

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

June 22, 2017
(Thursday)

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

- Item 1. Consideration of proposed amendments to: Judge Wilner
Rule 4-202 (Charging Document - Content)
Rule 4-213.1 (Appointment, Appearance, or
Waiver of Attorney at Initial Appearance)
- Item 2. Consideration of proposed amendments to: Judge Wilner
Rule 4-342 (Sentencing - Procedure)
Deletion of Rule 4-343 (Sentencing -
Bifurcated Procedure in Capital Cases)
Rule 5-606 (Competency of Juror as Witness)
- Item 3. Consideration of proposed amendments to: Mr. Laws
Rules in Title 10 (Guardians and Other
Fiduciaries)
Rule 10-108 (Orders)
Rule 10-112 (Petition for Guardianship of
Alleged Disabled Person)
Rule 10-103 (Definitions)
Rule 10-202 (Certificates and Consents)
Rule 10-301 (Petition for Appointment of
a Guardian of Property)

Item 4. Reconsideration of a proposed new Title 15, Mr. Frederick
Chapter 1400 (Liens for Unpaid Wages)

Rule 15-1401 (Applicability; Definitions)

Rule 15-1402 (Notice to Employer - Requirements)

Rule 15-1403 (Right of Employer to Contest
Proposed Lien; Procedure; Consequence of
Failure to Contest Timely)

Rule 15-1404 (Filing and Recording Wage
Lien Statements)

Rule 15-1405 (Extinguishment or Release of
Lien)

Rule 15-1406 (Enforcement of Lien)

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-202 by revising the notice contained in a charging document to direct a defendant who seeks Public Defender representation to contact a District Court commissioner, as follows:

Rule 4-202. CHARGING DOCUMENT - CONTENT

(a) General Requirements

A charging document shall contain the name of the defendant or any name or description by which the defendant can be identified with reasonable certainty, except that the defendant need not be named or described in a citation for a parking violation. It shall contain a concise and definite statement of the essential facts of the offense with which the defendant is charged and, with reasonable particularity, the time and place the offense occurred. An allegation made in one count may be incorporated by reference in another count. The statute or other authority for each count shall be cited at the end of the count, but error in or omission of the citation of authority is not grounds for dismissal of the charging document or for reversal of a conviction.

A charging document also shall contain a notice to the defendant in the following form:

TO THE PERSON CHARGED:

1. This paper charges you with committing a crime.
2. If you have been arrested and remain in custody, you have the right to have a judicial officer decide whether you should be released from jail until your trial.
3. If you have been served with a citation or summons directing you to appear before a judicial officer for a preliminary inquiry at a date and time designated or within five days of service if no time is designated, a judicial officer will advise you of your rights, the charges against you, and penalties. The preliminary inquiry will be cancelled if a lawyer has entered an appearance to represent you.
4. You have the right to have a lawyer.
5. A lawyer can be helpful to you by:
 - (A) explaining the charges in this paper;
 - (B) telling you the possible penalties;
 - (C) explaining any potential collateral consequences of a conviction, including immigration consequences;
 - (D) helping you at trial;
 - (E) helping you protect your constitutional rights; and
 - (F) helping you to get a fair penalty if convicted.
6. Even if you plan to plead guilty, a lawyer can be helpful.
7. If you are eligible, the Public Defender or a court-appointed attorney will represent you at any initial appearance

before a judicial officer and at any proceeding under Rule 4-216.1 to review an order of a District Court commissioner regarding pretrial release. If you want a lawyer for any further proceeding, including trial, but do not have the money to hire one, the Public Defender may provide a lawyer for you. ~~The court clerk will tell you how to contact the~~ To apply for Public Defender representation, contact a District Court commissioner.

8. If you want a lawyer but you cannot get one and the Public Defender will not provide one for you, contact the court clerk as soon as possible.

9. DO NOT WAIT UNTIL THE DATE OF YOUR TRIAL TO GET A LAWYER. If you do not have a lawyer before the trial date, you may have to go to trial without one.

. . .

REPORTER'S NOTE

Amendments to Rules 4-202 and 4-213.1 are proposed in conjunction with implementation of Chapter 606, Laws of 2017 (SB 714). Under the new statute, a District Court commissioner -- rather than the Office of the Public Defender -- determines whether an individual qualifies as indigent and eligible for representation provided by the Public Defender.

In Rule 4-202 (a), an amendment to the Notice contained on a charging document is revised to direct a defendant who seeks Public Defender representation to contact a District Court commissioner.

In Rule 4-213.1, subsection (d)(1)(A) is amended to reflect that the request and affidavit form used by a defendant seeking representation by the Public Defender is a form approved by Chief Judge of the District Court, rather than a form used by the Public Defender. Subsection (g)(1) is amended to reflect

that District Court commissioners will make determinations of eligibility for provisional representation and final determinations of indigence.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-213.1 by deleting a reference to certain forms used by the Public Defender, by adding a reference to certain forms approved by the Chief Judge of the District Court, by adding a reference to a final determination of indigence made by a District Court commissioner, by deleting a reference to a determination of eligibility for provisional representation made by the Public Defender, and by adding a reference to a determination of eligibility for provisional representation made by a District Court commissioner, as follows:

Rule 4-213.1. APPOINTMENT, APPEARANCE, OR WAIVER OF ATTORNEY AT INITIAL APPEARANCE

(a) Right to Representation by Attorney

(1) Generally

A defendant has the right to be represented by an attorney at an initial appearance before a judicial officer.

(2) Attorney

Unless the defendant waives that right in accordance with section (e) of this Rule or another attorney has entered an appearance, if the defendant is indigent within the meaning of Code, Criminal Procedure Article, §16-210 (b) and (c):

(A) the defendant shall be represented by the Public Defender if the initial appearance is before a judge; and

(B) the defendant shall be represented by an attorney appointed by the court in accordance with section (b) of this Rule if the initial appearance is before a District Court commissioner, unless the Public Defender enters an appearance for the defendant.

(b) Appointment of Attorneys for Initial Appearance Before Commissioner

(1) Appointment

After consultation with the State and local bar associations and the Public Defender, the District Administrative Judges shall develop lists of attorneys willing to accept appointment to represent indigent defendants at initial appearances before District Court commissioners in the district on a pro bono basis or at fees equivalent to those paid by the Public Defender to panel attorneys. Attorneys shall be appointed from the lists as needed for specific proceedings or to be available for blocks of time.

(2) Processing of Invoices

Invoices for fees due to court-appointed attorneys shall be processed in accordance with procedures adopted by the State Court Administrator.

(c) General Advice by Judicial Officer

If the defendant appears at an initial appearance without an attorney, the judicial officer shall advise the defendant that the defendant has a right to an attorney at the initial appearance, of the importance of having an attorney, and that, if the defendant is indigent, (1) the Public Defender will provide representation if the proceeding is before a judge, or (2) a court-appointed attorney will provide representation if the proceeding is before a commissioner.

(d) Proceeding Before Commissioner

(1) Determination of Indigence

(A) If the defendant claims indigence and desires a court-appointed attorney for the proceeding, the defendant shall complete a request and affidavit substantially in the form ~~used by the Public Defender~~ approved by the Chief Judge of the District Court and, from those documents and in accordance with the criteria set forth in Code, Criminal Procedure Article, §16-210 (b) and (c), the commissioner shall determine whether the defendant qualifies for an appointed attorney.

(B) If the commissioner determines that the defendant is indigent, the commissioner shall provide a reasonable opportunity for the defendant and a court-appointed attorney to consult in confidence.

(C) If the commissioner determines that the defendant is not indigent, the commissioner shall advise the defendant of the right to a privately retained attorney and provide a reasonable

opportunity for the defendant to obtain the services of, and consult in confidence with, a private attorney.

(2) Inability of Attorney to Appear Promptly

The commissioner shall further advise the defendant that, unless the attorney, whether court appointed or privately retained, is able to participate, either in person or by electronic means or telecommunication, within a reasonable period of time, the initial appearance may need to be continued, in which event, subject to subsection (d)(3) of this Rule, the defendant will be temporarily committed until the earliest opportunity that the defendant can be presented to the next available judicial officer with an attorney present.

(3) If Initial Appearance Continued

If pursuant to subsection (d)(2) of this Rule, the initial appearance needs to be continued, the commissioner, before recessing the proceeding, shall proceed in accordance with this subsection.

(A) Arrest Without Warrant - Determination of Probable Cause

If the defendant was arrested without a warrant, the commissioner shall determine whether there was probable cause for the charges and the arrest pursuant to Rule 4-216 (a). If the commissioner finds no probable cause for the charges or for the arrest, the commissioner shall release the defendant on personal recognizance, with no other conditions of release. If

the defendant is released pursuant to subsection (d)(3)(A) of this Rule, the Commissioner shall not make the determination otherwise required by subsection (d)(3)(B) of this Rule, but shall provide the advice required by subsection (d)(3)(C) of this Rule.

(B) Preliminary Determination Regarding Release on Personal Recognizance

Regardless of whether the defendant was arrested with or without a warrant, the commissioner shall make a preliminary determination regarding the commissioner's authority to release the defendant on personal recognizance and the appropriateness of such a release pursuant to Rules 4-216 and 4-216.1. If the commissioner's preliminary determination is that release on personal recognizance with no other conditions of release is authorized and appropriate, the commissioner shall release the defendant on that basis.

(C) Required Compliance Before Release of Defendant

Before releasing the defendant pursuant to subsection (d)(3)(A) or (B) of this Rule, the commissioner shall comply with the applicable provisions of Rules 4-213 and 4-216 (g).

(D) Preliminary Determination Not to Release

Upon a preliminary determination by the commissioner not to release the defendant on personal recognizance, the commissioner shall comply with the applicable provisions of Rule 4-216 (f) and (g) and recess the proceeding. The commissioner's

preliminary determination is without prejudice to the right of the defendant to seek release on personal recognizance when the proceeding resumes with the attorney present. If the proceeding resumes before the commissioner who made the preliminary determination not to release the defendant on personal recognizance, the commissioner, upon request of the defendant, shall recuse, and the proceeding shall be before another judicial officer.

(e) Waiver - Initial Appearance Before Judge or Commissioner

(1) If the defendant indicates a desire to waive the right to an attorney, the judicial officer shall advise the defendant (A) that an attorney can be helpful in explaining the procedure and in advocating that the defendant should be released immediately on recognizance or on bail with minimal conditions, (B) that it may be possible for the attorney to participate electronically or by telecommunication, and (C) that any waiver would be effective only for the initial appearance and not for any subsequent proceedings.

(2) If, upon this advice, the defendant still wishes to waive the right to an attorney and the judicial officer finds that the waiver is knowing and voluntary, the judicial officer shall announce and record that finding.

(3) A waiver pursuant to section (e) of this Rule is effective only for the initial appearance and not for any subsequent proceeding.

(4) Notwithstanding an initial decision not to waive the right to an attorney, a defendant may waive that right at any time during the proceeding, provided that no attorney has already entered an appearance.

(f) Participation by Attorney by Electronic or Telecommunication Means

(1) By State's Attorney

The State's Attorney may participate in the proceeding, but is not required to do so. When the physical presence of the State's Attorney is impracticable, the State's Attorney may participate electronically or by telecommunication if the equipment at the judicial officer's location and the State's Attorney's location provides adequate opportunity for the State's Attorney to participate meaningfully in the proceeding.

(2) By Defense Attorney

When the physical presence of a defense attorney is impracticable, the attorney may consult with the defendant and participate in the proceeding electronically or by telecommunication if the equipment is at the judicial officer's location and the defense attorney's location provides adequate opportunity for the attorney to consult privately with the defendant and participate meaningfully in the proceeding.

(g) Provisional and Limited Appearance

(1) Provisional Representation by Public Defender

Unless a District Court commissioner has made a final determination of indigence and the Public Defender has entered a general appearance pursuant to Rule 4-214, any appearance entered by the Public Defender at an initial appearance shall be provisional. For purposes of this section, eligibility for provisional representation shall be determined by ~~the Public Defender~~ a District Court commissioner prior to or at the time of the proceeding.

(2) Limited Appearance

Unless a general appearance has been entered pursuant to Rule 4-214, an appearance by a court-appointed or privately retained attorney shall be limited to the initial appearance before the judicial officer and shall terminate automatically upon the conclusion of that stage of the criminal action.

(3) Inconsistency with Rule 4-214

Section (g) of this Rule prevails over any inconsistent provision in Rule 4-214.

Source: This Rule is new but is derived, in part, from amendments proposed to Rule 4-216 in the 181st Report of the Standing Committee on Rules of Practice and Procedure.

REPORTER'S NOTE

See the Reporter's note to Rule 4-202.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-342 by changing the title of the Rule, by deleting section (a), by moving the cross reference following section (a) to the end of the Rule, by deleting language from new section (a), by deleting a part of a cross reference after new section (a), and by relettering the Rule, as follows:

Rule 4-342. SENTENCING - PROCEDURE ~~IN NON-CAPITAL CASES~~

~~(a) Applicability~~

~~This Rule applies to all cases except those governed by Rule 4-343.~~

~~Cross reference: For procedures pertaining to collection of DNA samples from an individual convicted of a felony or a violation of Code, Criminal Law Article, §§6-205 or 6-206, see Code, Public Safety Article, §2-504.~~

~~(b)~~ (a) Statutory Sentencing Procedure

When a defendant has been found guilty of murder in the first degree and the State has given timely notice of intention to seek a sentence of imprisonment for life without the possibility of parole, ~~but has not given notice of intention to seek the death penalty,~~ the court shall conduct a sentencing proceeding, separate from the proceeding at which the defendant's guilt was adjudicated, as soon as practicable after

the trial to determine whether to impose a sentence of imprisonment for life or imprisonment for life without parole.

Cross reference: Code, Criminal Law Article, §§2-201, ~~2-202~~ ~~(b)(3)~~, 2-203, and 2-304.

~~(e)~~ (b) Judge

If the defendant's guilt is established after a trial has commenced, the judge who presided shall sentence the defendant. If a defendant enters a plea of guilty or nolo contendere before trial, any judge may sentence the defendant except that, the judge who directed entry of the plea shall sentence the defendant if that judge has received any matter, other than a statement of the mere facts of the offense, which would be relevant to determining the proper sentence. This section is subject to the provisions of Rule 4-361.

~~(d)~~ (c) Presentence Disclosures by the State's Attorney

Sufficiently in advance of sentencing to afford the defendant a reasonable opportunity to investigate, the State's Attorney shall disclose to the defendant or counsel any information that the State expects to present to the court for consideration in sentencing. If the court finds that the information was not timely provided, the court shall postpone sentencing.

~~(e)~~ (d) Notice and Right of Victim to Address the Court

(1) Notice and Determination

Notice to a victim or a victim's representative of proceedings under this Rule is governed by Code, Criminal Procedure Article, §11-104 (e). The court shall determine whether the requirements of that section have been satisfied.

(2) Right to Address the Court

The right of a victim or a victim's representative to address the court during a sentencing hearing under this Rule is governed by Code, Criminal Procedure Article, §11-403.

Cross reference: See Code, Criminal Procedure Article, §§11-103 (b) and 11-403 (e) concerning the right of a victim or victim's representative to file an application for leave to appeal under certain circumstances. See Code, Criminal Procedure Article, §11-103 (e) for the right of a victim to file a motion requesting restitution.

~~(f)~~ (e) Allocution and Information in Mitigation

Before imposing sentence, the court shall afford the defendant the opportunity, personally and through counsel, to make a statement and to present information in mitigation of punishment.

~~(g)~~ (f) Reasons

The court ordinarily shall state on the record its reasons for the sentence imposed.

Cross reference: For factors related to drug and alcohol abuse treatment to be considered by the court in determining an appropriate sentence, see Code, Criminal Procedure Article, §6-231. For procedures to commit a defendant who has a drug or alcohol dependency to a treatment program in the Department of Health and Mental Hygiene as a condition of release after conviction, see Code, Health General Article, §8-507.

~~(h)~~ (g) Credit for Time Spent in Custody

Time spent in custody shall be credited against a sentence pursuant to Code, Criminal Procedure Article, §6-218.

~~(i)~~ (h) Advice to the Defendant

(1) At the time of imposing sentence, the court shall cause the defendant to be advised of: (A) any right of appeal, (B) any right of review of the sentence under the Review of Criminal Sentences Act, (C) any right to move for modification or reduction of the sentence, (D) any right to be represented by counsel, and (E) the time allowed for the exercise of these rights.

(2) At the time of imposing a sentence of incarceration for a violent crime as defined in Code, Correctional Services Article, §7-101 and for which a defendant will be eligible for parole as provided in §7-301 (c) or (d) of the Correctional Services Article, the court shall state in open court the minimum time the defendant must serve for the violent crime before becoming eligible for parole or for conditional release under mandatory supervision pursuant to Code, Correctional Services Article, §7-501.

(3) The circuit court shall cause the defendant who was sentenced in circuit court to be advised that within ten days after filing an appeal, the defendant must order in writing a transcript from the court reporter.

Cross reference: Code, Criminal Procedure Article, §§8-102 - 8-109.

Committee note: Code, Criminal Procedure Article, §6-217 provides that the court's statement of the minimum time the defendant must serve for the violent crime before becoming eligible for parole is for informational purposes only and may not be considered a part of the sentence, and the failure of a court to comply with this requirement does not affect the legality or efficacy of the sentence imposed.

~~(j)~~ (i) Terms for Release

On request of the defendant, the court shall determine the defendant's eligibility for release under Rule 4-349 and the terms for any release.

~~(k)~~ (j) Restitution from a Parent

If restitution from a parent of the defendant is sought pursuant to Code, Criminal Procedure Article, §11-604, the State shall serve the parent with notice of intention to seek restitution and file a copy of the notice with the court. The court may not enter a judgment of restitution against the parent unless the parent has been afforded a reasonable opportunity to be heard and to present evidence. The hearing on parental restitution may be part of the defendant's sentencing hearing.

~~(l)~~ (k) Recordation of Restitution

(1) Circuit Court

Recordation of a judgment of restitution in the circuit court is governed by Code, Criminal Procedure Article, §§11-608 and 11-609 and Rule 2-601.

(2) District Court

Upon the entry of a judgment of restitution in the District Court, the Clerk of the Court shall send the written

notice required under Code, Criminal Procedure Article, §11-610 (e). Recordation of a judgment of restitution in the District Court is governed by Code, Criminal Procedure Article, §§11-610 and 11-612 and Rule 3-621.

Cross reference: For procedures pertaining to collection of DNA samples from an individual convicted of a felony or a violation of Code, Criminal Law Article, §§6-205 or 6-206, see Code, Public Safety Article, §2-504.

Source: This Rule is derived as follows:

~~Section (a) is derived from former Rule 772 a.~~

Section ~~(b)~~ (a) is new.

Section ~~(e)~~ (b) is derived from former Rule 772 b and M.D.R. 772 a.

Section ~~(d)~~ (c) is derived from former Rule 772 c and M.D.R. 772 b.

Section ~~(e)~~ (d) is new.

Section ~~(f)~~ (e) is derived from former Rule 772 d and M.D.R. 772 c.

Section ~~(g)~~ (f) is derived from former Rule 772 e and M.D.R. 772 d.

Section ~~(h)~~ (g) is derived from former Rule 772 f and M.D.R. 772 e.

Section ~~(i)~~ (h) is in part derived from former Rule 772 h and M.D.R. 772 g and in part new.

Section ~~(j)~~ (i) is new.

Section ~~(k)~~ (j) is new.

Section ~~(l)~~ (k) is new.

REPORTER'S NOTE

Chapter 156, Laws of 2013 (SB 276) repealed the death penalty. *Bellard v. State*, ___ Md. ___ (No. 72, September Term, 2016, filed March 31, 2017) has now resolved an ambiguity that had been created Chapter 156. Rule 4-342 is proposed to be amended by deleting language referring to the death penalty and a reference to the Code that has been repealed. The language "in non-capital cases" is deleted from the title of the Rule.

Section (a) is deleted, because it states that Rule 4-342 applies to all cases except those governed by Rule 4-343, which is proposed for deletion in its entirety. A cross reference after section (a) is moved to the end of the Rule.

The newly relettered section (a) (former section (b)) is amended by deleting the language "but has not given notice of intention to seek the death penalty," because, under section 4. of Chapter 156, any existing notice to seek the death penalty is considered withdrawn and replaced with an intention to seek life without the possibility of parole.

A cross reference after the newly relettered section (a) (former section (b)) is amended by deleting a reference to former Code, Criminal Law Article, §2-202, which has been repealed.

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

DELETE Rule 4-343, as follows:

~~Rule 4-343. SENTENCING - BIFURCATED PROCEDURE IN CAPITAL CASES~~

~~(a) Applicability~~

~~_____~~

~~(b) Statutory Sentencing Procedure; Bifurcation of Proceeding~~

~~_____~~

~~(c) Presentence Disclosures by the State's Attorney~~

~~_____~~

~~(d) Reports of Defendant's Experts~~

~~_____~~

~~(e) Judge~~

~~_____~~

~~(f) Notice and Right of Victim's Representative to Address
the Court or Jury~~

~~_____~~

~~(g) Allocution~~

~~_____~~

~~(h) Phase I of Sentencing Proceeding~~

~~_____~~

~~(i) Phase II of Sentencing Proceeding~~

~~.....~~

(j) Deletions from Phase II Form

.....

(k) Advice of the Judge

.....

(l) Report of Judge

.....

~~Source: This Rule is derived in part from the 2008 version of former Rule 4-343 and is in part new.~~

REPORTER'S NOTE

Chapter 156, Laws of 2013 (SB 276) repealed the death penalty. *Bellard v. State*, ___ Md. ___ (No. 72, September Term, 2016, filed March 31, 2017) has now resolved an ambiguity that had been created by Chapter 156. Rule 4-343, which provides the sentencing procedure in capital cases, is proposed for deletion in its entirety.

MARYLAND RULES OF PROCEDURE

TITLE 5- EVIDENCE

CHAPTER 600 - WITNESSES

AMEND Rule 5-606 by deleting subsection (c)(2), as follows:

Rule 5-606. COMPETENCY OF JUROR AS WITNESS

. . .

(c) "Verdict" Defined

For purposes of this Rule, "verdict" means ~~(1) a verdict returned by a trial jury or (2) a sentence returned by a trial jury in a sentencing proceeding conducted pursuant to law.~~

. . .

REPORTER'S NOTE

Chapter 156, Laws of 2013 (SB 276) repealed the death penalty, but created an ambiguity as to whether, after the State has given notice of intent to seek life imprisonment without the possibility of parole, a defendant who is convicted of first degree murder has the right to have a jury determine if that sentence is to be imposed. The Court of Appeals, in *Bellard v. State*, ___ Md. ___ (No. 72, September Term, 2016, filed March 31, 2017), resolved the ambiguity by holding that the defendant does not have such a right. As with all other criminal convictions under the laws of this State, the defendant's sentence is determined by the court, not by a jury.

With the resolution of the statutory ambiguity, the language of Rule 5-606 (c)(2) is superfluous and, therefore, is proposed to be deleted.

NOTE TO RULES COMMITTEE: At its August 11, 2016 meeting, the **Probate/Fiduciary Subcommittee** recommended adding a cross reference to the Maryland Fiduciary Access to Digital Assets Act after subsection (a)(1) of Rule 10-108. This was inadvertently omitted when Rule 10-108 was considered and approved by the Rules Committee at its May 2017 meeting. The proposed addition is shown in boldfaced type on page 3.

MARYLAND RULES OF PROCEDURE

TITLE 10- GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 10-108 by adding the language "e-mail address, if available" to subsection (a)(1)(C); by adding the language "date by which proof of bond shall be filed with the court" to subsection (a)(1)(E); by adding a cross reference after subsection (a)(1)(E); by adding a cross reference after subsection (a)(1)(F); in subsection (a)(1)(G), by deleting language referring to the order reciting the powers and duties of the guardian; by adding a new section (a)(1)(H) providing that, with certain exceptions, the order shall direct a guardian other than a public guardian to complete certain orientation and training programs; by adding a Committee note after subsection (a)(1)(H); by adding to a cross reference after subsection (a)(1); by adding a new subsection (a)(2) pertaining to confidential information; by adding a cross reference after subsection (a)(2); by adding a Committee note after subsection (a)(2); by deleting the language of section (b) providing that the court may issue letters of guardianship and by adding in its

place language providing that an order constitutes letters of guardianship as it is used by certain Code provisions; by adding to the cross reference after section (b); and by making stylistic changes, as follows:

Rule 10-108. ORDERS

(a) Order Appointing Guardian

(1) Generally

An order appointing a guardian shall ~~state~~:

~~(1)~~ (A) Whether state whether the guardianship is of the property, ~~or~~ the person, or both;

~~(2)~~ (B) The state the name, sex, and date of birth of the minor or disabled person;

~~(3)~~ (C) The state the name, address, ~~and~~ telephone number, and e-mail address, if available, of the guardian;

~~(4)~~ (D) Whether state whether ~~or not~~ the appointment of a guardian is solely ~~as a result of~~ due to a physical disability, and if not, the reason for the guardianship;

~~(5)~~ (E) The state (i) the amount of the guardian's bond, ~~or that the~~ a bond is waived and (ii) the date by which proof of any bond shall be filed with the court;

Cross reference: See Rule 10-702 (a), requiring the bond to be filed before the guardian commences the performance of any fiduciary duties.

~~(6)~~ (F) The state the date ~~upon~~ by which any annual report of the guardian shall be filed; and

Cross reference: See Rule 10-706 (b).

~~(7)~~ (G) The state the specific powers and duties of the guardian and any limitations on those powers or duties. The order shall recite the powers and duties of the guardian either expressly or by referring to the specific paragraphs sections or subsections of an applicable statute containing those powers and duties; and

(H) except as to a public guardian, unless the guardian has already satisfied the requirement or the court orders otherwise, direct the guardian to complete an orientation program and training in conformance with the applicable Guidelines for Court-Appointed Guardians attached as an Appendix to the Rules in this Title.

Committee note: An example of an appointment as to which waiver of the orientation and training requirements of subsection (a)(1)(H) may be appropriate is the appointment of a temporary guardian for a limited purpose or specific transaction.

Cross reference: Code, Estates and Trusts Article, §§13-201 (b) and (c), 13-213, 13-214, ~~15-102~~, 13-705 (b), and 13-708, and 15-102 and Title 15, Subtitle 6 (Maryland Fiduciary Access to Digital Assets Act).

(2) Confidential Information

Information in the order or in papers filed by the guardian that is subject to being shielded pursuant to the Rules in Title 16, Chapter 900 shall remain confidential, but, in its order, the court may permit the guardian to disclose that information when necessary to the administration of the guardianship, subject to a requirement that the information not

be further disclosed without the consent of the guardian or the court.

Committee note: Disclosure of identifying information to financial institutions and health care providers, for example, may be necessary to further the purposes of the guardianship.

Cross reference: See Rule 16-907 (f) and (j) and Rule 16-908 (d).

(b) Letters of Guardianship

~~A court may issue letters of guardianship of the property which shall contain a list of any restrictions on the powers of the guardian.~~ An order appointing a guardian entered under this Rule constitutes "letters of guardianship" as that term is used in Code, Estates and Trusts Article.

Cross reference: Code, Estates and Trusts Article, §§13-215 and 13-217, and 13-219.

(c) Orders Assuming Jurisdiction over a Fiduciary Estate
Other than a Guardianship

An order assuming jurisdiction over a fiduciary estate other than a guardianship shall state whether the court has assumed full jurisdiction over the estate. If it has not assumed full jurisdiction over the estate or if jurisdiction is contrary to the provisions in the instrument, the order shall state the extent of the jurisdiction assumed. The order shall state the amount of the fiduciary's bond or that the bond is waived.

(d) Modifications

The court may modify any order of a continuing nature in a guardianship or fiduciary estate upon the petition of an interested person or on its own initiative, and after notice and opportunity for hearing.

Source: This Rule is derived as follows:

Section (a) is derived in part from Code, Estates and Trusts Article, §§13-208 and 13-708 and is in part new.

Section (b) is ~~derived from former Rule V77 e 3~~ new.

Section (c) is derived from former Rules V71 f 1 and f 2.

Section (d) is derived in part from former Rule R78 b and is in part new.

REPORTER'S NOTE

In Rule 10-108, subsection (a)(1)(C) is proposed to be amended so that the order appointing the guardian contains the guardian's e-mail address. This is important in counties in which MDEC is operating and is helpful in other counties as well. In subsection (a)(1)(D), the words "as a result of" are replaced by "due to." Language requiring the date by which proof of bond must be filed is added to subsection (a)(1)(E). A cross reference pertaining to the bond requirement is added after the subsection. Language that is duplicative or obsolete is deleted from subsection (a)(1)(G). Subsection (a)(1)(H) is added to comply with the proposed new Guidelines for Court-Appointed Guardians. A reference to the Maryland Fiduciary Access to Digital Assets Act is added to the cross reference after subsection (a)(1).

Subsection (a)(2) is added to conform to the Rules in Title 16, Chapter 900, with the addition of a provision permitting disclosure by the guardian when necessary, subject to a prohibition against further disclosure by the recipient of the information without permission of the guardian or the court. Cross references to specific Rules in that Chapter reflect the revised numbering proposed in the 193rd Report of the Rules Committee, currently pending before the Court of Appeals. The Committee note after subsection (a)(2) is added to address the Work Group's concern that being unable to disclose identifying information would interfere with the guardian's ability to administer the guardianship.

There had been a suggestion to delete section (b), because courts do not use letters of guardianship, but the Committee

believes that since "letters of guardianship" are still referred to in the Code, it would be better to provide in the Rule that an order appointing a guardian constitutes letters of guardianship.

NOTE TO RULES COMMITTEE: Amendments to Rule 10-112 were approved by the Committee at the May 2017 meeting. To conform to Chapter 666, Laws of 2017, references to "confinement" are deleted from Rules 10-112 and 10-103.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 10-112 by changing the word "jurisdiction" to the word "county" in Section 2. and by adding a "NOTE" pertaining to the use of the word "county"; by adding language and boxes to check pertaining to an alleged disabled person who may be a beneficiary of the Veterans Administration; by adding language to Section 6. pertaining to a request for certain information about a conviction of a crime; by changing the word "an" to the word "any" in Section 7.; in Section 8., by adding the words "and e-mail addresses, if known," by updating a cross reference, and by changing the term "Local Commission on Aging and Retirement Education" to "Director of the Local Area Agency on Aging"; by deleting the word "confinement" from Section 9.; by deleting the requirement at the end of the form that a facsimile number be provided; and by making stylistic changes, as follows:

Rule 10-112. PETITION FOR GUARDIANSHIP OF ALLEGED DISABLED PERSON

A petition for guardianship of an alleged disabled person

shall be substantially in the following form:

[CAPTION]

In the Matter of

In the Circuit Court for

(Name of Alleged
Disabled Individual)

(County)

(docket reference)

PETITION FOR GUARDIANSHIP OF
ALLEGED DISABLED PERSON

Note: This form is to be used where the subject of the petition is an individual, regardless of the individual's age, who has a disability other than minority.

[] Guardianship of
Person

[] Guardianship of
Property

[] Guardianship of
Person and
Property

The petitioner, _____, _____, whose
(name) (age)

address is _____, and whose

telephone number is _____, represents to

the court that:

1. The alleged disabled person _____,
age _____, born on the _____ day of _____,
(month) (year)
a [] male or [] female resides at _____

2. If the alleged disabled person does not reside in the
~~jurisdiction~~ county in which this petition is filed, ~~then~~ state

the place in this ~~jurisdiction~~ county where the alleged disabled person is currently located _____

NOTE: For purposes of this Form, "county" includes Baltimore City.

3. The relationship of petitioner to the alleged disabled person is _____.

4. The alleged disabled person

is a beneficiary of the Veterans Administration and the guardian may expect to receive benefits from that Administration.

is not a beneficiary of the Veteran's Administration.

~~4.~~ 5. Complete Section 4. ~~5.~~ if the petitioner is asking the court to appoint the petitioner as the guardian.

(Check only one of the following boxes)

I have not been convicted of a crime listed in Code, Estates and Trusts Article, §11-114, ~~or~~ .

I was convicted of such a crime, namely _____

_____.

The conviction occurred in _____ in the _____
(year)

_____, but the following good cause
(name of court)

exists for me to be appointed as guardian: _____

~~5.~~ 6. Complete Section ~~5.~~ 6. if the petitioner is asking the court to appoint an individual other than the petitioner as the guardian.

The name of the prospective guardian is _____
_____ and that individual's age is _____.
The relationship of that individual to the alleged disabled person is _____.

(Check only one of the following boxes)

_____ has not been convicted
(Name of prospective guardian)
of a crime listed in Code, Estates and Trusts Article, §11-114.

_____ was convicted of such a crime, namely _____
_____. The conviction occurred in _____
(year) in the _____, but the
(Name of court)

following good cause exists for the individual to be appointed as guardian: _____
_____.

~~6.~~ 7. If the alleged disabled person resides with petitioner, then state the name and address of ~~an~~ any additional person on whom initial service shall be made: _____

~~7.~~ 8. The following is a list of the names, addresses, ~~and~~ telephone numbers, and e-mail addresses, if known of all interested persons (see Code, Estates and Trusts Article, §13-101 ~~(j)~~ (k)):

	<u>Name</u>	<u>Address</u>	<u>Telephone Number</u>	<u>E-mail Address (if known)</u>
Person or Health Care Agent Designated in Writing by Alleged Disabled Person:	_____	_____	_____	_____
Spouse:	_____	_____	_____	_____
Parents:	_____	_____	_____	_____
	_____	_____	_____	_____
Adult Children:	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____
Adult Grandchildren*:	_____	_____	_____	_____
	_____	_____	_____	_____
Siblings*:	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____

Any Other Heirs
at Law: _____

Guardian
(If appointed): _____

Any Person
Holding a Power
of Attorney of
the Alleged Disabled
Person: _____

Alleged
Disabled
Person's
Attorney: _____

Any Other Person
Having Assumed
Responsibility for
the Alleged Disabled
Person: _____

Any Government
Agency Paying Benefits
to or for the Alleged
Disabled Person: _____

Any Person Having an
Interest in the Property
of the Alleged Disabled
Person: _____

All Other Persons
Exercising Control over
the Alleged Disabled
Person or the Person's
Property: _____

A Person or Agency Eligible to Serve as Guardian of the Person of the Alleged Disabled Person (Choose A or B below):

A. ~~Local Commission on Aging and Retirement Education~~ Director of the Local Area Agency on Aging (if Alleged Disabled Person is Age 65 or over): _____

B. Local Department of Social Services (if Alleged Disabled Person is Under Age 65): _____

* Note: Adult grandchildren and siblings need not be listed unless there is no spouse and there are no parents or adult children.

~~8.~~ 9. The names and addresses of the persons with whom the alleged disabled person resides or has resided over the past five years and the ~~length of time~~ approximate dates of the alleged disabled person's residence with each person are as follows:

<u>Name</u>	<u>Address</u>	<u>Approximate Dates</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

~~9.~~ 10. A brief description of the alleged disability and how it affects the alleged disabled person's ability to function is

as follows:

~~10.~~ 11. (a) Guardianship of the Person is sought because

(Name of Alleged Disabled Person)

cannot make or communicate responsible decisions concerning health care, food, clothing, or shelter, because of mental disability, disease, habitual drunkenness, addiction to drugs, or other addictions. State the relevant facts:

(b) Describe less restrictive alternatives that have been attempted and have failed (see Code, Estates and Trusts Article, §13-705 (b)):

~~11.~~ 12. (a) Guardianship of the Property is sought because

(Name of Alleged Disabled Person) cannot manage property and affairs effectively because of physical or mental

disability, disease, habitual drunkenness, addiction to drugs or other addictions, imprisonment, compulsory hospitalization,

~~confinement~~, detention by a foreign power, or disappearance.

State the relevant facts:

(b) Describe less restrictive alternatives that have been attempted and have failed (see Code, Estates and Trusts Article, §13-201):

~~12.~~ 13. If this Petition is for Guardianship of the Property, the following is the list of all the property in which the alleged disabled person has any interest including an absolute interest, a joint interest, or an interest less than absolute (e.g. trust, life estate):

<u>Property</u>	<u>Location</u>	<u>Value</u>	<u>Sole Owner, Joint Owner (specific type), Life Tenant, Trustee, Custodian, Agent, etc.</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

~~13.~~ 14. The petitioner's interest in the property of the alleged disabled person listed in ~~12.~~ 13. is _____

~~14.~~ 15. If a guardian or conservator has been appointed for the alleged disabled person in another proceeding, the name and address of the guardian or conservator and the court that appointed the guardian or conservator are as follows:

_____	_____
Name	Address

Court	

~~15.~~ 16. All other proceedings regarding the alleged disabled person (including criminal) are as follows:

~~16.~~ 17. All exhibits required by the Instructions below are attached.

WHEREFORE, Petitioner requests that this court issue an order to direct all interested persons to show cause why a guardian of the

[] person [] property [] person and property of the alleged disabled person should not be appointed, and (if applicable) _____ should not
(Name of prospective guardian)

be appointed as the guardian.

Attorney's Signature

Petitioner's Name

Attorney's Name

Address

Telephone Number

~~Facsimile Number~~

E-mail Address

Petitioner solemnly affirms under the penalties of perjury that the contents of this document are true to the best of Petitioner's knowledge, information, and belief.

Petitioner's Name

Petitioner's Signature

INSTRUCTIONS

1. The required exhibits are as follows:
 - (a) A copy of any instrument nominating a guardian;
 - (b) A copy of any power of attorney (including a durable power of attorney for health care) which the alleged disabled person has given to someone;
 - (c) Signed and verified certificates of two physicians licensed to practice medicine in the United States who have examined the alleged disabled person, or of one

licensed physician, who has examined the alleged disabled person, and one licensed psychologist or certified clinical social worker, who has seen and evaluated the alleged disabled person. An examination or evaluation by at least one of the health care professionals must have occurred within 21 days before the filing of the petition (see Code, Estates and Trusts Article, § 13-103 and §1-102 (a) and (b)).

- (d) If the petition is for the appointment of a guardian of an alleged disabled person who is a beneficiary of the Department of Veterans Affairs, then in lieu of the certificates required by (c) above, a certificate of the Secretary of that Department or an authorized representative of the Secretary setting forth the fact that the person has been rated as disabled by the Department.

- 2. Attach additional sheets to answer all the information requested in this petition, if necessary.

Source: This Rule is new.

REPORTER'S NOTE

Several changes to the Petition for Guardianship of an Alleged Disabled Person form set forth in Rule 10-112 are proposed. The changes track the changes to Rule 10-111, Petition for Guardianship of a Minor, and are proposed for the reasons stated in the Reporter's note to that Rule. In addition, in Section 8., the name of the "Local Commission on Aging and Retirement Education" is corrected to "Director of the Local Area Agency on Aging." In Section 9., deletion of the word "confinement" conforms the Rule to Chapter 666, Laws of 2017 (HB 81).

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 10-103 by deleting the word "confinement" from subsection (b)(2), as follows:

Rule 10-103. DEFINITIONS

. . .

(b) Disabled Person

(1) In connection with a guardianship of the person, "disabled person" means a person, other than a minor, who, because of mental disability, disease, habitual drunkenness, or addiction to drugs, has been adjudged by a court to lack sufficient understanding or capacity to make or communicate responsible decisions concerning himself or herself, such as provisions for health care, food, clothing, or shelter, and who, as a result of this inability, requires a guardian of the person.

(2) In connection with a guardianship of property, "disabled person" means a person, other than a minor, (A) who has been adjudged by a court to be unable to manage his or her property and affairs effectively because of physical or mental disability, disease, habitual drunkenness, addiction to drugs, imprisonment, compulsory hospitalization, ~~confinement~~, detention

by a foreign power, or disappearance, (B) who has or may be entitled to property or benefits that require proper management, and (C) who, as a result of this inability, requires a guardian of the property.

. . .

REPORTER'S NOTE

Chapter 666, Laws of 2017 (HB 81) repealed "confinement" as a condition of disability for purposes of guardianship proceedings to protect an individual's property. The proposed amendment to Rule 10-103 (b)(2) conforms the Rule to the statutory change.

NOTE TO RULES COMMITTEE: The Department of Family Administration suggested that the phrase "and orphans' courts" be deleted from the proposed amendments to Rules 10-202 and 10-301 that were approved by the Rules Committee at the May 2017 meeting because certificates of incapacity are only required for guardianship of alleged disabled persons and would not be filed in an orphans' court.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 200 - GUARDIAN OF PERSON

AMEND Rule 10-202 (a) to delete language pertaining to the contents of certain certificates, to add a requirement that each certificate be substantially in the form approved by the State Court Administrator, and to add certain requirements pertaining to posting and availability of forms, as follows:

Rule 10-202. CERTIFICATES AND CONSENTS

(a) Certificates

(1) Generally Required

Except as provided in subsection (a)(4) of this Rule, if guardianship of the person of a disabled person is sought, the petitioner shall file with the petition signed and verified certificates of (A) two physicians licensed to practice medicine in the United States who have examined the disabled person, or (B) one licensed physician who has examined the disabled person and one licensed psychologist or certified clinical social worker who has seen and evaluated the disabled person. An

examination or evaluation by at least one of the health care professionals shall have been within 21 days before the filing of the petition.

(2) ~~Contents~~ Form

Each certificate required by subsection (a)(1) of this Rule shall state: ~~(A) the name, address, and qualifications of the person who performed the examination or evaluation, (B) a brief history of the person's involvement with the disabled person, (C) the date of the last examination or evaluation of the disabled person, and (D) the person's opinion as to: (i) the cause, nature, extent, and probable duration of the disability, (ii) whether institutional care is required, and (iii) whether the disabled person has sufficient mental capacity to understand the nature of and consent to the appointment of a guardian~~ be substantially in the form approved by the State Court Administrator, posted on the Judiciary website, and available in the offices of the clerks of the circuit courts ~~[and orphans' courts]~~.

(3) Absence of Certificates

(A) Refusal to Permit Examination

If the petition is not accompanied by the required certificate and the petition alleges that the disabled person is residing with or under the control of a person who has refused to permit examination by a physician or evaluation by a

psychologist or certified clinical social worker, and that the disabled person may be at risk unless a guardian is appointed, the court shall defer issuance of a show cause order. The court shall instead issue an order requiring that the person who has refused to permit the disabled person to be examined or evaluated appear personally on a date specified in the order and show cause why the disabled person should not be examined or evaluated. The order shall be personally served on that person and on the disabled person.

(B) Appointment of Health Care Professionals by Court

If the court finds after a hearing that examinations are necessary, it shall appoint two physicians or one physician and one psychologist or certified clinical social worker to conduct the examinations or the examination and evaluation and file their reports with the court. If both health care professionals find the person to be disabled, the court shall issue a show cause order requiring the alleged disabled person to answer the petition for guardianship and shall require the petitioner to give notice pursuant to Rule 10-203. Otherwise, the petition shall be dismissed.

(4) Beneficiary of the Department of Veterans Affairs

If guardianship of the person of a disabled person who is a beneficiary of the United States Department of Veterans Affairs is being sought, the petitioner shall file with the petition, in lieu of the two certificates required by subsection

(a)(1) of this Rule, a certificate of the Secretary of that Department or an authorized representative of the Secretary stating that the person has been rated as disabled by the Department in accordance with the laws and regulations governing the Department of Veterans Affairs. The certificate shall be prima facie evidence of the necessity for the appointment.

. . .

REPORTER'S NOTE

To enhance uniformity of practice and to provide judges with specific, detailed information pertaining to examinations and evaluations of alleged disabled persons, the Guardianship Work Group of the Domestic Law Committee of the Judicial Council is developing standardized forms for the certificates required by subsection (a)(1) of Rule 10-202. Because the professional credentials, the nature of the examination or evaluation the individual is licensed to perform, etc. are difference as to each type of professional [physician, psychologist, or social worker] authorized to perform the examination or evaluation, three separate forms are being developed.

A proposed amendment to subsection (a)(2) of the Rule replaces language pertaining to the contents of the certificate with the requirement that each certificate be "substantially in the form approved by the State Court Administrator, posted on the Judiciary website, and available in the offices of the clerks of the circuit courts." The proposed language follows the format of a recently adopted amendment to Rule 4-504 (b).

Rule 10-301 refers to the certificates required by Rule 10-202. In conjunction with the proposed amendment to Rule 10-202, a Committee note following Rule 10-301 (d) also is proposed.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 300 - GUARDIAN OF PROPERTY

AMEND Rule 10-301 by adding a Committee note following section (d), as follows:

Rule 10-301. PETITION FOR APPOINTMENT OF A GUARDIAN OF PROPERTY

. . .

(d) Required Exhibits

The petitioner shall attach to the petition as exhibits (1) a copy of any instrument nominating a guardian; (2) (A) the certificates required by Rule 10-202, or (B) if guardianship of the property of a disabled person who is a beneficiary of the United States Department of Veterans Affairs is being sought, in lieu of the requirements of Rule 10-202, a certificate of the Secretary of that Department or an authorized representative of the Secretary stating that the person has been rated as disabled by the Department in accordance with the laws and regulations governing the Department of Veterans Affairs; and (3) if the petition is for the appointment of a guardian for a minor who is a beneficiary of the Department of Veterans Affairs, a certificate of the Secretary of that Department or any authorized representative of the Secretary, in accordance with Code, Estates and Trusts Article, §13-802.

Committee note: Rule 10-202 (a)(1) requires that a certificate of a physician, psychologist, or social worker be substantially in the form approved by the State Court Administrator, posted on the Judiciary website, and available in the offices of the clerks of the circuit courts ~~{and orphans' courts}~~.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 10-202.

MARYLAND RULES OF PROCEDURE
TITLE 15 - OTHER SPECIAL PROCEEDINGS
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MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1400 - LIENS FOR UNPAID WAGES

ADD new Rule 15-1401, as follows:

Rule 15-1401. APPLICABILITY; DEFINITIONS

(a) Applicability

This Chapter applies to the establishment of liens for unpaid wages governed by Code, Labor and Employment Article, Title 3, Subtitle 11. To the extent that the Commissioner of Labor and Industry, acting pursuant to Code, Labor and Employment Article, §3-1109, acts on behalf of an employee, the Commissioner shall be regarded as the employee for purposes of filing, sending, and serving notices, pleadings, and other papers.

(b) Definitions

In this Chapter, (1) the definitions in Code, Labor and Employment Article, §3-1101 apply except as expressly otherwise provided or as necessary implication requires, and (2) "LE" means the Labor and Employment Article of the Maryland Code.

Committee note: LE §3-1101 (b) defines "employer" as "includ[ing] a person who acts directly or indirectly in the interest of another employer with an employee." That language also appears in the definition of "employer" in the Federal Fair Labor Standards Act (29 U.S.C. §203 (d)), the Maryland Wage and Hour Law (LE §3-401(b)), the Maryland Equal Pay Act (LE §3-301 (b)(2)), and the Maryland adoption, medical, and parental leave laws (LE §§3-801, 3-802, and 3-1201). The scope of that provision is defined, with respect to both multiple employers

and corporate officers and supervisory personnel, in Federal and Maryland case law and regulations. See, for example, *McFeeley v. Jackson Street Entertainment*, 825 F.3d 235 (4th Cir. 2016); *Perez v. Sanford-Orlando Kennel Club*, 515 F.3d 1150 (11th Cir. 2008); *Newell v. Runnels*, 407 Md. 578 (2009); 29 C.F.R. §825.104. Under those interpretations, depending on the facts, it is possible that more than one entity as well as certain officers or supervisory employees of an entity may be regarded as employers or additional employers for purposes of the unpaid wages lien law. Each such person against whom a lien is sought must be separately identified in, and served with, all notices, pleadings, and other papers affecting the person.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1400 - LIENS FOR UNPAID WAGES

ADD new Rule 15-1402, as follows:

Rule 15-1402. NOTICE TO EMPLOYER - REQUIREMENTS

(a) Generally

To establish a lien for unpaid wages due and owing to an employee under LE Title 3, Subtitle 11, the employee shall serve on the employer a Notice to Employer of Intent to Claim Lien for Unpaid Wages that (1) complies with the requirements of section (b) of this Rule and with regulations adopted by the Commissioner of Labor and Industry, and (2) is under oath. The oath shall be in one of the forms set forth in Rule 1-304[, **except that an affidavit as to the amount of unpaid wages due and owing shall be made upon personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit**].

Query to Rules Committee: Should the affidavit requirement pertaining to the amount of unpaid wages due and owing be similar to the form of affidavit required in summary judgment proceedings [Rule 2-501 (c)], or is the general form of affidavit [Rule 1-304 - "Generally"] sufficient for all statements required to be included in the Notice?

(b) Contents

In addition to any other information required by regulations of the Commissioner of Labor and Industry, the notice shall contain (1) the name, address, telephone number (if any), and e-mail address (if any) of the employee seeking the lien; (2) the name and address of the employer against whose property a lien is sought; (3) the dates of the employee's employment by the employer; (4) the dates for which wages are due and owing but were not paid; (5) the basis for the claim that wages were due and owing by the employer but were not paid; (6) the monetary amount of the lien sought; (7) a description of the real or personal property, or both, of the employer against which the lien is sought adequate to identify the property, the name of the owner, and the location of the property; and (8) notice to the employer of the employer's right to dispute the lien by filing a complaint in the circuit court for the county in which any of the listed property is located within 30 days after service of the notice.

Committee note: LE §3-1102 (3) requires that the notice to the employer "contain[s] the information required by the Commissioner of Labor and Industry under §3-1110 of this Subtitle to provide the employer with adequate notice of the wages claimed and the property against which the lien for unpaid wages is sought." The list in section (b) is taken almost verbatim from COMAR 09.12.39.02B.

(c) Service

The notice shall be personally served by any competent individual over the age of 18 years **[other than the employee]** on the employer pursuant to Rules 2-121 and 2-124, except that

service may be made on the employer at the employer's place of business. Service shall be made within the period of limitations prescribed in Code, Courts Article §5-101.

Query to Rules Committee: May the employee serve the Notice? Rule 2-123 (a), pertaining to service of process, prohibits service by a party. Proposed new Rule 15-1402 (c), however, pertains to service of a notice, rather than service of process. If the employee is permitted to serve the notice, a Committee note distinguishing service of the notice from service of process could be added to the Rule, as follows:

Committee note: Although Rule 2-123 (a) prohibits service of process by a party, service of a notice pursuant to section (c) of this Rule may be made by any competent individual over the age of 18 years, including the employee.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE
TITLE 15 - OTHER SPECIAL PROCEEDINGS
CHAPTER 1400 - LIENS FOR UNPAID WAGES

ADD new Rule 15-1403, as follows:

Rule 15-1403. RIGHT OF EMPLOYER TO CONTEST PROPOSED LIEN;
PROCEDURE; CONSEQUENCE OF FAILURE TO CONTEST

(a) Right to Contest Lien

Within 30 days after the employer is served with the notice pursuant to Rule 15-1402, the employer may contest the proposed lien by filing a complaint in the circuit court for any county where any of the property identified in the employee's notice is located.

(b) Requirements of Complaint

A complaint shall include or be accompanied by:

(1) a copy of the notice that was served on the employer in accordance with Rule 15-1402;

(2) The date that the notice was served on the employer;

(3) the names and addresses of the employer and employee named in the Notice of Intent to Claim Lien for Unpaid Wages;

(4) an explanation of why the wages claimed by the employee are not due and owing by the employer;

(5) a statement of any other defense to the proposed lien for unpaid wages;

(6) a statement of whether the employer has an ownership interest in the property identified in the notice and the nature of the interest;

(7) an affidavit containing a statement of facts that support any defenses raised;

(8) a description of supporting documents with the supporting documents attached;

(9) if the employer wants a hearing, a separate request for hearing in bolded lettering at or near the caption of the complaint;

(10) a statement that within 10 days after service of the complaint, the employee may file (A) an answer to the complaint, (B) a motion to dismiss the complaint, or (C) a withdrawal of the Notice of Intent to Claim Unpaid Wages and may request a hearing as part of a response or in a separate document; and

(11) any other statement or information required by regulation of the Commissioner of Labor and Industry adopted pursuant to Code, LE §§3-1104 and 3-1110.

(c) Service

The complaint shall be served on the employee pursuant to Rule 2-121.

(d) Response by Employee

Within ten days after being served with the complaint, the employee may file (1) an answer to the complaint, (2) a motion to dismiss the complaint, or (3) a withdrawal of the

Notice of Intent to Claim Lien for Unpaid Wages and may request a hearing as part of a response or in a separate document. The court may not enter an order of default based upon an employee's failure to file a timely response to the complaint.

QUERY TO RULES COMMITTEE: Should a counterclaim by the employee -- or additional claims by the employer -- be expressly permitted or expressly prohibited in a wage lien action? Permitting such claims would allow all disputes between the parties to be decided in a single action, but could cause delays beyond the "45-day" decision deadline in Code, LE §3-1103 (d) and result in a more complicated procedure than the statute contemplates. Prohibiting such claims could result in multiple actions between the parties, motions for consolidation of those actions, and collateral estoppel issues. As drafted, Rule 15-1404 neither permits nor prohibits counterclaims and additional claims. Instead, subsection (g)(3) requires the court to enter an order in accordance with the court's case management plan if any issues remain open after determination of the lien. Is this "middle ground" sufficient?

(e) Hearing

If a request for a hearing is filed by the employer or employee, the court shall hold a hearing no later than 30 days after the earliest of service of a complaint that includes a request or the filing of a timely request by the employee.

(f) Determination

Within 45 days after service of the complaint, the circuit court shall determine whether to issue an order establishing a lien for unpaid wages in accordance with LE §3-1103. The employee has the burden of proof to establish the employee's right to the lien based a preponderance of the evidence. If there are any issues raised by either party the resolution of which is not necessary to the determination of

whether a lien should be established or the amount thereof, the court may defer determination of those issues.

DRAFTER'S NOTE: The Code, §3-1103 (d) requires a decision by the court "within 45 days after the date on which the complaint was filed" but fails to indicate a consequence for failure to meet that deadline. A decision may not be possible or feasible within 45 days from filing if there is any delay in serving the employee, especially if either party requests a hearing. There appear to be two ways to deal with this problem, each involving a departure from the statute. One is to have the 45 days date from service of the complaint rather than its filing; the other is to allow the court to postpone a decision upon a showing of good cause.

Because a time requirement for a judicial decision involves practice and procedure in the courts, the Court of Appeals has the power under Art. IV, §18 of the Md. Constitution to alter that deadline by Rule. The Court rarely exercises its power to supersede statutes, but there may be a need to do so in this instance.

(g) Order

(1) In Favor of Employer

If the court determines that the employee is not entitled to a lien in any amount for unpaid wages, it shall enter an order so stating. If the court determines that the employee's effort to establish a lien for unpaid wages was frivolous or made in bad faith, the court may award court costs and reasonable attorney's fees to the employer.

(2) In Favor of Employee

If the court determines that the employee is entitled to a lien in any amount, it shall enter an order (A) establishing the lien, (B) stating the amount of the lien and identifying each item of property that is subject to the lien, and (C)

awarding such other relief as the court finds appropriate,
including a stay of enforcement.

Cross reference: Rule 15-1403 (g)(2) is derived, in part, from
LE §3-1103 (d)(2).

(3) Determination of Other Issues

If determination of the lien is not dispositive of all
issues, the order shall direct that those issues be resolved in
accordance with the court's case management plan.

(h) Consequence of Failure to File Timely Complaint

If the employer fails to file a timely complaint pursuant
to section (a) of this Rule, the lien is established and the
employee may record a Wage Lien Statement pursuant to Rule 15-
1404.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE
TITLE 15 - OTHER SPECIAL PROCEEDINGS
CHAPTER 1400 - LIENS FOR UNPAID WAGES

ADD new Rule 15-1404, as follows:

Rule 15-1404. FILING AND RECORDING OF WAGE LIEN STATEMENTS

(a) Generally

If the court issues an order pursuant to Rule 15-1403 establishing a lien or if the employer fails to file a complaint within 30 days after service of the notice served pursuant to LE §15-1402, the employee may file for recording a Wage Lien Statement as prescribed in this Rule.

(b) Time for Filing

A Wage Lien Statement shall be filed within 180 days after (1) entry of an order issued pursuant to Rule 15-1403 (g)(2), or (2) if the employer failed to file a timely complaint pursuant to Rule 15-1403 (h), the thirtieth day following service of the Notice to Employer of Intent to Claim Wage Lien.

(c) Lien Against Real Property

A Wage Lien Statement that includes a lien against real property shall be in the form prescribed by the Commissioner of Labor and Industry and shall be filed with the Clerk of the Circuit Court for the county in which any portion of the property is located. The lien shall be recorded among the land records of the county.

Cross reference: See LE §3-1105 (c)(1) and COMAR 09.12.39.04.

(d) Lien Against Personal Property

A Wage Lien Statement that includes a lien against personal property shall be filed in the same manner, form, and place as a financing statement under Code, Commercial Law Article, Title 9, Subtitle 5.

Committee note: Section 9-501 of the Commercial Law Article requires financing statements to be filed with the State Department of Assessments and Taxation. Note §§9-509, 9-516, and 9-526 with respect to requirements that apply to the acceptance of financing statements.

(e) Priority

A lien for unpaid wages recorded under this Rule shall be considered a secured claim that has priority (1) if the lien was established by a court order pursuant to Rule 15-1403, from the date the order was docketed, or (2) if no complaint disputing the claim was filed, from the date the employee filed the Wage Lien Statement for recording.

Cross reference: See LE §3-1105 (f) providing constructive notice of an unpaid wage lien from the date the Wage Lien Statement is recorded.

MARYLAND RULES OF PROCEDURE
TITLE 15 - OTHER SPECIAL PROCEEDINGS
CHAPTER 1400 - LIENS FOR UNPAID WAGES

ADD new Rule 15-1405, as follows:

Rule 15-1405. EXTINGUISHMENT OR RELEASE OF LIEN

(a) Extinguishment

If an employee fails to record a Wage Lien Statement within 180 days after the lien for unpaid wages is established, the lien shall be extinguished without prejudice.

(b) Release

If payment is made, or a bond is filed, for the full amount of the lien for unpaid wages, the employee shall file a release of the lien.

Query: Where is a bond filed and how is it released?

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE
TITLE 15 - OTHER SPECIAL PROCEEDINGS
CHAPTER 1400 - LIENS FOR UNPAID WAGES

ADD new Rule 15-1406, as follows:

Rule 15-1406. ENFORCEMENT OF LIEN

(a) Manner of Enforcement

Upon the entry of an order establishing a lien pursuant to Rule 15-1403 (g)(2) or a confirmatory order pursuant to section (b) of this Rule, the employee may enforce the lien in the manners set forth in Rules 2-641 through 2-647 or 3-641 through 3-647, as appropriate, except that the lien may be enforced only upon the property specified in the order and provided that the lien has not been extinguished pursuant to Rule 15-1404 (b)(2). Waiver of prepayment of costs for the enforcement proceeding is governed by Rule 1-325.

Cross reference: See LE §3-1106.

(b) Order Confirming Lien Established Pursuant to Rule 15-1403 (h)

(1) Generally

Upon the establishment and continued existence of a lien pursuant to Rule 15-1403 (h) through the timely filing of a Wage Lien Statement after the failure of the employer to file a timely complaint to contest the proposed lien, the employee may

enforce the lien in the manner provided in section (a) of this Rule after obtaining a confirmatory order pursuant to this section.

(2) Petition for Confirmatory Order

(A) Generally

The employee may seek an order confirming the lien by filing a petition for such an order. Unless prepayment of costs is waived pursuant to Rule 1-325, the petition shall be accompanied by a filing fee in an amount equal to the fee for filing a garnishment proceeding in the court in which the petition is filed.

(B) Venue

If the petition seeks a confirmatory order enforcing the lien against real property, the petition shall be in the circuit court for the county where any part of the real property identified in the Wage Lien Statement is located. If the petition seeks a confirmatory order enforcing the lien against personal property, the petition shall be filed in the circuit court for the county where the property identified in the Wage Lien Statement is located. If the employee seeks to enforce the lien against both real and personal property, separate petitions may be filed, subject to transfer of the proceeding against personal property to the court where the proceeding against real property is pending.

(C) Contents

The petition shall be under oath and shall state or be accompanied by:

(i) the names and addresses of the employee and the employer;

(ii) the amount of the lien;

(iii) whether the lien remains in existence;

(iv) what, if any, payments have been made on the unpaid wages for which the lien was established;

(v) a copy of the Notice to Employer of Intent to Claim Lien for Unpaid Wages;

(vi) the date and manner of service of the Notice and proof of such service;

(vii) the failure of the employer to file a timely complaint to contest the proposed lien;

(viii) a copy of the Wage Lien Statement recorded pursuant to Rule 15-1404 and each place where that Statement was filed and recorded; and

(ix) an adequate description of each item of property against which the lien is sought to be enforced, including the nature of the item and where it is located.

(D) Service; Proof of Service

The petition shall be served on the employer in accordance with Rule 2-121. Proof of service shall be filed in accordance with Rule 2-126.

(3) Consolidation Upon Transfer

Upon any transfer pursuant to subsection (b)(2)(B) of this Rule, the cases shall be consolidated unless the court, for good cause, orders otherwise.

(4) Determination and Order

After an opportunity for a hearing if one is requested, the court shall determine whether the employee is entitled to enforcement of the lien. If the court determines that the employee is entitled to enforcement of the lien, the court shall enter an order confirming the lien. If the court determines that the employee is not entitled to enforcement of the lien, the court shall enter an order providing appropriate relief, which may include dissolving the lien.

(5) Recordation of Confirmatory Order

The employee may record a confirmatory order in any court in which enforcement of the lien is sought.

Source: This Rule is new.