bar Counsel." It is in the name of whichever Assistant Bar Counsel files the petition. The language could be something like "someone in the Office of Bar Counsel."

The Reporter asked what percentage of petitions are filed by Bar Counsel as opposed to being filed by someone else. Mr. Grossman answered that a little less than half are filed by someone else. The Chair noted that Bar Counsel or a court employee should not be compensated. Mr. Grossman agreed. The Reporter noted that private attorney who handles the conservatorship may deplete some of the assets. Mr. Grossman said that the position of his office is that if the estate can afford the services of a private attorney, it is beneficial to the estate.

The Chair asked Mr. Grossman whether he agreed with the Chair that neither Bar Counsel nor any of its employees should be paid. Mr. Grossman inquired whether it is necessary for a Rule to state this. The Chair responded that if it is in a Rule, it prevents it from happening. Mr. Grossman noted that

they have a protocol for non-employee conservators concerning what they are able to charge and how they charge. The reason for that is if there is a mistake, the Attorney Grievance Commission may end up paying. The conservators are told this ahead of time.

The Chair asked the Committee if anyone had a motion to further amend Rule 19-734. There being none, the Committee approved the Rule as amended.

Agenda Item 4. Consideration of proposed amendments to Rule 19-752 (Reinstatement – Other Suspension; Disbarment; Inactive Status; Resignation)

The Chair presented Rule 19-752, Reinstatement – Other Suspension; Disbarment; Inactive Status; Resignation, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS,

RESIGNATION

AMEND Rule 19-752 to place a certain time limit on an attorney's ability under this Rule to file a petition for reinstatement after a denial by the Court of Appeals of a petition for reinstatement by the Attorney, as follows:

Rule 19-752. REINSTATEMENT – OTHER SUSPENSION; DISBARMENT; INACTIVE STATUS; RESIGNATION

(a) Scope of Rule

This Rule applies to an attorney who has been disbarred, suspended indefinitely, suspended for a fixed period longer than six months, or placed on inactive status or who has resigned from the practice of law.

(b) Reinstatement Not Automatic

An attorney subject to this Rule is not automatically reinstated upon expiration of the period of suspension. An attorney is not reinstated until the Court of Appeals enters an Order of Reinstatement.

(c) Petition for Reinstatement

(1) Requirement

An attorney who seeks reinstatement under this Rule shall file a verified petition for reinstatement with the Clerk of the Court of Appeals and serve a copy on Bar Counsel. The attorney shall be the petitioner. Bar Counsel shall be the respondent.

(2) Timing Following Order of Suspension or Disbarment

(A) If the attorney was suspended for a fixed period, the petition may not be filed earlier than 30 days prior to the end of the period of suspension.

(B) If the attorney was suspended for an indefinite period or disbarred, the petition may not be filed earlier than (i) the time specified in the order of suspension or disbarment.

(3) Content

The petition shall state or be accompanied by the following:

(A) docket references to all prior disciplinary or remedial actions to which the attorney was a party;

(B) a copy of the order that disbarred or suspended the attorney, placed the attorney on inactive status, or accepted the resignation of the attorney and any opinion of the Court that accompanied the order;

(C) that the attorney has complied in all respects with the provisions of Rule 19-742 or, if applicable, Rule 19-744, and with any terms or conditions stated in the disciplinary or remedial order;

(D) a description of the conduct or circumstances leading to the order of disbarment, suspension, placement on inactive status, or acceptance of resignation; and

(E) facts establishing the attorney's subsequent conduct and reformation, present character, present qualifications and competence to practice law, and ability to satisfy the criteria set forth in section (g) of this Rule.

(d) Information for Bar Counsel

(1) Generally

Upon the filing of the petition, the attorney shall separately supply to Bar Counsel, in writing, the following information:

(A) the attorney's current address, e-mail address, if any, and telephone number;

(B) the information specified in subsection (c)(2) or (c)(3) of this Rule, as applicable;

(C) evidence establishing compliance with all applicable requirements set forth in section (g) of this Rule;

(D) a statement of whether the attorney has applied for reinstatement in any other jurisdiction and the current status of each such application; and

(E) any other information that the attorney believes is relevant to determining whether the attorney possesses the character and fitness necessary for reinstatement; and

(2) If Disbarred or Suspended

If the attorney has been disbarred or suspended, the information supplied to Bar Counsel shall include:

(A) the address of each residence of the attorney during the period of discipline, with inclusive dates of each residence;

(B) the name, address, e-mail address, if any, and telephone number of each employer, associate, and partner of the attorney during the period of discipline, together with (i) the inclusive dates of each employment, association, and partnership, (ii) the positions held, (iii) the names of all immediate supervisors, and (iv) if applicable, the reasons for termination of the employment, association, or partnership;

(C) the case caption, general nature, and disposition of each civil and criminal action pending during the period of discipline to which the attorney was a party or in which the attorney claimed an interest;

(D) a statement of monthly earnings and all other income during the period of discipline, including the source;

(E) copies of the attorney's state and federal income tax returns for the three years preceding the effective date of the order of disbarment or suspension and each year thereafter;

(F) a statement of the attorney's assets and financial obligations;

(G) the names and addresses of all creditors;

(H) a statement identifying all other business or occupational licenses or certificates applied for during the period of discipline and the current status of each application; and

(I) the name and address of each financial institution at which the attorney maintained or was signatory on any account, safe deposit box, deposit, or loan during the period of discipline and written authorization for Bar Counsel to obtain financial records pertaining to such accounts, safe deposit boxes, deposits, or loans.

(3) If Placed on Inactive Status

If the attorney was placed on inactive status, the information supplied to Bar Counsel shall include:

(A) the name, address, and telephone number of each health care provider or addiction care provider and institution that examined or treated the attorney for incapacity during the period of inactive status; and

(B) a written waiver of any physician-patient privilege with respect to each

psychiatrist, psychologist, or psychiatric-mental health nursing specialist named subsection (c)(3)(A) of this Rule.

(e) Response to Petition

(1) Generally

Within 30 days after service of the petition, Bar Counsel shall file and serve on the attorney a response. Except as provided in subsection (d)(2) of this Rule, the response shall admit or deny the averments in the petition in accordance with Rule 2-323 (c). The response may include Bar Counsel's recommendations in support of or opposition to the petition and with respect to any conditions to reinstatement.

(2) Consent

If Bar Counsel is satisfied that the attorney has complied fully with the provisions of Rule 19-742 and any requirements or conditions in the order of suspension or disbarment, and there are no known complaints or disciplinary proceedings pending against the attorney, the response may be in the form of a consent to the reinstatement.

(f) Disposition

(1) Consent by Bar Counsel

If, pursuant to subsection (e)(2) of this Rule, Bar Counsel has filed a consent to reinstatement, the Clerk shall proceed in accordance with Rule 19-751 (e)(1).

(2) Other Cases

In other cases, upon review of the petition and Bar Counsel's response, the Court may (A) without a hearing, dismiss the petition or grant the petition and enter an order of reinstatement with such conditions

as the Court deems appropriate, or (B) order further proceedings in accordance with section (g) of this Rule.

(g) Further Proceedings

(1) Order Designating Judge

If the Court orders further proceedings pursuant to subsection (f)(2)(B) of this Rule, it shall enter an order designating a judge of any circuit court to hold a hearing.

(2) Discovery

The judge shall allow reasonable time for Bar Counsel to investigate the petition and, subject to Rule 19-726, to take depositions and complete discovery.

(3) Hearing

The applicable provisions of Rule 19-727 shall govern the hearing and the findings and conclusions of the judge, except that the attorney shall have the burden of proving the averments of the petition by clear and convincing evidence.

(4) Proceedings in Court of Appeals

The applicable provisions of Rules 19-728 and 19-729 (a), (b), and (d) shall govern subsequent proceedings in the Court of Appeals. The Court may (A) dismiss the petition, (B) order reinstatement, with such conditions as the Court deems appropriate, or (C) remand for further proceedings.

(h) Criteria for Reinstatement

(1) Generally

In determining whether to grant a petition for reinstatement, the Court of Appeals shall consider the nature and

circumstances of the attorney's conduct that led to the disciplinary or remedial order and the attorney's (A) subsequent conduct, (B) current character, and (C) current qualifications and competence to practice law.

(2) Specific Criteria

The Court may order reinstatement if the attorney meets each of the following criteria or presents sufficient reasons why reinstatement should be ordered in the absence of satisfaction of one or more of those criteria:

(A) the attorney has complied in all respects with the provisions of Rule 19-742 or, if applicable, 19-744 and with the terms and conditions of prior disciplinary or remedial orders;

(B) the attorney has not engaged in or attempted or offered to engage in the unauthorized practice of law during the period of disbarment, suspension, or inactive status;

(C) if the attorney was placed on inactive status, the incapacity or infirmity, including alcohol or drug abuse no longer exists and is not likely to recur in the future;

(D) if the attorney was disbarred or suspended, the petitioner recognizes the wrongfulness and seriousness of the professional misconduct for which discipline was imposed;

(E) the attorney has not engaged in any professional misconduct or, other than minor traffic or municipal infractions, any unlawful activity since the imposition of discipline;

(F) the attorney currently has the requisite honesty and integrity to practice law;

(G) the attorney has kept informed about recent developments in the law and is competent to practice law; and

(H) the attorney has complied with all financial obligations required by these Rules or by court order, including (i) reimbursement of all amounts due to the attorney's former clients, (ii) payment of restitution which, by court order, is due to the attorney's former clients or any other person, (iii) reimbursement of the Client Protection Fund for all claims that arose out of the attorney's practice of law and satisfaction of all judgments arising our of such claims, and (iv) payment of all costs assessed by court order or otherwise required by law.

(i) Subsequent Petitions

An attorney shall not file a petition for reinstatement less than one year after a denial of a petition for reinstatement by the Court.

~~(i)~~ (j) Conditions to Reinstatement

An order that reinstates an attorney may include, as a condition precedent to reinstatement or as a condition of probation after reinstatement that the attorney:

(1) take the oath of attorneys required by Code, Business Occupations and Professions Article, §10-212;

(2) pass either the comprehensive Maryland Bar examination or an attorney examination administered by the Board of Law Examiners;

(3) attend a bar review course approved by Bar Counsel and submit to Bar Counsel satisfactory evidence of attendance;

(4) submit to Bar Counsel evidence of successful completion of a professional ethics course at an accredited law school;

(5) submit to Bar Counsel evidence of attendance at the professionalism course required for newly-admitted attorneys;

(6) engage an attorney satisfactory to Bar Counsel to monitor the attorney's legal practice for a period stated in the order of reinstatement;

(7) limit the nature or extent of the attorney's future practice of law in the manner set forth in the order of reinstatement;

(8) participate in a program tailored to individual circumstances that provides the attorney with law office management assistance, attorney assistance or counseling, treatment for substance or gambling abuse, or psychological counseling;

(9) demonstrate, by a report of a health care professional or other evidence, that the attorney is mentally and physically competent to resume the practice of law;

(10) issue an apology to one or more persons; or

(11) take any other corrective action that the Court deems appropriate.

~~(j)~~ (k) Effective Date of Reinstatement Order

An order that reinstates the petitioner may provide that it shall become effective immediately or on a date stated in the order.

~~(k)~~ (l) Duties of Clerk

(1) Attorney Admitted to Practice

Promptly after the effective date of an order that reinstates a petitioner, the Clerk of the Court of Appeals shall comply with Rule 19-761.

(2) Attorney Not Admitted to Practice

Upon receiving a reinstatement notice authorized by section (e) of this Rule, or on the effective date of an order or notice that reinstates a petitioner not admitted by the Court of Appeals to practice law, the Clerk of the Court of Appeals shall remove the petitioner's name from the list maintained in that Court of non-admitted attorneys who are ineligible to practice law in this State, and shall certify that fact to the Board of Law Examiners and the clerks of all courts in the State.

~~(l)~~ (m) Motion to Vacate Reinstatement

Bar Counsel may file a motion to vacate an order that reinstates the petitioner if (1) the petitioner has failed to demonstrate substantial compliance with the order, including any condition of reinstatement imposed under Rule 19-752 (h) or section (j) of this Rule or (2) the petition filed under section (a) of this Rule contains a false statement or omits a material fact, the petitioner knew the statement was false or the fact was omitted, and the true facts were not disclosed to Bar Counsel prior to entry of the order. The petitioner may file a verified response within 15 days after service of the motion, unless a different time is ordered. If there is a factual dispute to be resolved, the court may enter an order designating a judge in accordance with Rule 19-722 to hold a hearing. The judge shall allow reasonable

time for the parties to prepare for the hearing and may authorize discovery pursuant to Rule 19-726. The applicable provisions of Rule 19-727 shall govern the hearing. The applicable provisions of Rules 19-728 and 19-741, except section (c) of Rule 19-741, shall govern any subsequent proceedings in the Court of Appeals. The Court may reimpose the discipline that was in effect when the order was entered or may impose additional or different discipline.

Source: This Rule is derived from former Rule 16-781 (2016).

Rule 19-752 was accompanied by the following Reporter's note.

At the request of Bar Counsel, an amendment is being proposed to Rule 19-752. Rule 19-752 permits an attorney who has been disbarred, suspended indefinitely, or suspended for more than six months to petition for reinstatement, which must be accompanied by a great deal of information. Bar Counsel must then expend a substantial amount of time and effort in reviewing the filing and performing an investigation in order to respond. Bar Counsel noted that current Rule 19-752 places no temporal or numeric limitation on the ability of an attorney to petition for reinstatement after a denial of a petition for reinstatement by the Court of Appeals. A new section (i) is being proposed to require an attorney to wait one year after the denial of a petition for reinstatement to file another petition.

The Chair drew the Committee's attention to section (i) of Rule 19-752. Mr. Grossman explained that currently, disbarments and suspensions require a petition for reinstatement. The new

language provides that once the Court of Appeals denies a petition for reinstatement, there is a one-year waiting period before the attorney can reapply for reinstatement. He said that some people who file a petition for reinstatement just cannot take the hint and continue to refile. Many attorneys are disbarred or suspended indefinitely. When a petition for reinstatement is filed, the Bar Counsel staff use all of the information in the office's files and conduct an independent investigation as well. He explained that his office does not have the resources to do this more than once a year for each suspended or disbarred attorney.

Mr. Grossman said that at times the reinstatement is recommended by his office but ultimately denied by the Court of Appeals. Three months later, the attorney files a *pro se* petition and Bar Counsel opposes the reinstatement because reinstatement was denied only three months earlier. He suggested that the addition of section (i) is a reasonable approach because of staff resources. Most of the information will be the same, but some may be different. The person who got rejected may wish to give additional information.

Mr. Grossman pointed out that for good cause shown, the Court could permit someone to file a petition for reinstatement less than one year after a denial of a petition. The Chair suggested that "except upon order of the Court of Appeals for

good cause shown" be added to section (i). The Committee approved this amendment by consensus.

There being no further motion to amend or reject proposed amendments to Rule 19-752, the Rule was approved as amended.

The Committee applauded Mr. Grossman for his service to the State as Bar Counsel.

Agenda Item 5. Consideration of proposed amendments to Rule 18-103.9 (Service as Arbitrator or Mediator)

The Chair presented Rule 18-103.9, Service as Arbitrator or Mediator (ABA Rule 3.9) for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 100 – MARYLAND CODE OF JUDICIAL CONDUCT

RULES GOVERNING EXTRAJUDICIAL ACTIVITY

AMEND Rule 18-103.9 to change certain references from a retired judge approved for recall to a senior judge in section (b) and the Committee note, and add a new section (c) to permit certain judges of the Orphans' Court to conduct alternative dispute resolution proceedings under certain circumstances, as follows:

Rule 18-103.9. SERVICE AS ARBITRATOR OR MEDIATOR (ABA RULE 3.9)

(a) Unless expressly authorized by law, a judge shall not act as an arbitrator or a mediator or perform other judicial functions apart from the judge's official duties.

(b) A ~~retired judge who is approved for recall for temporary service under Code, Courts Article, §1-302~~ senior judge may conduct alternative dispute resolution (ADR) proceedings in a private capacity only if the judge:

(1) conducts no ADR proceedings in a private capacity relating to a case in which the judge currently is sitting;

(2) is not affiliated with a law firm, regardless of whether the law firm also offers ADR services;

(3) discloses to the parties in each judicial proceeding in which the judge sits:

(A) the judge's professional association with any entity that is engaged in offering ADR services;

(B) whether the judge is conducting, or has conducted within the previous 12 months, an ADR proceeding involving any party, attorney, or law firm involved in the judicial proceeding pending before the judge; and

(C) any negotiations or agreements for future ADR services involving the judge and any of the parties or attorneys to the case; and

(4) except when there is no disqualification by agreement as permitted by Rule 18-102.11 (c), does not sit in a judicial proceeding in which the judge's impartiality might reasonably be questioned

because of ADR services engaged in or offered by the judge.

(c) An Orphans' Court judge, other than an Orphans' Court judge in Montgomery County or Harford County, may conduct alternative dispute resolution (ADR) proceedings only if the Orphans' Court judge:

(1) does not conduct ADR proceedings in matters within the jurisdiction of the Orphans' Court or that are related to the administration of an estate or guardianship;

(2) does not use the judge's judicial office to further the judge's success in the practice of ADR; and

(3) discloses to the parties in each ADR proceeding over which the judge presides, whether a party, attorney or law firm involved in the ADR proceeding is or has been involved in an Orphans' Court proceeding before the judge within the past 12 months.

Drafter's note re: subsection (c)(1): This language is different from what was proposed.

In the Orphans' Court conference proposal, as supplemented at the meeting, subsection (c)(1) provided that an Orphans' Court judge may conduct ADR if the judge: (1) conducts no ADR proceedings relating to a matter currently assigned to the orphans' court judge or a matter involving estates and trusts or guardianship." That seemed redundant: if a matter involved estates and trusts or guardianship, it would not matter what is currently assigned to the judge.

Maryland Code, Estates and Trusts Article, §2-109 (b)(4) permits Orphans' Court judges from Prince George's, Baltimore, Calvert, and Howard counties to practice law "in connection with a case that is: (i) Outside

the jurisdiction of the orphans' court; and (ii) Unrelated to the administration of an estate or guardianship." I am suggesting similar language for subsection (c)(1).

Committee note: A ~~retired judge approved for recall~~ senior judge may affiliate with an entity that is engaged exclusively in offering ADR services but may not affiliate with any entity that also is engaged in the practice of law.

COMMENT

[1] Except as provided in section (b), this Rule does not prohibit a judge from participating in arbitration, mediation, or prehearing or settlement conferences performed as part of assigned judicial duties. Rendering dispute resolution services apart from those duties, whether or not for economic gain, is prohibited unless it is expressly authorized by law.

Source: This Rule is derived from former Rule 3.9 of Rule 16-813 (2016).

Rule 18-103.9 was accompanied by the following Reporter's note.

The Conference of Orphans' Court Judges submitted a request to the Rules Committee to seek an amendment to Rule 18-103.9 to permit Orphans' Court judges to conduct alternative dispute resolution ("ADR") proceedings, subject to conditions to ensure the integrity of the Orphans' Court and the ADR proceedings.

Proposed subsection (c)(1) would prevent a judge from presiding in an ADR proceeding that involves a matter that would be heard in an Orphans' Court. The proposed language is based on Maryland Code, Estates and Trusts Article, §2-109 (b)(4), which

permits the outside practice of law by Orphans' Court judges in Prince George's, Baltimore, Calvert, and Howard counties, in connection with a case that is "(i) Outside the jurisdiction of orphans' court; and (ii) Unrelated to the administration of an estate or guardianship."

Proposed subsection (c)(2) is derived from Rule 18-103.10 (b)(2)(A), which permits a part-time judge of the Orphans' Court who is an attorney to practice law, other than in the court where the judge sits, provided that "the judge shall not use the judge's judicial office to further the judge's success in the practice of law."

Proposed subsection (c)(3), which requires an Orphans' Court judge who is presiding in an ADR proceeding to make certain disclosures to the participants, is derived from subsection (b)(3) of Rule 18-109.3, which requires senior judges who conduct ADR proceedings to make certain disclosures to parties in a judicial proceeding in which the judge sits.

The Chair pointed out that section (b) of Rule 18-103.9 substitutes the term "senior judge" for the language "retired judge who is approved for recall for temporary service under Code, Courts Article, §1-302." This change was discussed earlier in the meeting.

Judge Juliet Fisher, Associate Judge of the Orphans' Court of Baltimore County, told the Committee that the matter presented in new section (c) was discussed by the Conference of Orphans' Court Judges. She explained that some Orphans' Court

judges are also attorneys who are allowed to practice law. Judge Michele Loewenthal, an Orphans' Court judge in Baltimore City, became aware that Orphans' Court judges were precluded from conducting Alternative Dispute Resolution ("ADR") proceedings under the prohibition against judges providing ADR services. Judge Fisher said that she did litigation work for the Better Business Bureau and has done other civil litigation. Judge Lowenthal has done some pro bono ADR in the District Court. Other Orphans' Court judges are interested in conducting ADR. This is not related to their role as Orphans' Court judges. The requested change to Rule 18-103.9 would not impact their role as judges on the Orphans' Court.

The Chair suggested, as a stylistic change, the addition of the language "a judge sitting as" after the word "than" and before the word "an" in section (c). Judge Fisher agreed to this change. By consensus, the Committee approved the amendment.

The Chair asked if the intent of the language in subsection (c)(1) is that the judge would not conduct ADR proceedings in matters within the jurisdiction of an Orphans' Court as opposed to the Orphans' Court generally. Judge Fisher answered that it was not meant to be the Orphans' Courts generally, so the word "an" would be correct. Mr. Durfee explained that Code, Estates and Trusts Article, §2-109 (b)(4) refers to "a judge of the

(Orphans') Court," so this why the language of subsection (c)(1) of Rule 18-103.9 had the language "the Orphans' Court." The Chair asked Senator Norman whether the intent of the legislature was to refer to the Orphans' Court generally, and he replied that he did not think that that was the intent. By consensus, the Committee approved the change from the word "the" to the word "an" in subsection (c)(1).

By consensus, the Committee approved Rule 18-103.9 as amended. Judge Fisher thanked the Committee for its attention.

Agenda Item 6. Reconsideration of proposed amendments to Rule 1-204 (Motion to Shorten or Extend Time Requirements) and "Prisoner Mailbox Rule" Issues; Alternative Approach – Amendments to Rule 1-322 (Filing of Pleadings, Papers, and Other Items)

The Chair presented Rules 1-204, Motion to Shorten or Extend Time Requirements and 1-322, Filing of Pleadings, Papers, and Other Items, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 300 – GENERAL PROVISIONS

AMEND Rule 1-322 to permit a self-represented party under involuntary confinement to file pleadings and papers by a specified method under certain circumstances, to add provisions pertaining to proof of the date of filing by the specified method, to add a form Certificate

of Filing by the specified method, and to add a Committee note, as follows:

Rule 1-322. FILING OF PLEADINGS, PAPERS, AND OTHER ITEMS

(a) Generally

~~The~~ Except as provided in section (d) of this Rule, the filing of pleadings, papers, and other items with the court shall be made by filing them with the clerk of the court, except that a judge of that court may accept the filing, in which event the judge shall note on the item the date the judge accepted it for filing and forthwith transmit the item to the office of the clerk. On the same day that an item is received in a clerk's office, the clerk shall note on it the date it was received and enter on the docket that date and any date noted on the item by a judge. The item shall be deemed filed on the earlier of (1) the filing date noted by a judge on the item or (2) the date noted by the clerk on the item. No item may be filed directly by electronic transmission, except (1) pursuant to an electronic filing system approved under Rule 16-203, (2) as permitted by Rule 14-209.1, (3) as provided in section (b) of this Rule, or (4) pursuant to Title 20 of these Rules.

(b) Electronic Transmission of Mandates of the U.S. Supreme Court

A Maryland court shall accept a mandate of the Supreme Court of the United States transmitted by electronic means unless the court does not have the technology to receive it in the form transmitted, in which event the clerk shall promptly so inform the Clerk of the Supreme Court and request an alternative method of transmission. The clerk of the Maryland court may request reasonable verification of

the authenticity of a mandate transmitted by electronic means.

(c) Photocopies; Facsimile Copies

A photocopy or facsimile copy of a pleading or paper, once filed with the court, shall be treated as an original for all court purposes. The attorney or party filing the copy shall retain the original from which the filed copy was made for production to the court upon the request of the court or any party.

(d) Filings by Self-represented Parties Under Involuntary Confinement

(1) Definition

In this section, "facility" means a prison, detention center, hospital, or other institution to which individuals are confined involuntarily pursuant to governmental authority and that has an internal system for collecting and forwarding outgoing mail from confined individuals to the U.S. Postal Service.

(2) Application

This section applies only to self-represented individuals who are confined in a facility and, as a result, have no direct access to the U.S. Postal Service or to a permitted method of electronically filing pleadings or papers in court.

(3) Generally

A pleading or paper filed under this section shall be deemed to have been filed on the date that the pleading or paper, in mailable form and with proper postage affixed, was deposited by the individual into a receptacle designated by the facility for outgoing mail or personally delivered to an employee of the facility

authorized by the facility to collect such mail.

(4) Proof of Date of Filing

The date of filing may be proved by a Certificate of Filing attached to the pleading or paper, in the form provided in subsection (d)(5) of this Rule, that the court finds to be credible.

(5) Certificate of Filing

A Certificate of filing shall be in the following form:

CERTIFICATE OF FILING

I, _____ (name), certify that (1) I am involuntarily confined in _____ (name of facility); (2) I have no direct access to the U.S. Postal Service or to a permitted means of electronically filing the attached pleading or paper; (3) on _____ (date) at approximately _____ (time) I personally [ ] deposited the attached pleading or paper for mailing in a receptacle designated by the facility for outgoing mail or [ ] delivered it to an employee of the facility authorized by the facility to collect outgoing mail; and (4) the item was in mailable form and had the correct postage on it.

I solemnly affirm this _____ day of _____,

under the penalty of perjury and upon personal knowledge that the foregoing statements are true.

_____
(Signature)

Committee note: This section recognizes that individuals who are detained in a facility involuntarily pursuant to governmental authority usually have no direct access to the U.S. Postal Service and are dependent on the facility to deliver outgoing mail to the Postal Service on behalf of the confined individual. The best the individual can do is to deposit the item in a mail collection receptacle provided by the facility or, if that be the practice of the facility, deliver it to an employee of the facility authorized by the facility to collect outgoing mail. The section also recognizes that the facility may not actually collect the mail on the day it is deposited and may not affix a date-stamp showing when the mail was collected. Proving the date that the item was actually deposited in the facility's mailbox may therefore be difficult, other than by an affidavit from the filer, which may not always be credible. In the event of any question or dispute, the court can consider, in addition to the affidavit and for such relevance it may have, the U.S.P.S post mark on the envelope, any internal date stamp applied by the facility, any written policy of the facility regarding outgoing mail from confined individuals that had been communicated to those individuals, and other relevant and reliable evidence.
Cross reference: See Rule 1-301 (d), requiring that court papers be legible and of permanent quality.

Source: This Rule is derived in part from the 1980 version of Fed. R. Civ. P. 5 (e) and Rule 102 1 d of the Rules of the United

States District Court for the District of Maryland and is in part new.

Rule 1-322 was accompanied by the following Reporter's note:

Rule 1-322 is proposed to be amended by adding a new section (d) pertaining to the date of filing of pleadings or papers. The section would apply to self-represented parties who are under involuntary confinement in a facility and do not have direct access to the U.S. Postal service or a permitted method of electronically filing pleadings or papers in court.

Subsection (d)(1) defines the term "facility" to include the various institutions to which individuals are confined involuntarily pursuant to governmental authority that have an internal system for collecting and forwarding outgoing mail from confined individuals to the U.S. Postal Service.

Subsection (d)(2) limits the application of section(d) to self-represented individuals confined in a facility who do not have direct access to U.S. Postal Service or a permitted method of electronically filings pleadings or papers.

Subsection (d)(3) provides that the date of filing by self-represented individuals who are covered under subsections (d)(1) and (d)(2) shall be deemed to be the date the individual deposited the pleading or paper into a designated receptacle or delivered the pleading or paper to an authorized employee of the facility, with proper postage affixed and in a mailable form.

Subsection (d)(4) provides that the date of filing may be proved by a

Certificate of Filing that the court finds to be credible. The Certificate of Filing must be attached to the pleading or paper.

The Committee note following section (d) instructs that in the event of a dispute about the date of filing, a court may consider, in addition to the affidavit, the postmark, any internal date stamp applied by the facility, any written policy of the facility regarding outgoing mail from confined individuals, and other relevant evidence.

The Federal Rules and statutes and rules of several states address how to establish a filing date of a pleading or paper by a party who is confined in an institution, usually a jail or a prison, and does not have direct access to the U.S. mail. *See, e.g.,* Barbara J. Van Arsdale, Application of "Prisoner Mailbox Rule" by State Courts under State Statutory and Common Law, 29 A.L.R.6th 237 (2007); 2A Federal Procedure, L.Ed., § 3:609, Appeals by inmates confined in institutions (December 2016 Update).

"Prisoner Mailbox Rule" – Amendments to Rule 1-204 approved 6/23/16

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 200 - CONSTRUCTION, INTERPRETATION,

AND DEFINITIONS

AMEND Rule 1-204 to provide that a self-represented party under involuntary confinement may file a motion, under oath,

to extend the time to act prescribed by court order or rule, upon a showing that because of the confinement the party has no direct access to the mail or permissible e-filing and as a result may not be or was not able to perform the act within the prescribed period, as follows:

Rule 1-204. MOTION TO SHORTEN OR EXTEND TIME REQUIREMENTS

(a) Generally

When these rules or an order of court require or allow an act to be done at or within a specified time, the court, on motion of any party and for cause shown, may (1) shorten the period remaining, (2) extend the period if the motion is filed before the expiration of the period originally prescribed or extended by a previous order, ~~or~~ (3) on motion filed after the expiration of the specified period, permit the act to be done if the failure to act was the result of excusable neglect, or (4) on motion filed before or after expiration of the specified period, extend the period or permit the act to be done if the motion is supported by a statement under oath that (A) the party is a self-represented party under involuntary confinement in an institution pursuant to law, (B) because of that confinement, the party has no direct access to the mail or to permissible electronic filing, and (C) as a result, may not be or was not able to perform the act within the specified period. The court may not shorten or extend the time for filing a motion for judgment notwithstanding the verdict, a motion for new trial, a motion to alter or amend a judgment, a motion addressed to the revisory power of the court, a petition for judicial review, a notice of appeal, an application for leave to appeal, or an action to reject a health claims award or assessment of costs

under Rule 15-403, or for taking any other action where expressly prohibited by rule or statute.

(b) Ex Parte Order

The court may enter ex parte an order as provided for in subsections (a)(1) and (a)(2) of this Rule only if the motion sets forth (1) facts which satisfy the court that the moving party attempted but was unable to reach agreement with the opposing party and that the moving party notified or attempted to notify the opposing party of the time and place the moving party intends to confer with the court; or (2) facts which satisfy the court that the moving party would be prejudiced if required to comply with the requirements of subsection (b)(1) of this Rule.

(c) Service of Order

An order which shortens the time for responding to original process shall be served in the same manner as the original process. Other orders entered under this Rule shall be served in the manner provided by Rule 1-321.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 309 and the 1971 version of Fed. R. Civ. P. 6 (b).
Section (b) is new.
Section (c) is new.

Rule 1-204 was accompanied by the following Reporter's note:

Rule 1-204 is proposed to be amended by the addition of language to section (a) that permits an individual to move for an extension of time to perform an act when required or permitted by rule or court order

if the motion is supported by a statement under oath that: (1) the party is a self-represented party under involuntary confinement in an institution pursuant to law, (2) because of that confinement, the party has no direct access to the mail or to permissible electronic filing, and (3) as a result, the party may not be or was not able to perform the act within the specified period. The motion may be filed before or after the expiration of the specified period.

The genesis of the proposed amendment to Rule 1-204 occurred when an appellate court clerk pointed out that an incarcerated individual has no control over when a pleading or paper is mailed after the document is placed in an institution's mail system. At its January 2016 meeting, the Rules Committee considered a proposed amendment to Rule 1-203 (d) that would have provided an additional five days for filing by a self-represented party who is involuntarily confined in an institution. The Committee remanded the proposal to the Criminal Subcommittee due to several concerns, including a concern about creating an automatic extension for an individual in custody, regardless of whether the extension was necessary under the specific circumstances of the individual's confinement.

The proposed amendment to Rule 1-204 addresses those concerns by requiring that the individual support a motion to extend under subsection (a)(4) by a statement under oath addressing each of the conditions required under the subsection. The extension will not be automatic -- a self-represented party under involuntary confinement must show that the party does not have access to the mail or permissible electronic filing and that, as a result, may not be or was not able to perform the act within the specified period.

The Chair told the Committee that the issue of how to address late filings of papers by people who are confined in an institution has been discussed several times previously. When Rule 1-204 was presented to the Court of Appeals, its position was that the 30-day window to file an appeal or an application for leave to appeal was a jurisdictional issue. Another approach would be to follow the rules of some other states and the Federal Rule, Fed. R. Civ. P. 5 (e). The proposed changes to Rule 1-322 are similar to the Federal Rule, but not exactly the same.

The Chair noted that the Federal Rule assumes that the prisons have a way to date-stamp the item being mailed, but not all prisons in Maryland have this. There is a great disparity within the Department of Corrections ("DOC") as to how mailings by prisoners are handled. Some have mailboxes within the institution; some do not. An attorney in the Office of the Attorney General has advised the Committee that none of the jails have any way of date-stamping mail. Most institutions have an internal system for collecting prisoner mail and taking it to the post office. Some have mailboxes in the institution into which the prisoners can drop their mail. Some prisoners in other institutions have to give the mail to a guard or other prison official.

The Chair commented that the attempt was to make Rule 1-322 as broad as possible. One question is whether this should be expanded to hospitals or other institutions where someone is held involuntarily. The problem arises when a prisoner has no attorney and has no direct access to the U.S. Postal Service or to electronic transmission. A party who has an attorney can have the attorney do the mailing.

The Chair said that a new section (d) has been added to Rule 1-322 pertaining to filings by self-represented parties under involuntary confinement. Subsection (d)(3) provides that a pleading or paper filed under this section shall be deemed to have been filed on the date that the pleading or paper, in mailable form and with proper postage affixed, was deposited by the person into a receptacle designated by the institution for outgoing mail or personally delivered to an employee of the facility authorized by the facility to collect such mail.

The Chair noted that subsection (d)(4) addresses how the date of a filing may be proven. The federal approach is that the prisoner files a certificate of filing with the paper being filed. The problem is that prisoners do not always tell the truth. Subsection (d)(4) provides that the court has to find the certificate of filing to be credible. The Chair added that he and the Reporter could not figure out any other way to do this. If an institution does not have a date-stamp method, this

is the only other way to accomplish the filing. The judge can consider the prisoner's documentation. If the prisoner says that the paper was put into the mail on September 1, and the Post Office stamps it December 19, the prisoner would have to explain the three-month delay. The judge can take evidence at a hearing. This is the only way to have an effective procedure for what it should apply to: petitions for appeal, applications for leave to appeal, petitions for post conviction relief, etc.

Mr. Zavin told the Committee that he is an attorney in the Appellate Division of the Office of the Public Defender ("OPD"). He said that he did not have an opinion on this, but he pointed out that sometimes, the timing is very important. If a client of the OPD is serving time for murder waits until the 10 years to file a petition for post-conviction relief are almost up, the certificate of service may be filed close to or on the deadline. The attorney from the OPD may be appointed two days later, and the clerk receives the petition one day after the deadline. The petition may be denied as untimely filed. The situation is in need of a remedy.

Mr. Zavin noted that the current procedure is potentially unconstitutional. There are problems with due process and access to justice. Someone who is involuntarily committed has to rely on the DOC officials to see that the filing is timely mailed. The adoption of the proposed changes to Rule 1-322

would be very fair for prisoners. The judge can determine the credibility of the filing.

Mr. Shellenberger expressed the view that the proposed changes to Rule 1-322 make sense. Mr. Zarbin added that people who are confined need to have the ability to mail documents. Mr. Weaver pointed out that the clerks are concerned about this. The date on the certificate should be considered as the postmark date. Rule 1-322 has to make it clear that the date used by the clerk should be the date on the certificate. The clerk may clock in the date that the paper arrives, but it is docketed using the date it is "mailed" pursuant to new section (d). In a county with a huge inmate population, it would be difficult to retain each envelope from the inmate mail, which could indicate the date that the paper arrived. Determining the date of filing could be difficult in a court with a large volume of cases.

The Chair commented that this matter has to be approached carefully. A paper could be accepted as a late filing under Rule 1-204 (Motion to Shorten or Extend Time Requirements) but that Rule does not apply to petitions for appeal or applications for leave to appeal. Mr. Carbine suggested that the language "for purposes of an appeal" could be added to subsection (d)(3) of Rule 1-322. The Chair responded that this does not only apply to appeals. Mr. Weaver suggested that the date could be either the date the paper was mailed or the date that the clerk

received it. The Chair commented that the date used in the federal system is the date of docketing by the clerk, not the date of receipt.

The Chair said that another issue is whether the Rule should apply only to criminal appeals. The comparable rules in most states limit their rules to criminal proceedings. However, if someone misses a date in a Termination of Parental Rights ("TPR") or an adoption proceeding, the person will be deemed to have consented to the TPR or the adoption.

Mr. Zarbin remarked that the legislature could require date-stamp machines in all penal institutions. The Chair responded that this issue was discussed, but the Court of Appeals cannot require the legislature to pass legislation. The Reporter explained that the problem is that even with a machine, the inmate may not have access to it. The inmate may give the paper that he or she would like filed to the guard, but then the inmate has no way of knowing whether or when the guard filed it. Senator Norman commented that he did not like the proposed change when it was made by the Subcommittee. He asked about inmates who are only incarcerated on weekends, but the Chair pointed out that those inmates would have mail access during the week.

The Chair explained that because of the constitutional issue of self-represented criminal defendants having access to

the courts when they cannot get to a mailbox, the decision was that it would be helpful to have a Rule on this. Judge Eaves remarked that she supported the change to Rule 1-322. Incarcerated people or people who are involuntarily confined must have a way to get their mail to the clerks' offices. It is also an equal protection issue. Using the date that was put on the form filed can be considered as timely. The Chair added that this would be the case unless the judge has a reason to doubt it.

Judge Nazarian suggested adding "for purposes of complying with deadlines" to section (d). The Chair noted that the change could be that for purposes of filing a response, it shall be based on the date the paper was received by the clerk. Mr. Weaver suggested that the judge could look at the certificate and the date of the postmark only when there is a question of timeliness. The Chair said that it would be deemed timely for purposes of deadlines. Mr. Weaver added that the judge will not have to look at every filing, only the ones that the judge does not find to be credible. The Chair pointed out that the clerk will have to accept the filing.

Mr. Weaver said that the practice in his jurisdiction is that anything that the clerk receives that is not timely filed is taken to the court for a determination of whether it would be accepted. Mr. Shellenberger suggested that a Committee note be

added to explain this, but the Chair responded that this would have to be in the body of Rule 1-322. Mr. Weaver suggested that a Committee note could be added that would provide that the judge deems whether the filing is timely. The Chair asked whether the clerk dockets a judgment that is entered on a certain day, and the notice of appeal is filed 32 days later. Mr. Weaver answered that it is docketed and then taken to the Administrative Judge.

Mr. Laws suggested deletion of the new language at the beginning of section (a) ("Except as provided in section (d) of this Rule"). He said that the last sentence of section (a) should refer to the date established under section (d). Judge Nazarian suggested that language could be added that the date established under subsection (d)(3) would be deemed the date of filing for purposes of compliance with filing deadlines. Mr. Zarbin remarked that there could be a rebuttable presumption that a paper is timely filed. That way the clerk does not have to go to the Administrative Judge to determine timeliness.

The Chair pointed out that a paper could be deemed filed when deposited, but the certificate of filing could create a rebuttable presumption that it is accurate. Mr. Zarbin noted that this would solve the clerk's problem; the onus would be on the State to show that it is not correct. The Chair inquired as to whether the changes to Rule 1-322 should apply to all

proceedings or only to criminal proceedings. Senator Norman replied that it should only apply to criminal proceedings. It could start with applying to criminal, habeas corpus, and post-conviction proceedings. Ms. McBride agreed that it should only apply to criminal proceedings. Judge Mosley moved that Rule 1-322 should go back to the Subcommittee for further revision and clarification. The motion was seconded.

The Chair said that guidance from the Rules Committee is needed as to the breadth of the Rule. Mr. Zavin pointed out that post-conviction is a civil matter. Mr. Shellenberger remarked about the loss of parental rights. Judge Mosley agreed that the Rule should apply to civil proceedings where the loss of parental rights is possible. Mr. Carbine suggested that the Subcommittee should determine the breadth of the Rule. The Chair commented that collateral attacks on judgments, such as habeas corpus, coram nobis, and post-conviction are not criminal proceedings. The Reporter said that the list could include criminal proceedings, collateral attacks on criminal judgments, and TPR proceedings. Judge Eaves noted that in a TPR proceeding, the respondent gets a Public Defender automatically.

The Chair called for a vote on the motion to remand Rule 1-322 to the Subcommittee, and it passed on a majority vote. The Reporter asked if it would go to the Criminal Subcommittee, and the Chair replied affirmatively.

There being no further business before the Committee, the Chair adjourned the meeting.