

The agenda for a meeting of the Rules Committee generally will be posted 7-10 days before the date of the meeting. At the discretion of the Chair, items may be deleted from or added to the agenda.

AGENDA FOR
RULES COMMITTEE MEETING

November 17, 2017
(Friday)

Judiciary Education and Conference Center
Rooms UL4 & 5
2011 Commerce Park Drive
Annapolis, Maryland
9:30 a.m.

NOTE: Consideration of Item 1 is deferred to the January 5, 2018 Meeting.

~~Item 1. Consideration of proposed amendments to: Judge~~
~~Wilner~~

~~Rule 2-541 (Magistrates)~~
~~Rule 2-542 (Examiners)~~
~~Rule 2-543 (Auditors)~~
~~Rule 9-208 (Referral of Matters to~~
~~Magistrates)~~

Item 2. Consideration of proposed amendments to: Mr. Laws

Rule 10-707 (Inventory, Monthly Benefits Statement, and Information Report)

Rule 10-708 (Fiduciary's Account and Report of Trust Clerk)

Item 3. Consideration of proposed amendments to Judge Bryant

Rule 1-321 (Service of Pleadings and Papers Other Than Original Pleadings)

Item 4. Consideration of proposed new Rule Reporter
9-211 (Restoration of Former Name After Judgment of Absolute Divorce)

- Item 5. Consideration of proposed amendments to Judge
Bryant
Rule 2-422.1 (Inspection of Property -
of Nonparty or by Foreign Party - Without
Deposition)
- Item 6. Consideration of proposed amendments to: Judge
Nazarian
Rule 2-706 (Fees for Appellate Litigation)
Rule 8-411 (Transcript)
Rule 7-114 (Dismissal of Appeal)
Rule 8-602 (Dismissal by Court)
Conforming amendments to:
Rule 8-502 (Filing of Briefs)
Rule 8-603 (Motion to Dismiss Appeal)
Rule 8-605 (Reconsideration) - section (a)
Rule 17-404 (Mediation)
Rule 8-605 (Reconsideration)

MARYLAND RULES OF PROCEDURE
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT
CHAPTER 500 - TRIAL

AMEND Rule 2-541 to clarify that the court does not prescribe the compensation, fees, and costs of a magistrate who is compensated by the State or a county; and to exclude from assessed costs in an action the compensation, fees, and costs of a magistrate to the extent covered by State or county funds, as follows:

Rule 2-541. MAGISTRATES

(a) Appointment - Compensation

(1) Standing Magistrate

A majority of the judges of the circuit court of a county may appoint a full time or part time standing magistrate. ~~and~~ If the magistrate is not compensated by the State or a county, the court shall prescribe the compensation, fees, and costs of the magistrate.

(2) Special Magistrate

The court may appoint a special magistrate for a particular action. ~~and~~ If the magistrate is not compensated by the State or a county, the court shall prescribe the compensation, fees, and costs of the special magistrate and assess them among the parties. The order of appointment may

specify or limit the powers of a special magistrate and may contain special directions.

(3) Officer of the Court

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

. . .

(i) Costs

Payment of the compensation, fees, and costs of a magistrate, to the extent not covered by State or county funds, may be compelled by order of court. The costs of any transcript may be included in the costs of the action and assessed among the parties as the court may direct.

. . .

REPORTER'S NOTE

Two amendments to Rule 2-541 are proposed.

An amendment to section (a) clarifies that the court does not prescribe the compensation, fees, and costs of a magistrate who is compensated by the State or a county.

An amendment to section (i) excludes from assessed costs in an action the compensation, fees, and costs of a magistrate to the extent covered by State or county funds.

MARYLAND RULES OF PROCEDURE
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT
CHAPTER 500 - TRIAL

AMEND Rule 2-542 to clarify that the court does not prescribe the compensation, fees, and costs of an examiner who is compensated by the State or a county; to prohibit referral to an examiner of a matter referable to a magistrate under Rule 9-208; and to exclude from assessed costs in an action the compensation, fees, and costs of an examiner to the extent covered by State or county funds, as follows:

Rule 2-542. EXAMINERS

(a) Appointment - Compensation

(1) Standing Examiner

A majority of the judges of the circuit court of a county may appoint a standing examiner. and If the examiner is not compensated by the State or a county, the court shall prescribe the compensation, fees, and costs of the examiner.

(2) Special Examiner

The court may appoint a special examiner for a particular action. and If the examiner is not compensated by the State or a county, the court shall prescribe the compensation, fees, and costs of the special examiner and assess them among

the parties. The order of appointment may specify or limit the powers of a special examiner and may contain special directions.

(3) Officer of the Court

An examiner serves at the pleasure of the appointing court and is an officer of the court in which the referred matter is pending.

(b) Referral by Order

On motion of any party or on its own initiative, the court may refer to an examiner, for the taking of evidence, issues in uncontested proceedings not triable of right before a jury or referable to a magistrate under Rule 9-208 and proceedings held in aid of execution of judgment pursuant to Rule 2-633. The order of reference may prescribe the manner in which the examination is to be conducted and may set time limits for the completion of the taking of evidence and the submission of the record of the examination.

. . .

(i) Costs

Payment of the compensation, fees, and costs of an examiner, to the extent not covered by State or county funds, may be compelled by order of court. The costs of the transcript may be included in the costs of the action and assessed among the parties as the court may direct.

. . .

REPORTER'S NOTE

Three amendments to Rule 2-542 are proposed.

An amendment to section (a) clarifies that the court does not prescribe the compensation, fees, and costs of an examiner who is compensated by the State or a county.

An amendment to section (b) prohibits referral to an examiner of any matter referable to a magistrate under Rule 9-208.

An amendment to section (i) excludes from assessed costs in an action the compensation, fees, and costs of an examiner to the extent covered by State or county funds.

MARYLAND RULES OF PROCEDURE
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT
CHAPTER 500 - TRIAL

AMEND Rule 2-543 to clarify that the court does not prescribe the compensation, fees, and costs of an auditor who is compensated by the State or a county; and to exclude from assessed costs in an action the compensation, fees, and costs of an auditor to the extent covered by State or county funds, as follows:

Rule 2-543. AUDITORS

(a) Appointment - Compensation

(1) Standing Auditor

A majority of the judges of the circuit court of a county may appoint a standing auditor. ~~and~~ If the auditor is not compensated by the State or a county, the court shall prescribe the compensation, fees, and costs of the auditor.

(2) Special Auditor

The court may appoint a special auditor for a particular action. ~~and~~ If the auditor is not compensated by the State or a county, the court shall prescribe the compensation, fees, and costs of the special auditor and assess them among the parties. The order of appointment may specify or limit the powers of a special auditor and may contain special directions.

(3) Officer of the Court

An auditor serves at the pleasure of the appointing court and is an officer of the court in which the referred matter is pending.

. . .

(i) Costs

Payment of the compensation, fees, and costs of an auditor, to the extent not covered by State or county funds, may be compelled by order of court. The costs of any transcript may be included in the costs of the action and assessed among the parties as the court may direct.

. . .

REPORTER'S NOTE

Two amendments to Rule 2-543 are proposed.

An amendment to section (a) clarifies that the court does not prescribe the compensation, fees, and costs of an auditor who is compensated by the State or a county.

An amendment to section (i) excludes from assessed costs in an action the compensation, fees, and costs of an auditor to the extent covered by State or county funds.

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

CHAPTER 200 - DIVORCE, ANNULMENT, ALIMONY, CHILD SUPPORT,
AND CHILD CUSTODY

AMEND Rule 9-208 by correcting an internal reference in the Committee note following subsection (a)(1) and adding clarifying language to the Committee note, by deleting the Committee note following section (j), and by transferring the substance of the deleted Committee note to the text of section (j), as follows:

Rule 9-208. REFERRAL OF MATTERS TO MAGISTRATES

(a) Referral

(1) As of Course

If a court has a full-time or part-time standing magistrate for domestic relations matters and a hearing has been requested or is required by law, the following matters arising under this Chapter shall be referred to the magistrate as of course unless the court directs otherwise in a specific case:

(A) uncontested divorce, annulment, or alimony;

(B) alimony pendente lite;

(C) child support pendente lite;

(D) support of dependents;

(E) preliminary or pendente lite possession or use of the family home or family-use personal property;

(F) subject to Rule 9-205, pendente lite custody of or visitation with children or modification of an existing order or judgment as to custody or visitation;

(G) subject to Rule 9-205 as to child access disputes, constructive civil contempt by reason of noncompliance with an order or judgment relating to custody of or visitation with a minor child, the payment of alimony or support, or the possession or use of the family home or family-use personal property, following service of a show cause order upon the person alleged to be in contempt;

(H) modification of an existing order or judgment as to the payment of alimony or support or as to the possession or use of the family home or family-use personal property;

(I) counsel fees and assessment of court costs in any matter referred to a magistrate under this Rule;

(J) stay of an earnings withholding order; and

(K) such other matters arising under this Chapter and set forth in the court's case management plan filed pursuant to Rule 16-302 (b).

Committee note: Examples of matters that a court may include in its case management plan for referral to a magistrate under subsection ~~(a)(1)(J)~~ (a)(1)(K) of this Rule include scheduling conferences, settlement conferences, uncontested matters in addition to the uncontested matters listed in subsection (a)(1)(A) of this Rule, and the application of methods of alternative dispute resolution.

(2) By Order on Agreement of the Parties

By agreement of the parties, any other matter or issue arising under this Chapter may be referred to the magistrate by order of the court.

. . .

(j) Costs

The court, by order, may assess among the parties (1) the compensation, fees, and costs of the magistrate if the magistrate is not compensated by the State or a county, and (2) the cost of any transcript.

~~Committee note: Compensation of a magistrate paid by the State or a county is not assessed as costs.~~

Cross reference: See, Code, Family Law Article, §10-131, prescribing certain time limits when a stay of an earnings withholding order is requested.

Source: This Rule is derived in part from Rule 2-541 and former Rule S74A and is in part new.

REPORTER'S NOTE

Proposed amendments to Rule 9-208 correct and clarify the Committee note following subsection (a)(1) by changing an internal reference from "subsection (a)(1)(J)" to "subsection (a)(1)(K)" and adding the word "uncontested" to the description of matters listed in subsection (a)(1)(A). The amendments also delete the Committee note following section (j) and transfer the substance of the deleted Committee note to the text of section (j).

MARYLAND RULES OF PROCEDURE
TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES
CHAPTER 700 - FIDUCIARY ESTATES INCLUDING GUARDIANSHIPS
OF THE PROPERTY

AMEND Rule 10-707 by adding to the title the language
"Monthly Benefits Statement;" by adding to the inventory form a
new Part II, Monthly Benefits Statement; and by making stylistic
changes, as follows:

Rule 10-707. INVENTORY, MONTHLY BENEFITS STATEMENT, AND
INFORMATION REPORT

(a) Duty to File

Within 60 days after jurisdiction has been assumed or a
fiduciary has been appointed, the fiduciary shall file an
inventory and information report in substantially the following
form:

Part I.

[CAPTION]

INVENTORY

The FIDUCIARY ESTATE now consists of the following assets:

(attach additional sheets, if necessary; each item listed
shall be valued by the fiduciary at its fair market value, as
of the date of the appointment of the fiduciary or the

assumption of jurisdiction by the court; unless the court otherwise directs, it shall not be necessary to employ an appraiser to make any valuation; state amount of any mortgages, liens, or other indebtedness, but do not deduct when determining estimated fair market value)

A. REAL ESTATE

(State location, liber/folio, balance of mortgage, and name of lender, if any)

	ESTIMATED FAIR MARKET VALUE
_____	\$ _____
_____	\$ _____
_____	\$ _____
TOTAL	\$ _____

B. CASH AND CASH EQUIVALENTS

(State name of financial institution, account number, and type of account)

	PRESENT FAIR MARKET VALUE
_____	\$ _____
_____	\$ _____
_____	\$ _____
TOTAL	\$ _____

C. PERSONAL PROPERTY

(Itemize motor vehicles, regardless of value; describe all other property generally if total value is under \$1500; state amount of any lien; itemize, if total value is over \$1500)

ESTIMATED FAIR
MARKET VALUE

_____	\$ _____
_____	\$ _____
_____	\$ _____
TOTAL	\$ _____

D. STOCKS

(State number and class of shares, name of corporation)

PRESENT FAIR
MARKET VALUE

_____	\$ _____
_____	\$ _____
_____	\$ _____
TOTAL	\$ _____

E. BONDS

(State face value, name of issuer, interest rate, maturity date)

PRESENT FAIR
MARKET VALUE

_____	\$ _____
_____	\$ _____
_____	\$ _____
TOTAL	\$ _____

F. OTHER

(Describe generally, e.g., debts owed to estate, partnerships, cash value of life insurance policies, etc.)

	ESTIMATED FAIR MARKET VALUE
_____	\$ _____
_____	\$ _____
_____	\$ _____
TOTAL	\$ _____

Part II.

MONTHLY BENEFITS STATEMENT

Anticipated monthly benefits and other receipts (e.g., Social Security, rental income, annuities, pensions, etc.) are:

	<u>Amount Received Monthly</u>
_____	\$ _____
_____	\$ _____
_____	\$ _____
<u>TOTAL</u>	\$ _____

Part ~~II.~~ III.

INFORMATION REPORT

(1) Are there any assets in which the minor or disabled person holds a present interest of any kind together with

another person in any real or personal property, including accounts in a credit union, bank, or other financial institution?

No Yes

If yes, give the following information as to all such property:

Name, Address, and Relationship of Co-Owner	Nature of Property	Description of Interest	Total Value of Property
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

(2) Does the minor or disabled person hold an interest less than absolute in any other property which has not been disclosed in question (1) and has not been included in the inventory (e.g., interest in a trust, a term for years, a life estate)?

No Yes

If yes, give the following information as to each such interest:

Description of Interest and Amount or Value	Date and Type of Instrument Establishing Interest
_____	_____

VERIFICATION:

I solemnly affirm under the penalties of perjury that the contents of this document are true to the best of my knowledge, information, and belief.

_____ Date	_____ Date
_____ Signature of Fiduciary	_____ Signature of Fiduciary
_____ Address	_____ Address
_____ Telephone Number	_____ Telephone Number

Name of Fiduciary's Attorney

Address

Telephone Number

Facsimile Number

E-mail Address

(b) Examination not Required

Unless the court otherwise directs, it shall not be

necessary that the assets listed in the report be exhibited to or examined by the court, the trust clerk, or auditor.

(c) Notice

Unless the court orders otherwise, the trust clerk or fiduciary shall furnish a copy of the report to any interested person who has made a request for it.

Source: This Rule is derived as follows:

Section (a) is in part derived from former Rule V74 b 1 and 2 and is in part new.

Section (b) is derived from former Rule V74 b 3.

Section (c) is new.

REPORTER'S NOTE

Guardianship estates include monthly income from government benefits, pensions, annuities, rental properties, etc., but the inventory form in Rule 10-707 does not have a place for guardians of the property to list this income. Some courts have asked guardians to list this income in a separate attachment, but this is burdensome for some guardians and clerks.

The Probate/Fiduciary Subcommittee agrees with the suggestion of the Guardianship Work Group to add a new section to the inventory form asking for guardians to provide specific information about the benefits that are received monthly.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 700 - FIDUCIARY ESTATES INCLUDING GUARDIANSHIPS

OF THE PROPERTY

AMEND Rule 10-708 by separating the Fiduciary's Account form into Part 1 and Part 2; by adding the word "now" to Part 1; by deleting language from Part 1 referring to assets reported on the fiduciary's inventory carried forward from the last account; by adding to Part 1 instructions as to how to fill the form out; by deleting from Part 1 Sections A. through F., referring to certain assets and by deleting the line for the total of the assets; by adding new Sections A. through F., referring to certain assets, and including lines to itemize the assets, to add the fair market value of the assets, and to add the total of the assets; by adding Part 2 to the form; by deleting from the summary in Part 2 the language "to be carried forward to next account" and adding the language "is as follows;" by adding to Part 2 a section requiring an itemization of the summary of what is in the Fiduciary Estate, including value reported on last fiduciary account, value reported on the current account, and a total for both; by adding to both the Report of Trust Clerk and the Order in section (b) language specifying the time period that the account covers, and by making stylistic changes, as

follows:

Rule 10-708. FIDUCIARY'S ACCOUNT AND REPORT OF TRUST CLERK

(a) Form of Account

The Fiduciary's Account shall be filed in substantially the following form:

[CAPTION]

FIDUCIARY'S ACCOUNT

I, _____, make this [] periodic [] final Fiduciary's Account for the period from _____ to _____ .

PART 1. The Fiduciary Estate **now** consists of the following assets ~~as [] reported on the Fiduciary's Inventory [] carried forward from last Fiduciary Account~~ **(attach additional sheets, if necessary; state amount of any mortgages, liens, or other indebtedness, but do not deduct when determining estimated fair market value):**

A. Real Estate	\$	_____
B. Cash and Cash Equivalents	\$	_____
C. Personal Property	\$	_____
D. Stocks	\$	_____
E. Bonds	\$	_____
F. Other Total	\$	_____

Total \$ _____

A. REAL ESTATE

(State location, liber/folio, balance of mortgage, and name of lender, if any)

	<u>ESTIMATED FAIR MARKET VALUE</u>
_____	\$ _____
_____	_____
_____	_____
_____	_____
	<u>TOTAL</u> \$ _____

B. CASH AND CASH EQUIVALENTS

(State name of financial institution, account number, and type of account)

	<u>PRESENT FAIR MARKET VALUE</u>
_____	\$ _____
_____	\$ _____
_____	\$ _____
	<u>TOTAL</u> \$ _____

C. PERSONAL PROPERTY

(Itemize motor vehicles, regardless of value; describe all other property generally if total value is under \$1500; state amount of any lien; itemize, if total value is over \$1500)

ESTIMATED FAIR
MARKET VALUE

_____	\$ _____
_____	\$ _____
_____	\$ _____
<u>TOTAL</u>	\$ _____

D. STOCKS

(State number and class of shares, name of corporation)

PRESENT FAIR
MARKET VALUE

_____	\$ _____
_____	\$ _____
_____	\$ _____
<u>TOTAL</u>	\$ _____

E. BONDS

(State face value, name of issuer, interest rate, maturity date)

PRESENT FAIR
MARKET VALUE

_____	\$ _____
_____	\$ _____
_____	\$ _____
<u>TOTAL</u>	\$ _____

F. OTHER

(Describe generally, e.g., debts owed to estate, partnerships, cash value of life insurance policies, etc.)

	<u>ESTIMATED FAIR MARKET VALUE</u>
	\$ _____
	\$ _____
	\$ _____
<u>TOTAL</u>	\$ _____

PART 2.

The following changes in the assets of the Fiduciary Estate have occurred since the last account: (Please include real or personal property that was bought, sold, transferred, exchanged, or disposed of and any loans that were taken out on any asset in the estate. Attach additional sheets, if necessary.)

_____.

A. INCOME

Date Received	Type of Income (e.g., pension, social security, rent, annuity, dividend, interest, refund)	Source	Amount
			\$ _____
			\$ _____
			\$ _____

_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
Total			\$ _____

B. DISBURSEMENTS

Date of Payment	To Whom Paid	Purpose of Payment	Amount
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
Total			\$ _____

C. ASSETS ADDED

Date	Description of Transaction	Gross Sale Proceeds	Selling Costs	Carrying Value	Gain or (Loss)
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

D. ASSETS DELETED

Date	Description of Transaction	Gross Purchase Price	Value at date of acquisition if other than by purchase
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

SUMMARY

Total Income	\$ _____
Total Disbursements	\$ (_____)
Total Assets Added	\$ _____
Total Assets Deleted	\$ (_____)
Total Changes	\$ _____

A Summary of the Fiduciary Estate ~~to be carried forward to next account~~ is as follows:

<u>Type of Property</u>	<u>Value reported on last Fiduciary Account</u>	<u>Value reported on this Fiduciary Account</u>
<u>A. Real Estate</u>	\$ _____	\$ _____
<u>B. Cash and Cash Equivalents</u>	\$ _____	\$ _____
<u>C. Personal Property</u>	\$ _____	\$ _____
<u>D. Stocks</u>	\$ _____	\$ _____
<u>E. Bonds</u>	\$ _____	\$ _____
<u>F. Other</u>	\$ _____	\$ _____
<u>Total</u>	\$ _____	\$ _____

The Fiduciary bond, if any, has been filed in this action in the amount of \$ _____.

VERIFICATION:

I solemnly affirm under the penalties of perjury that the contents of this document are true to the best of my knowledge, information, and belief.

_____	_____
Date	Date
_____	_____
Signature of Fiduciary	Signature of Fiduciary
_____	_____
Address	Address

Date	Signature of Trust Clerk
Address of Trust Clerk	Telephone No. of Trust Clerk

ORDER

The foregoing Fiduciary's Account having been filed and reviewed, it is by the Court, this ____ day of _____, _____, (month) (year)

ORDERED, that the attached Fiduciary's Account **covering the period of _____ through _____** is accepted.

(or)

ORDERED, that a hearing shall be held in this matter on _____ (date).

JUDGE

Source: This Rule is new.

REPORTER'S NOTE

Clerks from around the State had complained about the changes to the Fiduciary's Account form in Rule 10-708 that went into effect on January 1, 2016. The changes only allow for the total values of real estate, case and cash equivalents, personal property, stocks, bonds and other items. However, the proposed changes bring back the form that had been in use. These have spaces for guardians to itemize the contents of each category of assets. Without this information, the clerks are having difficulty keeping track of what is in the estate, particularly as assets change or shift over the course of the guardianship. The revised form that is currently in use creates more work for court staff responsible for tracking assets, especially in guardianships that have been open for many years. The court staff also prefers the last section of the old form, the summary, which had fields for guardians to report the value of assets in the last fiduciary accounts along with the current values.

The Probate/Fiduciary Subcommittee also suggests adding to the Report of the Trust Clerk and Order of Court and to the Order the dates that the account covers to help courts keep track of filing.

MARYLAND RULES OF PROCEDURE
TITLE 1 - GENERAL PROVISIONS
CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-321 by adding a new section (e), a cross reference, and a Committee note, as follows:

Rule 1-321. SERVICE OF PLEADINGS AND PAPERS OTHER THAN ORIGINAL PLEADINGS

(a) Generally

Except as otherwise provided in these rules or by order of court, every pleading and other paper filed after the original pleading shall be served upon each of the parties. If service is required or permitted to be made upon a party represented by an attorney, service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivery of a copy or by mailing it to the address most recently stated in a pleading or paper filed by the attorney or party, or if not stated, to the last known address. Delivery of a copy within this Rule means: handing it to the attorney or to the party; or leaving it at the office of the person to be served with an individual in charge; or, if there is no one in charge, leaving it in a conspicuous place in the office; or, if the office is closed or the person to be served has no office,

leaving it at the dwelling house or usual place of abode of that person with some individual of suitable age and discretion who is residing there. Service by mail is complete upon mailing.

(b) Service After Entry of Limited Appearance

Every document required to be served upon a party's attorney that is to be served after entry of a limited appearance also shall be served upon the party and, unless the attorney's appearance has been stricken pursuant to Rules 2-132 or 3-132, upon the limited appearance attorney.

Cross reference: See Rule 1-324 with respect to the sending of notices by a clerk when a limited appearance has been entered.

(c) Party in Default - Exceptions

No pleading or other paper after the original pleading need be served on a party in default for failure to appear except:

(1) a pleading asserting a new or additional claim for relief against the party shall be served in accordance with the rules for service of original process; and

(2) a request for entry of judgment arising out of an order of default under Rule 2-613 shall be served in accordance with section (a) of this Rule.

(d) Requests to Clerk - Exception

A request directed to the clerk for the issuance of process or any writ need not be served on any party.

(e) Proceedings to Modify Judgment in a Civil Action

If a motion, petition, or other paper that initiates proceedings to modify a judgment in a civil action is filed more than 30 days after entry of the judgment, it shall be treated as an original pleading and served, together with a summons issued pursuant to Rule 2-114 or 3-114, as applicable, in accordance with the rules for service of original process.

Cross reference: For the time for filing a response to an original pleading, see Rules 2-321 and 3-307.

Committee note: A certificate of service under Rule 1-323 is not required when a motion, petition, or paper is treated as an original pleading pursuant to section (e) of this Rule.

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 306 a 1 and c and the 1980 version of Fed. R. Civ. P. 5 (a).

Section (b) is new.

Section (c) is derived from former Rule 306 b and the 1980 version of Fed. R. Civ. P. 5 (a).

Section (d) is new.

Section (e) is new.

REPORTER'S NOTE

A May 8, 2002 Letter of Advice from the Office of the Attorney General advised that:

the clerk should not issue a summons in connection with a motion or petition seeking post-judgment relief, unless expressly directed by the court to do so, and that a motion for post-judgment relief, such as modification of child support, custody, or visitation, but not a petition for contempt, needs to contain or be accompanied by a certification of service, or an admission or waiver of service.

A number of jurisdictions have raised concerns about the advice, and various local approaches have been implemented, including at least one circuit court requiring that "every civil Motion, Petition or Complaint filed with the Clerk of this Court to modify any provision of any final court order or judgment, which is filed after thirty (30) days have passed from the entry

of such final order, shall be served on the opposing party using the same process required for an original action."

To provide a more uniform procedure throughout the State and to assure that parties receive notice of post-judgment proceedings that may affect their rights, the Process, Parties, and Pleading Subcommittee recommends an amendment to Rule 1-321. The proposed amendment adds a new section (e), pertaining to post-judgment motions, petitions, and papers that seek to modify the judgment in a civil action. Such motions, petitions, and papers are treated as original pleadings and served in accordance with the rules for service of original process, together with a summons that is issued under Rule 2-114 or 3-114, as applicable.

The Process, Parties, and Pleading Subcommittee also recommends that a cross reference and a Committee note be added following new section (e). For the cross reference, the Subcommittee considered the time for filing a response and felt that the same rules for responding to an original pleading applied to responding to motions, petitions, or papers to which section (e) applies. The Committee note clarifies that a certificate of service is not required when a motion, petition, or paper is being treated as an original pleading.

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

CHAPTER 200 - DIVORCE, ANNULMENT, ALIMONY, CHILD SUPPORT,
AND CHILD CUSTODY

ADD new Rule 9-211, as follows:

Rule 9-211. RESTORATION OF FORMER NAME AFTER JUDGMENT OF
ABSOLUTE DIVORCE

(a) Applicability

This Rule applies to a post-judgment motion for a change of name pursuant to Code, Family Law Article, §7-105.

(b) Motion

The motion shall be filed under oath in the action in which the judgment of absolute divorce was entered and shall state:

(1) the change of name desired and the fact that the party formerly used the name;

(2) that the party took a new name upon marriage and no longer wishes to use it; and

(3) that the party is not requesting the name change for any [illegal or fraudulent] [illegal, fraudulent, or immoral] purpose.

(c) Service

A motion filed within 30 days after the entry of the judgment of absolute divorce shall be served in the manner provided in Rule 1-321. If more than 30 days have passed since the entry of the judgment, the motion shall be served in the manner described in Rule 2-121, and proof of service shall be filed in accordance with the method described in Rule 2-126.

Committee note: A motion under Code, Family Law Article, §7-105 may be filed no later than 18 months after the judgment of absolute divorce was entered.

(d) Action by Court

Notwithstanding Rule 2-311 (f), the court may hold a hearing or may rule on the motion without a hearing even if one was requested. The court shall not deny the motion without a hearing, regardless of whether a hearing was requested.

Source: This Rule is new.

REPORTER'S NOTE

Proposed new Rule 9-211 implements Chapter 625, Laws of 2017 (SB 83), which authorizes a court, upon motion of a party filed within 18 months after the entry of a judgment of absolute divorce, to change the name of the party if the statutory requirements are met.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 400 - DISCOVERY

AMEND Rule 2-422.1 to require that the written undertaking and notice accompanying a subpoena issued to a nonparty under subsection (d)(2) be in a form approved by the State Court Administrator, as follows:

Rule 2-422.1. INSPECTION OF PROPERTY--OF NONPARTY OR BY FOREIGN PARTY--WITHOUT DEPOSITION

(a) Applicability; Use of Subpoena

This Rule applies to the issuance of a subpoena to obtain entry upon and inspection of designated land or property owned by or in the possession or control of (1) a nonparty to an action pending in this State or (2) a person to whom a foreign subpoena is directed pursuant to Code, Courts Article, Title 9, Subtitle 4. A subpoena issued under this Rule may be used only for that purpose. This Rule does not apply to the issuance of a subpoena in conjunction with a deposition.

Committee note: Under subsection (a)(2), a person to whom a foreign subpoena is directed could be a party or a nonparty to the foreign action. A party to an action pending in this State who seeks entry upon land of another party must proceed in accordance with Rule 2-422.

Cross reference: For a subpoena issued in conjunction with a deposition, see Rules 2-510 and 2-510.1.

(b) Definitions

(1) Statutory Definitions

The definitions stated in Code, Courts Article, §9-401 apply in this Rule to the extent relevant.

(2) Additional Definitions

In this Rule, the following additional definitions apply:

(A) Domestic Subpoena

"Domestic subpoena" means a subpoena issued by a circuit court of this State in an action pending in this State.

(B) Inspection

"Inspection" includes inspecting, measuring, surveying, photographing, testing, and sampling within the scope of Rule 2-402 (a).

(C) Nonparty

"Nonparty" means any person, other than a party, who is in possession or control of land or other property and, if different, the record owner of the land or other property.

(D) Foreign Party

"Foreign party" means the party on whose behalf a foreign subpoena is issued.

(E) Foreign Attorney

"Foreign attorney" means an attorney licensed to practice law in a foreign jurisdiction, but not in the State of Maryland.

(c) Issuance

(1) Domestic Subpoena

Upon the request of a person entitled to the issuance of a subpoena under this Rule for discovery in an action pending in this State, the clerk shall issue a completed subpoena, or provide a blank form of subpoena which shall be filled in and returned to the clerk to be signed and sealed before service. On the request of an attorney or other officer of the court entitled to the issuance of a subpoena under this Rule, the clerk shall issue a subpoena signed and sealed but otherwise in blank, which shall be filled in before service.

(2) Foreign Subpoena

(A) Request for Issuance

A party to an action pending in a foreign jurisdiction may request issuance of a subpoena by a court of this State based on a foreign subpoena issued in that action by submitting a request to the clerk of the circuit court for the county in which discovery is sought to be conducted. The request shall be accompanied by the foreign subpoena and a written undertaking in a form approved by the State Court Administrator, signed by the foreign party and the party's foreign attorney, if any, by which the party and the party's foreign attorney submit to the jurisdiction of the circuit court for the purpose of adjudicating discovery disputes, motions to quash, enforcement of the subpoena, and discovery sanctions. A foreign party and the party's foreign attorney, if any, who files a request or

undertaking pursuant to this section does not, by so doing, submit to the jurisdiction of a court of this State for any other purpose.

Committee note: This section does not affect the jurisdiction of a court over a party or attorney who is otherwise subject to the court's jurisdiction.

(B) Issuance

The clerk promptly shall issue a subpoena for service upon the person to whom the foreign subpoena is directed. The subpoena shall:

(i) incorporate the terms used in the foreign subpoena;

(ii) comply with the requirements of section (d) of this Rule; and

(iii) contain or be accompanied by the names, addresses, and telephone numbers of all attorneys of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

(d) Form

(1) Except as otherwise provided by the court for good cause, every subpoena shall be on a uniform form approved by the State Court Administrator and shall:

(A) contain the caption of the action, including the civil action number for the Maryland court issuing the subpoena;

(B) contain the name and address of the person to whom it is directed;

(C) contain the name of the person at whose request it is issued;

(D) describe with reasonable particularity the land or property to be entered and any actions to be performed;

(E) state the nature of the controversy and the relevancy of the entrance and proposed acts;

(F) specify a reasonable time and manner of entering and performing the proposed acts;

(G) contain or be accompanied by a description of the good faith attempts made by the party to reach agreement and with the person to whom the subpoena is directed concerning the entry and proposed acts;

(H) contain the date of issuance; and

(I) contain a statement that the subpoena may be served within 60 days after its issuance and may not be served thereafter.

(2) A subpoena issued pursuant to this Rule shall be accompanied by the following, in a form approved by the State Court Administrator:

(A) a written undertaking that the requesting party will pay for all damages arising out of the entry and performance of the proposed acts; and

(B) a notice informing the person to whom the subpoena is directed that:

(i) the person has the right to object to the entry and proposed acts by filing an objection with the court and serving a copy of it on the requesting party;

(ii) any objection must be filed and served within 30 days after the person is served with the subpoena; and

(iii) the objection must include or be accompanied by a certificate of service, stating the date on which the person mailed a copy of the objection to the requesting party.

Cross reference: See Rules 1-321 and 1-323.

(e) Service

A subpoena shall be served by delivering a copy to the person named or to an agent authorized by appointment or by law to receive service for the person named or as permitted by Rule 2-121 (a)(3). Service of a subpoena upon a party represented by an attorney may be made by service upon the attorney under Rule 1-321 (a). A subpoena may be served by a sheriff of any county or by any person who is not a party and who is not less than 18 years of age. If a subpoena is to permit entry upon leased land or property, the subpoena shall be served on any record owner of the land or property and any occupant or person in possession or control of the land or property. Before the subpoena is served, the party on whose behalf the subpoena is issued shall serve a copy of it on each other party in the manner provided by Rule 1-321 and file with the court a certificate of service attesting to the fact of service on the other parties. A person may not

serve or attempt to serve a subpoena more than 60 days after its issuance. A subpoena shall be served at least 45 days before the date of a requested entry.

Cross reference: See Code, Courts Article, §6-410, concerning service upon certain persons other than the custodian of public records named in the subpoena if the custodian is not known and cannot be ascertained after a reasonable effort. As to additional requirements for certain subpoenas, see Code, Health-General Article, §4-306 (b)(6) and Code, Financial Institutions Article, §1-304.

(f) Objection to Subpoena to Permit Entry Upon Designated Land or Property; Procedure to Compel Entry

(1) Objection

A person served with a subpoena to permit entry upon designated land or property, or any other person who claims an interest in the land or property, may object to the entry by filing an objection within 30 days after service of the subpoena and serving the objection on the requesting party. After an objection is filed, entry upon the designated land or property is not permitted unless the court grants a motion to compel entry filed in accordance with subsection (f)(2) of this Rule.

(2) Procedure to Compel Entry

(A) Motion to Compel

If the requested discovery is refused or within 15 days after an objection is served, the requesting party may file a motion to compel entry. The requesting party shall (i) attach to the motion a copy of the subpoena and any objection, (ii) serve a copy of the motion in the manner provided by Rule 1-321

on all other parties and the person who filed the objection, and (iii) if the requesting party is seeking entry upon leased land or property, serve a copy of the motion on any record owner of the land or property and any occupant or person in possession or control of the land or property. A hearing may be requested by including the heading "Request for Hearing" in the motion.

(B) Response

A response may be filed within 15 days after service. A hearing may be requested by including the heading "Request for Hearing" in the response.

(C) Hearing

If a hearing is not timely requested, the court may rule on the motion without a hearing. If a nonparty requests a hearing, the court shall hold a hearing. If a party requests a hearing, the court may determine whether a hearing will be held.

(D) Order

An order granting the motion shall specify the time, place, and manner of entry upon the land or property and the acts that may be performed. The order also may include any other provision that the court deems appropriate, including provisions relating to the privacy of the person who filed the objection, protection of the interests of the parties and any nonparty, and the filing of a bond to secure the obligation of the moving party to pay for damages arising out of the entry and acts performed.

Cross reference: See Maryland Uniform Interstate Depositions and Discovery Act, Code, Courts Article, §§9-401 et seq.

Source: This Rule is new.

REPORTER'S NOTE

A practicing attorney observed that subsection (d)(2) of Rule 2-422.1 does not require that the written undertaking and notice accompanying a subpoena issued to a nonparty for inspection and testing of the nonparty's property in an action pending in this State be in a form approved by the State Court Administrator. This requirement is proposed to be added to the Rule to ensure that the documents are uniformly consistent with the Rule and adequately protect the interests of the nonparty.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 700 - CLAIMS FOR ATTORNEYS' FEES AND RELATED EXPENSES

AMEND Rule 2-706 to allow a party to file a motion seeking an award of attorneys' fees up to 30 days after the entry of a final order in proceedings conducted on remand from an appellate court, as follows:

Rule 2-706. FEES FOR APPELLATE LITIGATION

A party who seeks an award of attorneys' fees incurred in connection with an appeal, application for leave to appeal, or petition for certiorari shall file a motion for such fees in the circuit court that entered the judgment or order that is the subject of the appellate litigation. The motion shall be filed: (a) within 30 days after entry of the last mandate or order disposing of the appeal, application, or petition; or (b) if an appellate court remands for further proceedings, within 30 days after the entry of a final order disposing of all claims.

Proceedings on the motion shall be in the circuit court and shall be consistent with the standards and procedures set forth in Rule 2-703 or Rule 2-705, as applicable.

Source: This Rule is new.

REPORTER'S NOTE

The Appellate Subcommittee has been advised that litigants, particularly indigent litigants, have been adversely affected by the application of Rule 2-706 in cases that are remanded for further proceedings by an appellate court. Litigants in such cases must file two fee petitions—one for proceedings through the appellate stage of disposition and one after the conclusion of proceedings on remand. A proposed amendment to Rule 2-706 redresses the issue of multiple petitions by permitting a single petition to be filed within 30 days after entry of a final order disposing of all claims in a case remanded by an appellate court.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 400 - PRELIMINARY PROCEDURES

AMEND Rule 8-411 to require an appellant to order a transcript within ten days after the granting of a petition for writ of certiorari under Code, Courts Article, §12-305, as follows:

Rule 8-411. TRANSCRIPT

(a) Ordering of Transcript

Unless a copy of the transcript is already on file, the appellant shall order in writing from the court reporter a transcript containing:

(1) a transcription of (A) all the testimony or (B) that part of the testimony that the parties agree, by written stipulation filed with the clerk of the lower court, is necessary for the appeal or (C) that part of the testimony ordered by the Court pursuant to Rule 8-206 (c) or directed by the lower court in an order;

(2) a transcription of any proceeding relevant to the appeal that was recorded pursuant to Rule 16-502 (b); and

(3) if relevant to the appeal and in the absence of a written stipulation by all parties to the contents of the

recording, a transcription of any audio or audiovisual recording or portion thereof offered or used at a hearing or trial.

(b) Time for Ordering

Unless otherwise ordered by the court, the appellant shall order the transcript within the applicable time specified in this section:

(1) in a civil action subject to Rule 8-207 (a), the time prescribed by Rule 8-207 (a)(3);

(2) in all other civil actions subject to Rule 8-205 (a), ten days after the date of an order entered pursuant to Rule 8-206 (c); ~~or~~

(3) within ten days after the granting of a petition for writ of certiorari under Code, Courts Article, §12-305; or

~~(3)~~ (4) in all other actions, ten days after the date the first notice of appeal is filed.

Cross reference: Rule 8-207 (a).

(c) Filing and Service

The appellant shall (1) file a copy of the written order to the court reporter with the clerk of the lower court for inclusion in the record, (2) cause the original transcript to be filed promptly by the court reporter with the clerk of the lower court for inclusion in the record, and (3) promptly serve a copy on the appellee.

Source: This Rule is derived from former Rule 1026 a 2 and Rule 826 a 2 (b).

REPORTER'S NOTE

The Appellate Subcommittee was advised of a timing issue for litigants requesting a transcript after petitioning for a writ of certiorari following an appeal to a circuit court. Rule 8-411 (b) is silent on the matter. As a result, petitioners are following current subsection (b)(3) of the Rule. If a petitioner follows current subsection (b)(3) and the petition is denied, the petitioner has paid for the transcript unnecessarily and the court reporter has prepared it needlessly. The proposed amendment directly addresses this issue by requiring an appellant to order a transcript within ten days after the granting of a petition for writ of certiorari under Code, Courts Article, §12-305.

MARYLAND RULES OF PROCEDURE

TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

CHAPTER 100 - APPEALS FROM THE DISTRICT COURT

TO THE CIRCUIT COURT

AMEND Rule 7-114 to reorganize it, to specify grounds for mandatory dismissals and grounds for discretionary dismissals, to delete a cross reference to Rule 2-311, to add a cross reference to Rule 7-105, and to make stylistic changes, as follows:

Rule 7-114. DISMISSAL OF APPEAL

(a) On Motion or Court's Initiative

A circuit court may dismiss an appeal pursuant to this Rule on motion or on the court's own initiative.

(b) When Mandatory

~~On motion or on its own initiative, the~~ The circuit court ~~may shall~~ dismiss an appeal ~~for any of the following reasons if:~~

~~(a) (1) the appeal is not allowed by law;~~

~~(b) the appeal was not properly taken pursuant to Rule 7-103;~~

~~(c) (2) the notice of appeal was not filed with the District Court within the time prescribed by Rule 7-104; or~~

(3) an appeal to be heard de novo was withdrawn pursuant to Rule 7-112.

(c) When Discretionary

The circuit court may dismiss an appeal if:

(1) the appeal was not properly taken pursuant to Rule 7-103;

~~(d)~~ (2) the record was not transmitted within the time prescribed by Rule 7-108, unless the court finds that the failure to transmit the record was caused by the act or omission of a judge, a clerk of court, a court reporter, or the appellee;
or

~~(e) an appeal to be heard de novo has been withdrawn pursuant to Rule 7-112; or~~

~~(f)~~ (3) the case has become moot.

Cross reference: ~~Rule 2-311.~~ See Rule 7-105 allowing the District Court to strike a notice of appeal for certain reasons, including failure to file the notice of appeal within the time prescribed by Rule 7-104.

Source: This Rule is derived from former Rule 1335.

REPORTER'S NOTE

In *Brownstones at Park Potomac v. JP Morgan*, 445 Md. 12 (2015), the Court held that the circuit court did not have jurisdiction to hear an appeal from the District Court that was not timely filed, and the appeal had to be dismissed.

Proposed amendments to Rule 7-114 reorganize the Rule and conform the Rule to the holding in *Brownstones at Park Potomac* by making dismissal of an appeal not timely filed mandatory, rather than discretionary. In addition, an appeal to be heard de novo that has been withdrawn pursuant to Rule 7-112 and an appeal that is not allowed by law have been included in the category of mandatory dismissals. Dismissals for the other reasons listed in the Rule continue to be discretionary.

A cross reference to Rule 2-311 is deleted as unnecessary, and a new cross reference to Rule 7-105 is added.

Stylistic changes also are made.

MARYLAND RULES OF PROCEDURE
TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS
AND COURT OF SPECIAL APPEALS
CHAPTER 600 - DISPOSITION

AMEND Rule 8-602 to reorganize it, to specify grounds for mandatory dismissals and grounds for discretionary dismissals, and to make stylistic changes, as follows:

Rule 8-602. DISMISSAL BY COURT

(a) ~~Grounds~~ On Motion or Court's Initiative

The court may dismiss an appeal pursuant to this Rule on motion or on the court's own initiative.

(b) When Mandatory

~~On motion or on its own initiative, the~~ The Court ~~may~~ shall dismiss an appeal ~~for any of the following reasons if:~~

(1) the appeal is not allowed by these Rules or other law;
or

~~(2) the appeal was not properly taken pursuant to Rule 8-201;~~

~~(3) (2) the notice of appeal was not filed with the lower court within the time prescribed by Rule 8-202.~~

(c) When Discretionary

The court may dismiss an appeal if:

(1) the appeal was not property taken pursuant to Rule 8-201;

~~(4)~~ (2) the appellant has failed to comply with the requirements of Rule 8-205;

~~(5)~~ (3) the record was not transmitted within the time prescribed by Rule 8-412, unless the court finds that the failure to transmit the record was caused by the act or omission of a judge, a clerk of court, the court reporter, or the appellee;

~~(6)~~ (4) the contents of the record do not comply with Rule 8-413;

~~(7)~~ (5) a brief or record extract was not filed by the appellant within the time prescribed by Rule 8-502;

~~(8)~~ (6) the style, contents, size, format, legibility, or method of reproduction of a brief, appendix, or record extract does not comply with Rules 8-112, 8-501, 8-503, or 8-504;

~~(9)~~ (7) the proper person was not substituted for the appellant pursuant to Rule 8-401; or

~~(10)~~ (8) the case has become moot.

Cross reference: Rule 8-501 (m).

~~(b)~~ (d) Determination by Court

An order of the Court dismissing an appeal or denying a motion to dismiss an appeal may be entered by the Chief Judge, an individual judge of the Court designated by the Chief Judge, or the number of judges required by law to decide an appeal.

Cross reference: For the number of judges required by law to decide an appeal, see Maryland Constitution, Article IV, §14 and Code, Courts Article, §1-403.

~~(e)~~ (e) Reconsideration of Dismissal

(1) Motion for Reconsideration

No later than 10 days after the entry of an order dismissing an appeal, a party may file a motion for reconsideration of the dismissal.

(2) Number of Judges; Exception

A motion for reconsideration shall be determined by the number of judges required by law to decide an appeal, except that an individual judge who entered an order of dismissal may rescind the order and reinstate the appeal. The judges who determine the motion for reconsideration may include one or more of the judges who entered the order of dismissal.

Committee note: Although an individual judge who entered an order of dismissal may rescind the order and reinstate the appeal upon a timely filed motion for reconsideration, a motion for reconsideration of the dismissal may be denied only by the number of judges required by law to decide an appeal.

(3) Determination of Motion for Reconsideration

The Court shall rescind an order of dismissal if:

(A) the Court determines that the appeal should not have been dismissed;

(B) the appeal was dismissed pursuant to subsection ~~(a)(4), (a)(5), or (a)(7)~~ (c)(2), (c)(3), or (c)(5) of this Rule and the Court finds that there was good cause for the failure to comply with the applicable subsection of the Rule; or

(C) the appeal was dismissed pursuant to subsection ~~(a)(4), (a)(5), (a)(6), (a)(7), (a)(8), or (a)(9)~~ (c)(2), (c)(3), (c)(4), (c)(5), (c)(6), or (c)(7) of this Rule and the Court finds that the interests of justice require reinstatement of the appeal.

(4) Reinstatement

If an order of dismissal is rescinded, the case shall be reinstated on the docket on the terms and conditions prescribed by the Court.

(5) No Further Reconsideration by the Court

If an order dismissing an appeal is reconsidered under this section, the party who filed the motion for reconsideration may not obtain further reconsideration of the motion.

~~(d)~~ (f) Judgment Entered after Notice Filed

A notice of appeal filed after the announcement or signing by the trial court of a ruling, decision, order, or judgment but before entry of the ruling, decision, order, or judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.

~~(e)~~ (g) Entry of Judgment not Directed Under Rule 2-602

(1) If the appellate court determines that the order from which the appeal is taken was not a final judgment when the notice of appeal was filed but that the lower court had discretion to direct the entry of a final judgment pursuant to Rule 2-602 (b), the appellate court, as it finds appropriate,

may (A) dismiss the appeal, (B) remand the case for the lower court to decide whether to direct the entry of a final judgment, (C) enter a final judgment on its own initiative or (D) if a final judgment was entered by the lower court after the notice of appeal was filed, treat the notice of appeal as if filed on the same day as, but after, the entry of the judgment.

(2) If, upon remand, the lower court decides not to direct entry of a final judgment pursuant to Rule 2-602 (b), the lower court shall promptly notify the appellate court of its decision and the appellate court shall dismiss the appeal. If, upon remand, the lower court determines that there is no just reason for delay and directs the entry of a final judgment pursuant to Rule 2-602 (b), the case shall be returned to the appellate court after entry of the judgment. The appellate court shall treat the notice of appeal as if filed on the date of entry of the judgment.

(3) If the appellate court enters a final judgment on its own initiative, it shall treat the notice of appeal as if filed on the date of the entry of the judgment and proceed with the appeal.

Source: This Rule is in part derived from former Rules 1035 and 835 and in part new.

REPORTER'S NOTE

Proposed amendments to Rule 8-602 reorganize the Rule and categorize the listed grounds for dismissal as "mandatory" or "discretionary." Stylistic changes also are made.

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

AMEND Rule 8-502 to conform an internal reference to the reorganization of Rule 8-602, as follows:

Rule 8-502. FILING OF BRIEFS

. . .

(d) Default

If an appellant fails to file a brief within the time prescribed by this Rule, the appeal may be dismissed pursuant to Rule 8-602 ~~(a)(7)~~ (c)(5). An appellee who fails to file a brief within the time prescribed by this Rule may not present argument except with permission of the Court.

. . .

REPORTER'S NOTE

A proposed amendment to Rule 8-502 conforms an internal reference to the reorganization of Rule 8-602.

MARYLAND RULES OF PROCEDURE
TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS
AND COURT OF SPECIAL APPEALS
CHAPTER 600 - DISPOSITION

AMEND Rule 8-603 to conform internal references to the reorganization of Rule 8-602, as follows:

Rule 8-603. MOTION TO DISMISS APPEAL

(a) Time for Filing

Unless included in the appellee's brief as permitted by section (c) of this Rule or by order of the appellate court, a motion to dismiss shall be filed within the following time periods:

(1) ten days after the record was or should have been filed pursuant to Rule 8-412 if the motion is based on subsection ~~(a)(2), (3), (5), or (6)~~ (b)(2), (c)(1), (c)(3), or (c)(4) of Rule 8-602;

(2) ten days after the information report was or should have been filed pursuant to Rule 8-205 if the motion is based on subsection ~~(a)(4)~~ (c)(2) of Rule 8-602;

(3) ten days after the appellant's brief was or should have been filed pursuant to Rule 8-502 if the motion is based on subsection ~~(a)(7) or (8)~~ (c)(5) or (6) of Rule 8-602;

(4) ten days after the case becomes moot, if the motion is based on subsection ~~(a)(10)~~ (c)(8) of Rule 8-602.

(b) Where Filed; Number of Copies

A motion to dismiss and any response shall be filed with the Clerk of the appellate court. If the motion or response is not included in a brief as permitted by section (c) of this Rule, an original shall be filed together with three copies in the Court of Special Appeals or seven copies in the Court of Appeals.

(c) Included in Appellee's Brief

A motion to dismiss based on subsection ~~(a)(1), (2), (3), (9), or (10)~~ (b)(1), (b)(2), (c)(1), (c)(7), or (c)(8) of Rule 8-602 may be included in the appellee's brief. The appellant may include in a reply brief any response to the motion.

(d) Affidavit

A motion to dismiss or response that is based on facts not contained in the record or papers on file in the appellate court shall be supported by affidavit and accompanied by any part of the record or papers on which it is based.

(e) Request for Hearing

A party desiring oral argument on a motion to dismiss in advance of argument on the merits shall so request in the motion or response under the heading "Request for Hearing."

(f) Separate Oral Argument

(1) Not Unless Directed by the Court

Oral argument on a motion to dismiss will not be held in advance of argument on the merits unless directed by order of the Court.

(2) Briefs

If the Court directs oral argument on a motion to dismiss in advance of argument on the merits, the parties, with permission of the Court, may file briefs in support of or in opposition to the motion. Not later than one day before the date assigned for argument (A) an original shall be filed with the Clerk together with three copies in the Court of Special Appeals or seven copies in the Court of Appeals, and (B) a copy shall be delivered to other parties. Unless otherwise ordered by the Court, the briefs shall not exceed 2,600 words in the Court of Special Appeals or 6,500 words in the Court of Appeals.

(3) Time; Number of Counsel

Unless otherwise ordered by the Court, separate oral argument on a motion to dismiss is restricted to 15 minutes for each side, and only one attorney may argue for each side.

Source: This Rule is derived from former Rules 1036, 1037, 836, and 837.

REPORTER'S NOTE

Proposed amendments to Rule 8-603 conform internal references to the reorganization of Rule 8-602.

MARYLAND RULES OF PROCEDURE
TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS
AND COURT OF SPECIAL APPEALS
CHAPTER 600 - DISPOSITION

AMEND Rule 8-605 (a) to conform an internal reference to the reorganization of Rule 8-602, as follows:

Rule 8-605. RECONSIDERATION

(a) Motion; Response; No Oral Argument

Except as otherwise provided in Rule 8-602 ~~(e)~~ (e), a party may file pursuant to this Rule a motion for reconsideration of a decision by the Court that disposes of the appeal. The motion shall be filed (1) before issuance of the mandate or (2) within 30 days after the filing of the opinion of the Court, whichever is earlier. A response to a motion for reconsideration may not be filed unless requested on behalf of the Court by at least one judge who concurred in the opinion or order. Except to make changes in the opinion that do not change the decision in the case, the Court ordinarily will not grant a motion for reconsideration unless it has requested a response. There shall be no oral argument on the motion.

. . .

REPORTER'S NOTE

A proposed amendment to Rule 8-605 conforms an internal reference to the reorganization of Rule 8-602.

MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 400 - PROCEEDINGS IN THE COURT OF SPECIAL APPEALS

AMEND Rule 17-404 to conform an internal reference to the reorganization of Rule 8-602, as follows:

Rule 17-404. MEDIATION

. . .

(f) Order Implementing Settlement

(1) Proposed Order

Within 30 days after the conclusion of a Court-ordered mediation at which a full or partial settlement is achieved, if an order is necessary to implement the settlement, the parties shall submit a proposed order for review by the Chief Judge. The proposed order may include dismissal of the appeal, proceeding with the appellate process, limiting issues, a remand pursuant to Rule 8-602 ~~(e)~~ (g), or any other appropriate directives necessary to implement the settlement.

(2) Review by Chief Judge

After review, the Chief Judge shall (A) sign the order as presented, (B) reject the proposed order, or (C) return the order to the parties with recommended changes, but the Chief Judge may not preclude an appellant from dismissing the appellant's appeal as permitted by Rule 8-601 or preclude the

parties from otherwise proceeding in a manner authorized by the Rules in Title 8.

(3) Recommended Changes

If the Chief Judge returns an order with recommended changes and, within 15 days after return of the order, the parties do not accept the recommended changes, the appeal shall proceed as if no agreement had been reached, unless the Chief Judge agrees to withdraw an unaccepted recommended change. If the parties accept the recommended changes, the Chief Judge shall sign the order with those changes included.

(4) Duty of Clerk

The clerk shall send a copy of a signed order to each party and to the ADR Division.

. . .

REPORTER'S NOTE

A proposed amendment to Rule 17-402 conforms an internal reference to the reorganization of Rule 8-602.

MARYLAND RULES OF PROCEDURE
TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS
AND COURT OF SPECIAL APPEALS
CHAPTER 600 - DISPOSITION

AMEND Rule 8-605 to permit a motion for reconsideration when the court's opinion determined the outcome of an appeal on an issue not raised in the briefs or proceedings below, as follows:

Rule 8-605. RECONSIDERATION

(a) Motion; Response; No Oral Argument

Except as otherwise provided in Rule 8-602 (c), a party may file pursuant to this Rule a motion for reconsideration of a decision by the Court that disposes of the appeal. The motion shall be filed (1) before issuance of the mandate or (2) within 30 days after the filing of the opinion of the Court, whichever is earlier. A response to a motion for reconsideration may not be filed unless requested on behalf of the Court by at least one judge who concurred in the opinion or order. Except to make changes in the opinion that do not change the decision in the case, the Court ordinarily will not grant a motion for reconsideration unless it has requested a response. There shall be no oral argument on the motion.

(b) Content

A motion or response ordinarily shall be limited to addressing one or more of the following:

(1) whether the Court's opinion or order did not address a material factual or legal matter raised in the lower court and argued by a party in its submission to the Court, and if not raised or argued, a brief statement as to why it was not raised or argued;

(2) whether a material change in the law relevant to the appeal occurred after the case was submitted and was not addressed in the Court's opinion or order;

(3) whether the court's opinion determined the outcome of the appeal on an issue not raised in the briefs or proceedings below;

~~(3)~~ (4) whether there is a significant consequence of the decision that was not addressed in the opinion;

~~(4)~~ (5) if the motion or response is filed in the Court of Appeals, whether and how the Court's opinion or order is in material conflict with a decision of the United States Supreme Court or a decision of the Court of Appeals; or

~~(5)~~ (6) if the motion or response is filed in the Court of Special Appeals, whether and how the Court's opinion or order is in material conflict with a decision of the United States Supreme Court or the Court of Appeals or a reported opinion of the Court of Special Appeals.

(c) Length

A motion or response filed pursuant to this Rule shall not exceed 3,900 words.

(d) Copies--Filing

(1) In Court of Special Appeals

In the Court of Special Appeals, the original of the motion and any response shall be filed together with four copies if the opinion of the Court was unreported or 13 copies if reported.

(2) In Court of Appeals

In the Court of Appeals, the original and seven copies of the motion and any response shall be filed.

(e) Mandate to be Delayed

A motion for reconsideration shall delay issuance of a mandate, unless otherwise ordered by the Court.

(f) Disposition of Motion

A motion for reconsideration shall be granted only with the consent of at least half the judges who concurred in the opinion. If a motion for reconsideration is granted, the Court may make a final disposition of the appeal without reargument, restore the appeal to the calendar for argument, or make other orders, including modification or clarification of its opinion, as the Court finds appropriate.

Source: This Rule is in part derived from former Rules 1050 and 850 and in part new.

REPORTER'S NOTE

The Appellate Subcommittee was advised of procedural difficulties an attorney experienced when requesting review after an appellate court decided a case on an issue not raised in the briefs or proceedings below. The proposed amendment to Rule 8-605 permits a motion for reconsideration when an appellate court decides a case on an issue not raised in the briefs or proceedings below.