

Maryland State Board of Law Examiners
BOARD'S ANALYSIS FOR FEBRUARY 2015 OUT-OF-STATE ATTORNEY'S EXAM

Board's Analysis for Question No. 1

1. Is the action properly filed in Allegany County, Maryland? Discuss fully.

The defendant, Ms. Ennis, is a resident of that state and county. Md. Code Ann, Courts of Judicial Proceedings Article, §1-501. A case which has been dismissed from another state because it is barred by the statute of limitations can be filed in Maryland if the action is still within the Maryland statute of limitations and it is filed within 30 days of the dismissal from the other state court. Md. Rule 2-101(b).

2. Is service proper on Ms. Ennis?

Service is not proper in that the Summons, Complaint and other documents must either be served by a person not a party to the case and over the age of 18 or must be mailed certified by a first class mail with a restricted delivery. Md. Rule 2-121(a)(3). The green card being signed by Ms. Ennis' mother makes the service improper.

3. Assuming service is proper, please discuss the applicable rules including:

- A. How should Ms. Ennis respond?

Md. Rule 2-421(a) states that a party may serve one or more sets of no more than 30 interrogatories in total number to an opposing party. Each subpart of an interrogatory can be counted separately. Unless the questions with subparts are all "form" interrogatories taken from the appendix, there are too many interrogatories. She must contact opposing counsel to try to resolve any dispute pursuant to Md. Rule 2-431. If the dispute cannot be resolved, she should submit the certificate to the Court.

- B. If Ms. Ennis does not object to the discovery when is her response due?

Md. Rule 2-422(c) provides that a party has 30 days to respond to Interrogatories after service of the Interrogatories or 15 days after the answering party initial pleading is due. Since the discovery was served with the pleading, Ennis must respond within 15 days after her Answer is due. The same time frame applies to the request for documents.

4. Ennis serves Interrogatories on Plaincoat who fails to respond in a timely manner. What action may Ennis take?

Ennis should, under guideline 10 of the Maryland Discovery Deadlines, communicate with Plaincoat to make a good faith effort to resolve any dispute without court involvement. Failing that, she can move pursuant to Md. Rule 2-432(a) for immediate sanctions or move under Md. Rule 2-432(b) for an Order Compelling Discovery. (Md. Rule 2-432(b)(1)(D).)

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Board's Analysis for Question No. 2

A. In what court(s) may LSB pursue his claim?

Allen's claim may only be pursued in the Circuit Court for Kent County as it is the trial court of general jurisdiction pursuant to Md. Code Ann., Courts and Judicial Proceedings Article, §1-501. Civil jurisdiction in the District Court under §4-401(1) limits the amount in controversy, in the District Court, to \$30,000.00.

B. What are Allen's post trial options other than appeal?

Allen may file a Motion for New Trial under Md. Rule 2-533, a Motion to Alter or Amend under Md. Rule 2-534 or a Motion for Revisory Repower under Md. Rule 2-535.

C. When must he file in order to be certain to protect his right to appeal?

His Motion must be filed within 10 days under Md. Rule 2-533 or Md. Rule 2-534 to be timely. Md. Rule 8-202(c) provides that any civil action, when a timely motion is filed pursuant to Md. Rule 2-533 or Md. Rule 2-534, the Notice of Appeal shall be filed within 30 days after entry of (1) a notice withdrawing the motion or (2) an order denying a motion pursuant to Md. Rule 2-533 or disposing of a motion pursuant to Md. Rule 2-534. The committee note to Md. Rule 8-202(c) indicates that a motion filed pursuant to Md. Rule 2-535, if filed within 10 days after the entry of the judgment, will have the same effect as a motion filed pursuant to Md. Rule 2-534 for purposes of this rule.

D. May he appeal the original judgment?

No, he is too late to appeal the original judgment. Since more than 10 days have passed, the motion could only be treated as a motion under Md. Rule 2-535 for Revisory Repower which can be filed within 30 days under Md. Rule 2-535(a). However, there is nothing in this Rule to extend the period within which to file an appeal. While Md. Rule 2-535(a) states that the court can take any action it could have taken at Md. Rule 2-534, Md. Rule 2-534 requires that it be filed within 10 days in order to extend the appeal period. Thus he cannot successfully appeal the judgment.

E. May the Court hear his request?

Md. Rule 1-203(a)(1) states that if the last day of the period is a Saturday, Sunday or a holiday, the statute is extended for one day. Md. Rule 1-202(k), committee note provides the fourth Thursday in November for Thanksgiving Day as a holiday.

F. Assume Allen took no action whatever until December 15, 2014. Is there any way for him to preserve his claim? Why or why not?

The only claim Allen could preserve would be under Maryland Rule 2-535(b). Allen must properly allege fraud, mistake or irregularity, otherwise his claim is barred.

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Board's Analysis for Question No. 3

A. On what should he rely to support his contention?

Gibbs will argue that the introduction of his criminal history through Mitchell violated Md. Rules 5-404(b) and 5-403.

B. How should the court rule and why?

The evidence in question was admissible because it was not being offered to establish the defendant's character. Rather, Mitchell became evasive when pressed on cross-examination about her direct testimony, given without qualification, that she and Gibbs had lived together continuously for nine years. The State will argue that the evidence of Gibbs' criminal history was relevant for an "other purpose" pursuant to Md. Rule 5-404(b), to impeach Mitchell's credibility and to establish that Mitchell and Gibbs lacked the opportunity to live together continuously for nine years. The State's position will be that incarceration of her significant other was a memorable event, which made Gibbs' incarceration available to impeach her.

The probative value of the evidence outweighed the dangers of undue prejudice (*see* Md. Rule 5-403). Additionally, the danger of undue prejudice was dispelled by the trial court's curative instruction. Gibbs' incarceration was highly relevant to impeach Mitchell's testimony.

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Board's Analysis for Question No. 4

A. What is the proper venue for the foreclosure action?

Md. Rule 14-203(a) provides that an action to foreclose a lien shall be filed in the county in which all or any part of the property, subject to lien, is located. Therefore it could be filed in either Howard or Carroll Counties and § (b) says that the Courts jurisdiction over the property subject to lien attaches when an action to foreclose is filed.

B. May C-Bank foreclose immediately?

C-Bank may not foreclose immediately. Md. Rule 14-206(a) states the conditions upon which C-Bank may file an action for immediate foreclosure of the lien against residential property. None of the four circumstances apply in the facts.

C. Is service of process required?

Yes. Md. Rule 14-209 provides that when an action to foreclose a lien on residential property is filed, plaintiffs shall serve on the borrower and the record owner a copy of all papers filed to commence the action, accompanied by documents required by Md. Code Ann., Real Property Article, § 7-105.1(f). Service shall be accomplished by personal delivery of the papers or by leaving the papers with a resident of suitable age and discretion at the borrowers or record owner's dwelling house or usual place of abode.

D. Does C-Bank have a remedy?

Yes. Md. Rule 14-305 governs procedure following a sale. Under Md. Rule 14-305(g) Resale. If the purchaser defaults, the Court, on application and after notice to the purchaser, may order resale at the risk and expense of the purchaser or may take any other appropriate action.

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Board's Analysis for Question No. 5

MRPC 1.4 (Communication). Paragraphs (a)(2) and (3) require a lawyer to keep his client "reasonably informed" about the status of the case and promptly respond to reasonable requests for information from the client. Bill failed to return Alice's persistent telephone calls and emails and learned of the seizure of the \$10,000.00 payment from the government and not from the respondent. Bill clearly violated MRPC 1.4(a) (2) and (3).

MRPC 1.5 (Fees). This rule prohibits, among other things, the collection of "an unreasonable fee". Bill received the benefit of the \$10,000.00 (and attorney's fees previously paid) when his settlement check was appropriated and credited to his delinquent loan account, none of which was refunded to Alice. This is a violation of MRPC 1.5(a) 1.5 (Safekeeping Property). Failure to deposit Alice's retainer checks in a separate Trust Account is a violation of MRPC 1.15(c) and Md. Rule 16-604. Since the checks were not deposited in a separate Trust Account, it is apparent there was a violation of Md. Rule 16-606.1(a)(3) requiring the attorney to keep a record of each attorney trust transaction. Arguably MRPC 1.15(d) was also violated because it requires a lawyer to deliver, promptly to his client, any funds belonging to that person and render a prompt accounting. Here, because an agency appropriated settlement proceeds to benefit the respondent, and Alice received none of her settlement, Bill has violated this rule. The \$500.00 check also violated the rule 1) because it wasn't put into the Trust Account and 2) because it wasn't earned since he never ordered the transcript and didn't refund the money.

MRPC 1.16(d) (Declining or Terminating Representation). This rule requires the lawyer to take reasonable steps upon terminating representation to protect his client's interest, including surrendering property belonging to the client. This includes the refund of any payment to which the client is entitled. The attorney's failure to communicate is, at least, a de facto termination of representation in which case he should have turned over the attorney's fees and costs she had advanced.

MRPC 8.1 (Bar Admission and Disciplinary Matters). Subsection B of this Rule prohibits the lawyer from knowingly failing to respond to a lawful demand for information from the Disciplinary Authority. Bill failed to respond to the Attorney Grievance Commission's request for information by ignoring its correspondence and refusing to be interviewed by the investigator for the Attorney Grievance Commission.

MRPC 8.4 (Misconduct). Rule 8.4(a) makes a professional misconduct of violator or attempt to violate the rules of professional conduct in Subsection (d) prohibits engaging in conduct that is prejudicial to the administration of justice.