

**REPRESENTATIVE GOOD ANSWERS FOR THE FEBRUARY 2017 MARYLAND OUT OF STATE
ATTORNEYS' BAR EXAM**

NOTICE: These Representative Good Answers are provided to illustrate how actual examinees responded to the Maryland Out-of-State Attorneys' Bar Examination. The Representative Good Answers are not "average" passing answers nor are they necessarily "perfect" answers. Instead, these are the two (2) highest scoring overall exam responses for this session. These answers are transcribed from the hand-written answer books without any changes or corrections by the Board, other than to spelling and formatting for ease of reading.

Representative Good Answer No. 1

Question 1

Pursuant to MR 4-345(e), "upon a motion filed within 90 days after imposition of a sentence (A) in the District Court if an appeal has not been perfected or has been dismissed, and (B) in the circuit court, whether or not an appeal has been filed, the court has revisory power over the sentence except that it may not revise the sentence after the expiration of 5 years from the date the sentence was imposed on the defendant . . ."

Since the sentence was entered on April 25, 2010, the trial court was not able to use its revisory power to modify the sentence over six years later.

Question 2

Pursuant to MR 3-621(a), "a money judgment constitutes a lien in the amount of the judgment and post-judgment interest on the judgment debtor's interest in land . . ." Pursuant to Rule 3-625, "a money judgment expires 12 years from the date of entry or most recent renewal." Based on the facts provided, Beta Corp. has not taken action at any time after the entry of judgment on 7/1/04 to renew the judgment. Accordingly, the judgment would expire on 7/1/16. Carla may argue that the judgment has expired since Beta Corp. failed to execute prior to 7/1/16.

Further, pursuant to MR 3-643(e), "a person other than the judgment debtor who claims an interest in property under levy may file a motion requesting the property be released." Carla, on behalf of Delia, may make the necessary motion to have the property released from the levy. She may argue that the judgment has expired (MR 3-625) or she may argue that the levy is improper since Abel (nor his estate) has any interest in the property at the time execution was pursued.

Beta Corp. should argue that the judgment properly attached to Abel's property in July 2004. The subsequent transfer was made subject to all liens and encumbrances. Further, with respect to execution, Beta Corp. should renew its judgment by 7/10/2016 arguing that under MR 3-623(a) the judgment was stayed 10 days after entry and therefore under MR 3-625, the time to renew extends an additional 10 days to 7/10/16.

Additionally, Beta Corp. may argue that execution proceedings commenced prior to the expiration of the judgment and that date should be operative date.

Question 3

A. Pursuant to MR 2-533, "any party may file a motion for a new trial within ten days after entry of judgment." Pursuant to MR 2-525(a), "on motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment . . ." Pursuant to MR 2-534, "in an action decided by the Court, on motion of any party filed within 10 days after the entry of judgment, the court may open the judgment to receive additional evidence, may amend its findings . . ." George may proceed with a motion for new trial, a motion to alter or amend the judgment or a motion appealing to the court's revisory power.

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B. Pursuant to MR 8-202(c), “in a civil action when a timely motion is filed pursuant to Rule 2-532, 2-533, or 2-534, the notice of appeal shall be filed within 30 days after entry of (1) a notice withdrawing the motion or (2) an order denying the motion pursuant to Rule 2-533 or disposing of a motion pursuant to Rule 5-532 or 2-534.”

In order to best protect his right to appeal, George should file his Motions for a new trial (2-533) & to Alter or Amend Judgment (2-534) within 10 days after entry of judgment, so by November 7, 2016. Otherwise, under MR 8-202(a), the notice of appeal must be filed within 30 days after entry of judgment.

C. Assuming George filed to amend the judgment under Rule 2-534, the filing was late and not made within 10 days after entry of judgment. Therefore, the time to file an appeal under Rule 8-202(c) was not extended. His appeal would have to be filed by November 27, 2016. Assuming he filed under Rule 2-535(a), his motion was timely filed within 30 days after judgment. However, filing a motion for reconsideration under Rule 2-535 does not extend the time to appeal. *Young v. Young*, 484 A2d 1054. George would have needed to file his appeal by November 27, 2016.

D. Assuming George filed a motion to reconsider or change the judgment under Rule 2-535(a), his motion must be filed within 30 days after the entry of judgment. As stated, he filed on Monday, November 28, 2016, or 31 days after judgment, pursuant to MR 1-203(a), “in computing any period of time prescribed by these rules . . . if the period of time allowed is more than 7 days . . . Saturdays, Sundays and holidays are counted . . . the last day of the period so computed is included unless: [1] it is a Saturday, Sunday, or holiday, in which event, the period runs under the end of the next day that is not a Saturday, Sunday, or holiday.” The filing is good. Monday was the first day after the 30th day, which fell on a Sunday.

E. If George takes no action until 12/15/2016, he may not file an appeal under 8-202(a), nor may he file any motions under Rule 2-533 or 2-534. However, under Rule 2-535(b), he may file a motion to reconsider under the revisory power rule at any time, if he can show fraud mistake or irregularity in the judgment entered. George faces a stiff burden as the phrase “fraud, mistake or irregularity” as used in section (b) of this Rule is narrowly defined and is to be strictly applied. *Early v. Early*, 338 Md. 639 (1995).

Question 4

A. Pursuant to Rule 3-306(b), in an action for money damages brought in District Court, the “plaintiff may file a demand for judgment on affidavit at the time of filing the complaint commencing the action.” The general requirements for same are set out in MR Rule 3-3-6(c)(1-4). It needs to be made on personal knowledge, setting forth admissible facts, show the affiant is competent to testify, and include any supporting documents. Darlene can file a demand for judgment on affidavit. In the alternative, Darlene could also file a Motion for Summary Judgment under Rule 3-311(a) in the event an answer is filed.

B. Pursuant to Rule 3-633, “a judgment creditor may obtain discovery to aid enforcement of a money judgment (1) by use of interrogatories pursuant to Rule 3-421 and (2) by examination before a judge or an examiner as provided by section (b) of this Rule.” Darlene should proceed with Interrogatories consistent with Rule 3-421.

C. With respect to C-Bank, Darlene should proceed with a deposition. Pursuant to Rule 2-411, “any party to an action may cause the testimony, whether or not a party, to be taken by deposition for the purposes of

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discovering . . .” Pursuant to Rule 2-412(a), notice to take the deposition upon written questions in accordance with Rule 2-417. Under Rule 2-417, “a party desiring to take a deposition upon written questions shall serve the questions together with the notice of deposition.” Darlene should seek a written deposition of C-Bank since she simply needs them to confirm whether George has an account. Further, since C-Bank is likely a corporation, the deposition notice must comply with Rule 2-412(d). The notice should be clear and indicate its purpose with respect to discovery in aid of execution against Evelyn.

D. Pursuant to Rule 2-431, a dispute pertaining to discovery need not be considered by the Court unless the attorney seeking action files a certificate detailing the good faith efforts to resolve the issue. Accordingly, before taking any court action, Darlene must attempt to resolve the issue with C-Bank and document those efforts. If that fails, file the certificate with the Court.

Pursuant to Rule 2-432(b), a discovering party, upon notice given may move for an Order compelling discovery if (b) the deponent fails to answer a question in an oral or written deposition and (c) a corporation or other entity fails to make a designation under Rule 2-412(d). Darlene can proceed with the motion to compel after certifying to the Court her efforts to resolve the dispute.

Question 5

Chapter 200 of Rule 7 of the Maryland Rules is applicable to judicial review of administrative decisions. Per the facts presented, the ordinance at issue provided the right to a hearing and specifically an appeal in circuit court. Circuit Court was designated as final appellate court by the ordinance and therefore the Court of Special Appeals did not have jurisdiction. Jed also filed to file a writ of certiorari as required by Rule 8-302. It must be filed within 30 days of circuit court ruling (8-302(a)).

Question 6

A. Pursuant to CJP §6-201(b), “if there is more than one defendant, and there is no single venue applicable to all defendants, under subsection (a) of this section, all may be sued in a county in which any one of them could be sued or in the county where the cause of action arose.” CJP 6-201(a) states civil actions shall be filed in the county where the defendant resides, carries on regular business, is employed or habitually engages in a vocation. Accordingly, Alice may sue Bill & Charles in Montgomery County, where the cause of action arose; or in Calvert or Bedford Counties where they reside. We don’t have enough information about their business to proceed elsewhere.

As for which court to proceed in, pursuant to CJP §4-401, the District Court has exclusive civil jurisdiction in: (1) an action in contract . . . if the debt or damages claimed do not exceed \$30,000 exclusive of interest, fees & costs. However under CJP 4-402(d), the trial court of general jurisdiction (the circuit court) may hear the case if the amount in controversy exceeds \$5,000. Accordingly, Alice may proceed in either district or circuit court in the aforementioned counties.

B. Pursuant to Rule 2-121, assuming the case is filed in circuit court, 2-121(a) service may be made within the State or when authorized by law, outside the state (1) by delivering to the person to be served a copy of the summons, complaint, and all other papers filed; (2) by leaving a copy of the summons, complaint & all other filed documents with a person of suitable age & discretion at the individual’s residence; or (3) by certified mail, requesting “restricted delivery” of the summons, complaint and all other filed documents. Rule 2-121(b) also provides that when proof is made by affidavit that the defendant has acted to evade service, the court may order service by mailing to the defendant’s last known residence & delivering a copy of all pleadings to a person

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of suitable age & discretion at place of business. Alice should file a motion seeking a court order pursuant to Rule 2-121(c) to allow for alternative service or file the necessary affidavit to allow service under 2-121(b).

C. Pursuant to Rule 2-322(a), assuming the case was filed in circuit court, 2-322(a) requires a motion to dismiss for “(a) insufficiency of process” be filed before any answer is filed. If the answer is filed first, the defense is waived. Bills Motion to Dismiss should be denied as the defense was waived by filing his answers first.

D. Pursuant to Rule 2-613, “if the time for pleading has expired and a defendant has failed to plead . . . the court on written request of the plaintiff shall enter an order of default. However, per Rule 2-321, since Charles was served out of state, he has 60 days to file his answer. Rule 2-321(b)(1). Accordingly, Alice’s Motion is premature and should be denied by the court.

Question 7

With respect to his practice, Abe may have violated the following Rules of Professional Conduct:

(1) Rule 8.4 Misconduct – Abe may have committed misconduct by (a) violating the rules of professional conduct; (c) engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. Abe’s lie to Bar counsel about the letter by bill is blatant & clear dishonesty and misrepresentation

(2) Rules 7.1, 7.4, 7.5 – Abe’s letterhead may violate Rules 7.1, 7.4 & 7.5 since it did not disclose he was not admitted in Maryland & did not communicate that he was an immigration lawyer (Rule 7.5(b)).

Under Rule 7.1, a lawyer shall not make false or misleading communications about services offered. Abe’s letterhead likely violates 7.1 via its omissions.

(3) Rule 1.15 & Rule 16-603 – Abe has a duty to maintain a trust account & safe keep the property of his clients. Abe has cashed settlement funds and paid out his clients outside an approved IOLTA account.

(4) Rule 1.5 Fees – Abe has no written fee agreement and does not appear to have discussed on with his client. Since the fee kept may have been contingent, Rule 1.5(c) requires the fee agreement to be in writing.

(4) (*Sic*) Rule 1.7 Competence – the pattern set above calls into question Abe’s competence. He is not admitted to practice law in Maryland, knows that based on Bill’s letter, but has continued to do so. He does not appear to be familiar with the Maryland Rules of Conduct. He gave false testimony to Bar counsel. He is an immigration lawyer practicing law in the auto accident industry with no experience. Abe likely violated Rule 1.1.

(5) Rule 8.1 – Abe has likely violated Rule 8.1(a) by knowingly giving false information in connection with a disciplinary matter. He lied to Bar counsel about the advice he received from Bill.

(6) General – Abe has practiced law without a license in Maryland. Maryland has published rules regarding admission and Abe has not complied with same.

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REPRESENTATIVE GOOD ANSWER NO. 2

MR = Maryland Rules

CJP = Courts and Judicial Proceedings

CP = Criminal Procedure

RPC = Rules of Professional Conduct

CC = Circuit Court

DC = District Court

Question 1

A Defendant may seek to have a sentence modified under MR 4-344. Unless a hearing is required under the Review of Criminal Sentences Act, the Review Panel may enter decision without a hearing if it affords parties the opportunity to be heard in writing. MR 4-344(e).

Upon motion, the circuit court may revise a sentence. MR 4-345. However, it may not revise a sentence after the expiration of five years from the date the sentence was originally imposed on the defendant. MR 4-345(e). Here, the sentence was imposed on April 25, 2010 and modified on June 5, 2016. Thus, this sentence modification was impermissible.

Question 2

Beta Corp's argument

Under MR 2-621(a), a money judgment that is recorded and indexed in the county of entry constitutes a lien from the date of judgment of entry on the defendant's interest in land located in that county.

Here, the lien was entered on July 1, 2004 so would have constituted a lien on that date on the Garrett County property (as that is the county where the judgment was entered). Thus, when the land was conveyed to Carla in September 2005, it was already encumbered. To release the property, Carla would have had to file a motion under MR 2-643, which she has not.

Beta Corp therefore validly requested a writ of execution under MR 2-642. Since Delia is a minor, it was proper for Beta Corp to serve her guardian and "next friend" as Carla has an obligation to defend Delia under MR 2-202(d).

The fact that the amended writ was served after the judgment expired does not mean it is not timely as a party may amend a pleading without leave of court, no later than 30 days before trial MR 2-341. The original pleading was filed in a timely manner and thus tolled the statute of limitations (here 12 years) CJP 5-102.

Carla's argument

Carla would likely argue that a lien cannot attach to a joint tenancy under common law. See e.g., *Eastern Shore Bldg. & Loan Corp. v. Bank of Somerset*, 253 Md. 525 (1969). However, the lien attached before the land had been conveyed, so it is not likely a winning argument.

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Carla should argue however that the judgment had expired. Under CJP 5-102, a judgment expires after 12 years. Here, the amended writ of execution was received by the sheriff on July 3, 2016, which is more than 12 years after entry of the judgment. Thus a valid judgment does not exist.

Question 3

A. Motion for new trial

George may file a motion for new trial under MR 2-533(a) within 10 days after entry of the judgment. He should include all grounds in support of the motion as no other grounds will be permitted later without leave of court. MR. 2-533(b).

Motion to alter or amend

George may also file a motion to alter or amend the judgment under MR 2-534. This must be filed within 10 days after entry of the judgment and request that the court open the judgment to receive additional evidence, amend its findings, enter new finding, etc.

Revisory power

George would also file a motion asking the court to exercise its revisory power over the judgment under MR 2-535. This motion must be filed within 30 days after entry of the judgment. Under this section, the court could take any action that it could under MR 2-534 (if action tried before same court as is true here).

Newly discovered evidence

If George has newly discovered evidence that could not have been discovered with due diligence in time to move for a new trial in 10 days as required above, he may also file a motion for a new trial based on newly discovered evidence MR 2-535(c).

B. To protect his right to appeal, George should file a notice of appeal within 30 days after entry of the judgment. MR 8-202.

If George files a motion pursuant to MR2-533 or 34 as discussed above, the notice of appeal should be filed within 30 days after the motion is either withdrawn or decided. MR 8-202(c). The 30 day motions under MR 2-535 do not extend the time to file the appeal.

C. If George files to “change the judgment” under MR 2-534, he could appeal the original judgment as discussed above. By filing under this section, he would have 30 days from the order denying the motion (December 15, 2016) to file the appeal. MR 8-202(c).

If George filed under MR 2-535, asking the court to exercise its revisory power, he may not appeal as the motion would not extend the time to file and he would have had to file his appeal within 30 days of the original judgment.

D. A motion to “change the judgment” under MR 2-535 must be filed within 30 days from the date of judgment. However, if the last day of the period to commit an act is a holiday, the time is extended until the next day that is not a Saturday, Sunday, or holiday. MR 1-203. Under MR 1-202(k), Thanksgiving is a holiday so George’s request is timely.

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E. If George takes no action until December 15, the only way to preserve his claim would be if there were fraud, mistake or some other irregularity. If that was the case, George could file a motion at any time asking the court to exercise its revisory power. MR 2-535(b).

Question 4

Darlene may bring a suit in either District Court (DC) or Circuit Court (CC) since the amount in controversy is greater than \$5000 but less than \$30,000 as there is concurrent jurisdiction. CJP 4-402(d).

Darlene should file a demand for judgment on the affidavit under MR 3-306. This is roughly equivalent to summary judgment in Circuit Court. The demand should be filed at the time of filing the complaint and should be supported by an affidavit showing the Darlene is entitled to judgment as a matter of law. (MR 3-306(b). The affidavit must be made on personal knowledge, set forth admissible facts, show that Darlene is competent to testify as to the matters in the affidavit and be accompanied by supporting documents to show damages. MR 3-306(c).

If Evelyn does not appear and the court determines that the pleadings and documentary evidence are sufficient to entitle P to judgment, the court will grant the demand. MR 3-306(e).

B. Enforcement

Darlene may obtain discovery to aid enforcement of a money judgment by use of interrogatories or examination before a judge or examiner. MR 3-633.

Discovery

Darlene may serve 15 interrogatories unless the court orders otherwise. MR 3-421(b). If Evelyn fails to respond, Darlene may move for sanctions or file for a motion to compel discovery. MR 3-431(g)-(h).

Examination

Darlene could request that the debtor (Evelyn) issue an order requiring the appearance of Evelyn in court for an examination under oath. MR 3-633(b). This request must be filed no earlier than 30 days after entry of the judgment. MR 3-633(b). If Evelyn failed to appear, she could be held in contempt.

C. Garnishment

Darlene should request a writ of garnishment of Evelyn's account under MR 3-645.1. The writ shall direct the bank not to hold property of the debtor that constitutes a protected amount or that may come into the garnishee's possession following service of the writ and to comply with other requirements, prohibitions and limitations. MR 3-645.1 (d)(1).

The writ of garnishment will notify Evelyn of her rights of protection of certain Federal benefits payments and that any claim for exemption must be filed no later than 30 days after service of the writ of garnishment on the garnishee. MR 3-645.1(d)(2).

D. Darlene should seek garnishment of Evelyn's wages under MR 3-646. Darlene should file in the same action in which the judgment was obtained a request for the writ and the clerk will issue a writ directed to the garnishee, together with a blank answer form. MR 3-646(b).

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Question 5

Under CJP 12-302, 12-301 does not permit an appeal from a final judgment of a court entered or made in the exercise of appellate jurisdiction in reviewing the decision of an administrative agency. Generally, 12-301 provides a right of appeal from final judgments.

Here, however, the Circuit Court was acting as an appellate court in reviewing the decision of the administrative officer so the Court of Special Appeals does not have jurisdiction.

Question 6

A. Jurisdiction

For an amount in controversy between \$5,000 and \$30,000, such as here, the DC and CC have concurrent jurisdiction. CJP 4-402(d). Thus, Alice may choose whether to bring her suit in CC or DC

Venue

Generally, a civil matter must be brought in a county where the D resides, carries on a regular business, is employed, or habitually engages in a vocation. CJP 6-201(a).

Where there are multiple defendants, and no single venue applicable to all, all may be sued in a county where any of them could be sued. CJP 6-201(b).

Here, Bill resides in Calvert County so venue would be appropriate there. Since Charles lives out of state, he can be sued in any county in the state. CJP 6-202(11). Charles has also absconded so could be sued wherever found, if found in Maryland. CJP 6-202(12). Since there are multiple defendants, they could also be sued where the cause of action arose, in Montgomery County.

Since no venue applies to all defendants, Alice can choose where to bring suit. *Swanson v. Wilde*, 74 Md. App. 57 (1998).

B. Service may be effectuated under MR 2-121 by leaving a copy of the summons, complaint and other papers at the individual's home with a person of suitable age and discretion or by mailing a copy of above documents, certified mail requesting "restricted delivery."

If Alice can show by affidavit that Charles tried to evade service, the court may order service by mail to Charles' last known address and delivering a copy of all papers (summons, complaint & supporting docs) to a person of suitable age and discretion at the defendant's place of business. MR 2-121(b).

The court may also authorize other methods of service if Alice proves by affidavit that she made good faith efforts to serve and MR 2-121 is impracticable. MR 2-121(c).

C. The court should deny the motion to dismiss. Insufficiency of process must be alleged in a mandatory preliminary motion before filing the answer or else it is waived. MR 2-322(a).

Here, Bill filed the motion to dismiss after filing the answer. Thus, he has waived this defense and his motion must be denied.

D. Alice's motion for summary judgment is premature. Ordinarily, an answer must be filed within 30 days after being served. MR 2-321(a). When a defendant is served outside Maryland (but within the United States) the defendant has 60 days to answer.

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Here, Charles was served on November 10, 2016 and Alice filed her motion on December 13. Charles has almost another month to answer so the motion should be denied.

Question 7

Unauthorized practice of law

Pursuant to MRPC 19-305.5 an attorney shall not practice law in a jurisdiction in violation of the rules of professional conduct. An attorney may not establish an office or other systematic and continuous presence in the state or hold out to the public that he is admitted to practice in the jurisdiction.

Here, Abe has an office in Maryland and his letterhead identifies him as an attorney with Maryland phone numbers and a Maryland address. Thus, he is holding himself out as an attorney licensed to practice in this state in violation of the Rules. Further his letterhead violates RPC 19-307.5 as it implies he practices in a firm.

Abe may represent his clients in federal immigration cases as it is permitted under RPC 19-305(c)(4), but he may not represent clients in personal injury cases.

Abe may potentially have been able to represent the clients in personal injury cases if he associated with Bill, who is licensed, but it is clear that he did not follow Bill's advice. MRPC 19-305.5.

Safekeeping

An attorney must hold property of clients separate from his own property, in a trust account maintained pursuant to Title 19, Chapter 400 of the Maryland Rules. RPC 19-301.15.

Upon receiving funds to which the client is entitled, the attorney must notify the client. RPC 19-301.15(a). Funds received must be deposited in a trust account if they must be delivered in part to the client. MR 19-404.

Here, Abe did not deposit the check in a trust account as required, he simply cashed the check, which is not permitted.

Disciplinary Matters

Pursuant to RPC 19-308.1, an attorney may not knowingly make a false statement of material fact or fail to disclose a fact necessary to correct a misapprehension by the person to have arisen in connection with a disciplinary matter. Here, Abe lied when he said he only practiced immigration law and that he relied on Bill's advice when Bill actually advised him to the contrary. Thus, Abe has violated this Rule.

Truthfulness in Statements to Others

Given the above, Abe has also likely violated RPC 19-304.1 in making false statements to third parties and may have done so in the course of his dealings with the insurance companies.

Competence

Given that Abe is not licensed in Maryland and not a personal injury lawyer, he likely was unable to provide competent representation under RPC 19-301.1.

Misconduct

All of the above could constitute misconduct under Rule 19-308.4.