

IN THE COURT OF APPEALS OF MARYLAND

R U L E S O R D E R

This Court's Standing Committee on Rules of Practice and Procedure having submitted its One Hundred Eighty-Ninth Report to the Court recommending proposed new Title 15, Chapter 1300 and proposed amendments to Rules 1-101, 2-131, 3-131, 4-342, and 16-1007; and

This Court having considered at open meetings, notices of which were posted as prescribed by law, those proposed rules changes, together with comments received, and, making certain amendments to the proposed rules changes on its own motion, it is this 7th day of December, 2015,

ORDERED by the Court of Appeals of Maryland, that new Title 15, Chapter 1300 be, and it is hereby, adopted in the form attached to this Order; and it is further

ORDERED that amendments to Rules 1-101, 2-131, 3-131, 4-342, and 16-1007 be, and they are hereby, adopted in the form attached to this Order; and it is further

ORDERED that the Rules changes hereby adopted by this Court shall govern the courts of this State and all parties and their attorneys in all actions and proceedings, and shall take effect and apply to all actions commenced on or after January 1, 2016 and, insofar as practicable, to all actions then pending; and it is further

ORDERED that a copy of this Order be posted promptly on the website of the Maryland Judiciary.

/s/ Mary Ellen Barbera

Mary Ellen Barbera

*

Lynne A. Battaglia

/s/ Clayton Greene, Jr.

Clayton Greene, Jr.

/s/ Sally D. Adkins

Sally D. Adkins

/s/ Robert N. McDonald

Robert N. McDonald

/s/ Shirley M. Watts

Shirley M. Watts

* Judge Battaglia did not participate in the consideration of this Rules Report.

Filed: December 7, 2015

/s/ Bessie M. Decker

Clerk
Court of Appeals of Maryland

MARYLAND RULES OF PROCEDURE
TITLE 1 - GENERAL PROVISIONS
CHAPTER 100 - APPLICABILITY AND CITATION

AMEND Rule 1-101 (o) by adding references to coram nobis and structured settlement transfers, as follows:

Rule 1-101. APPLICABILITY

. . .

(o) Title 15

Title 15 applies to special proceedings relating to arbitration, catastrophic health emergencies, contempt, coram nobis, habeas corpus, health claims arbitration, injunctions, judicial releases of individuals confined for mental disorders, mandamus, the Maryland Automobile Insurance Fund, name changes, structured settlement transfers, and wrongful death.

. . .

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 2-131 by replacing the word "representation" with the word "appearance" in subsection (b) (1); by specifying that, except as otherwise ordered by the court, the scope of a limited appearance includes any procedural task required by law to achieve the objective of the appearance; and by adding a Committee note following subsection (b) (1); as follows:

Rule 2-131. APPEARANCE

. . .

(b) Limited Appearance

(1) Notice of Appearance

An attorney, acting pursuant to an agreement with a client for limited representation that complies with Rule 1.2 (c) of the Maryland Lawyers' Rules of Professional Conduct, may enter an appearance limited to participation in a discrete matter or judicial proceeding. The notice of appearance (A) shall be accompanied by an Acknowledgment of Scope of Limited Representation substantially in the form specified in subsection (b) (2) of this Rule and signed by the client, and (B) shall specify the scope of the limited ~~representation~~ appearance, which (i) shall not exceed the scope set forth in the Acknowledgment but (ii) unless otherwise ordered by the court, shall include the performance of any procedural task required by law to achieve the

objective of the appearance.

Committee note: Although the scope of a limited representation is largely a matter of contract between the attorney and the client, if there are procedural requirements necessary to the achievement of the objective agreed upon, a limited appearance, unless otherwise ordered by the court for good cause, must include satisfaction of those requirements, and the Acknowledgment must include that commitment. As examples, (1) if the appearance is limited to filing and pursuing a motion for summary judgment and achievement of that objective requires the filing of affidavits, the attorney is responsible for assuring that the affidavits are prepared, that they are in proper form, and that they are properly filed; (2) if the appearance is limited to obtaining child support for the client, the attorney is responsible for assuring that any financial statements, child support guideline worksheets, and other documents necessary to obtaining the requested order are prepared, are in proper form, and are properly filed.

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MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 3-131 by replacing the word "representation" with the word "appearance" in subsection (b)(1) and by specifying that, except as otherwise ordered by the court, the scope of a limited appearance includes any procedural task required by law to achieve the objective of the appearance, as follows:

Rule 3-131. APPEARANCE

. . .

(b) Limited Appearance

(1) Notice of Appearance

An attorney, acting pursuant to an agreement with a client for limited representation that complies with Rule 1.2 (c) of the Maryland Lawyers' Rules of Professional Conduct, may enter an appearance limited to participation in a discrete matter or judicial proceeding. The notice of appearance (A) shall be accompanied by an Acknowledgment of Scope of Limited Representation substantially in the form specified in subsection (b)(2) of this Rule and signed by the client, and (B) shall specify the scope of the limited ~~representation~~ appearance, which (i) shall not exceed the scope set forth in the Acknowledgment but (ii) unless otherwise ordered by the court, shall include the performance of any procedural task required by law to achieve the

objective of the appearance.

. . .

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

AMEND Rule 4-342 by adding to the cross reference after section (g), as follows:

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

. . .

(g) 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. For procedures to be followed by the court to depart from a mandatory minimum sentence for certain drug-related offenses, see Code, Criminal Law Article, §5-609.1.

. . .

MARYLAND RULES OF PROCEDURE
TITLE 15 - OTHER SPECIAL PROCEEDINGS
CHAPTER 1300 - STRUCTURED SETTLEMENT TRANSFERS

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MARYLAND RULES OF PROCEDURE
TITLE 15 - OTHER SPECIAL PROCEEDINGS
CHAPTER 1300 - STRUCTURED SETTLEMENT TRANSFERS

Rule 15-1301. APPLICABILITY; DEFINITIONS

This Chapter applies to transfers of structured settlement payment rights governed by Code, Courts Article, Title 5, Subtitle 11. In this Rule, the definitions in Code, Courts Article, §5-1101 shall apply.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE
TITLE 15 - OTHER SPECIAL PROCEEDINGS
CHAPTER 1300 - STRUCTURED SETTLEMENT TRANSFERS

Rule 15-1302. PETITION FOR APPROVAL

(a) Petitioner

A petition for court approval of a transfer of structured settlement payment rights pursuant to Code, Courts Article, Title 5, Subtitle 1100, shall be filed by the proposed transferee of the structured settlement benefits.

(b) Venue

(1) If the payee resides in this State, the petition shall be filed in the circuit court for the county in which the payee resides.

(2) If the payee does not reside in this State and one or more prior petitions for approval of a proposed transfer have been filed in this State, the petition shall be filed in the circuit court for the county in which the most recent of those petitions was filed. If the payee does not reside in this State and no prior petitions for approval of a proposed transfer have been filed in this State, the petition may be filed in any circuit court.

(c) Contents of Petition

In addition to any other necessary averments, the petition shall:

(1) subject to section (d) of this Rule, include as exhibits:

(A) a copy of the structured settlement agreement;

(B) a copy of any order of a court or other governmental authority approving the structured settlement;

(C) a copy of each annuity contract that provides for payments under the structured settlement agreement or, if any such annuity contract is not available, a copy of a document from the annuity issuer or obligor evidencing the payments payable under the annuity policy;

(D) a copy of the transfer agreement;

(E) a copy of any disclosure statement provided to the payee by the transferee;

(F) a written Consent by the payee substantially in the form specified in Rule 15-1303; and

Cross reference: For shielding requirements applicable to identifying information contained in the payee's Consent, see Rule 16-1007 (f).

(G) an affidavit by the independent professional advisor selected by the payee, in conformance with Rule 15-1304;

(2) if the petitioner is not an individual, state (i) the legal status of the petitioner, (ii) whether it is registered to do business in Maryland; and (iii) the name, address, e-mail address, and telephone number of any resident agent in Maryland;

(3) state the names and addresses and, if known, the telephone numbers and e-mail addresses of all interested parties, as defined in Code, Courts Article, §5-1101 (d);

(4) state whether, to the best of the petitioner's knowledge, information, and belief, the structured settlement arose from (A)

a claim of lead poisoning, or (B) any other claim in which an allegation was made in a court record of a mental or cognitive impairment on the part of the payee;

(5) state whether there have been any prior transfers or proposed transfers of any of the payee's structured settlement payment rights, and for each prior transfer or proposed transfer:

(A) state whether the transferee in each transfer agreement was the petitioner, an affiliate or predecessor of the petitioner, or a person unrelated in any way to the petitioner;

(B) identify the court and the number of the case in which the transfer or proposed transfer was submitted for approval;

(C) state the disposition of the requested approval; and

(D) include as an exhibit a copy of (i) the transfer agreement, (ii) any disclosure statement provided to the payee by the transferee, and (iii) a copy of any court order approving or declining to approve such transfer or otherwise finally disposing of an application for approval of such transfer.

(6) state the amounts and due dates of the structured settlement payments to be transferred and the aggregate amount of these payments;

(7) state (A) the total amount to be paid under the transfer agreement; (B) the net amount to be received by the payee, after deducting all fees, costs, and amounts chargeable to the payee; and (C) the discounted present value of the payments that would be transferred as determined in accordance with Code, Courts Article, §5-1101 (b); and

(8) contain a calculation and statement in the following form: "Based on the net amount that the payee will receive from the transferee and the amounts and timing of the structured settlement payments that the payee is transferring to the transferee, the payee will be paying an implied, annual interest rate of ___ percent per year on this transaction, if it were a loan transaction";

(9) state whether there have been any written, oral, or electronic communications between the petitioner and the independent professional advisor selected by the payee with respect to the transfer and, if so, the dates and nature of those communications; and

(10) state whether, to the best of the petitioner's knowledge after making reasonable inquiry, the proposed transfer would not contravene any applicable law, statute, Rule, or the order of any court or other government authority.

(d) Exhibits

If a settlement agreement, court order, or other document contains sensitive personal financial or medical information or information subject to a non-disclosure obligation, it shall be filed under seal. If any document required to be attached as an exhibit is unavailable, the petitioner shall state that fact and any effort made by the petitioner to locate and obtain the document.

(e) Oath

The petition shall be under oath.

(f) Hearing Date and Notice

Upon the filing of a petition under this Rule, the court shall set a hearing date. Unless otherwise ordered by the court, the hearing date shall be no earlier than 40 days after the date of filing. The court shall send to the petitioner a written notice of the date, time, and location of the hearing.

(g) Service on Interested Parties

(1) The petitioner shall serve on each interested party:

(A) subject to subsection (g) (2) of this Rule, a copy of the petition;

(B) a copy of the notice of the hearing issued by the court pursuant to section (f) of this Rule; and

(C) a separate notice substantially in the following form:

[Caption of case]

IMPORTANT COURT NOTICE

_____ has filed the enclosed
(Name of Petitioner)

Petition requesting court approval of a transfer of some or all of the structured settlement payment rights of _____.
(Name of Payee)

You are named as an "interested party" in the petition. As an "interested party," you are entitled to support, oppose, or otherwise respond to the petition, in person or by counsel, by submitting written comments to the court or by participating in the hearing.

Notice of the date, time, and location of the hearing is

enclosed.

(2) Unless otherwise ordered by the court, the petitioner shall not serve a copy of any exhibit that was filed under seal.

(h) Method of Service and Proof of Service

The method of service on interested parties required by section (g) of this Rule shall be as provided in Rule 2-121. Proof of service shall be filed in accordance with the method described in Rule 2-126.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE
TITLE 15 - OTHER SPECIAL PROCEEDINGS
CHAPTER 1300 - STRUCTURED SETTLEMENT TRANSFERS

Rule 15-1303. CONSENT BY PAYEE

A Consent by the payee shall be substantially in the following form.

CONSENT TO PETITION FOR APPROVAL OF TRANSFER OF
STRUCTURED SETTLEMENT PAYMENT RIGHTS

Identifying Information

1. My name is _____.
2. I live at _____.
3. My telephone number is _____.
4. My e-mail address is _____.
- I do not have an e-mail address.
5. I do not have a guardian of the person, guardian of the property, or representative payee.
- I do have a guardian of the person, guardian of the property, or representative payee, whose name, address, and telephone number are _____.

Employment

6. I am employed by _____.

I am not currently employed.

Dependents

7. I am married divorced single.

8. I have _____ children under the age of 18 no children under the age of 18.

9. I am under an order of the _____ to
(Name of court(s))
pay a total of \$ _____ per _____ in spousal support
(week/month)

not under a court order to pay spousal support.

10. I am under an order of the _____
(Name of court(s))
to pay a total of \$ _____ per _____ in child support
(week/month)

not under any court order to pay child support.

Structured Settlement Agreement

11. In _____:
(year)

a case was filed by me by my parent or guardian on my behalf in the _____

(Name of court)

The case number is _____.

a claim was made by me by my parent or guardian on my behalf. No court case was filed and

the claim was settled without litigation.

12. I was represented in that case or claim by _____

(Name of attorney)

13. In or as a result of that case or claim, I received a structured settlement pursuant to a structured settlement agreement.

Independent Professional Advisor

14. I have selected _____ as my independent professional advisor to explain the terms and consequences to me of the transfer and advise me regarding whether it is in my best interest to accept those terms.

15. My independent professional advisor has:

met with me in person on _____ occasion(s);

explained the terms and consequences of the proposed transfer agreement;

answered all my questions;

16. I learned about _____
(Name of independent professional advisor)

from:

TV, radio, or other advertising

Personal solicitation by the independent professional advisor

Other: _____ (explain)

17. I have not previously transferred any of my

structured settlement payments.

18. I have made _____ previous transfers of some of my structured settlement payments and I have disclosed to my independent professional advisor the details of each such transfer and given to my independent professional advisor copies of the transfer agreements from each such transfer. I used the money I received from the prior transfer(s) for the following purposes: _____

19. If the current transfer is approved, I intend to use the money that I receive for the following purposes: _____

20. After consultation with my independent professional advisor, I understand:

- that I am presently entitled to receive from my structured settlement \$ _____ each month year; and that those payments will continue for the rest of my life or until _____, 20____.

- that I am entitled to receive lump sum payments due on the dates and in the amounts specified below:

- that the payments I now propose to transfer, in exchange for a net purchase price of \$_____,

have a discounted present value of \$ _____, as determined for federal tax purposes, and

that the "effective annual interest rate" of the proposed transfer is _____%. Based on the net amount that I will receive and the amounts and timing of the structured settlement payments that I am transferring, I will, in effect, be paying interest at a rate of _____% per year so that I can get money now rather than later.

21. I have not received any advances or gifts of money, other property, or services in connection with the proposed assignment.

22. I have received an advance or gift of _____, from _____ in connection with this assignment.

23. I have agreed to pay my independent professional advisor a fee of \$_____ for the services rendered by him/her.

My independent professional advisor has told me that he/she will receive no other compensation from anyone with respect to this transaction, except as follows: _____.

My Understanding

24. I understand that, if the proposed transfer is approved:

the aggregate amount of the future payments I would

be transferring and would no longer be entitled to
is \$ _____;

[] the discounted present value of the future payments
that I would be transferring and would no longer be
entitled to receive is \$ _____; and

[] as consideration for the transfer, I would receive
from the transferee the sum of \$ _____; which
is ___% of the discounted present value.

[] From that sum, [] fees and other charges in the
amount of \$ _____ will be deducted or [] no fees
or other charges will be deducted.

25. I understand that the proposed transfer cannot proceed
unless approved by the Court and that a petition for Court
approval has been or will be filed by the transferee

26. I have received a copy of the petition and

[] have read it.

[] had it read to me by _____.

Consent

WITH THIS KNOWLEDGE, I HEREBY CONFIRM THAT I UNDERSTAND THE
PROPOSED TRANSFER AND ITS CONSEQUENCES TO ME, AND I CONSENT TO
THE PETITION. MY CONSENT IS VOLUNTARY. I HAVE NOT BEEN
THREATENED WITH ANY LEGAL ACTION OR OTHER PENALTY IF I FAIL OR
REFUSE TO FILE THIS CONSENT.

Signature of Transferor

Date

Signature of Witness

Date

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE
TITLE 15 - OTHER SPECIAL PROCEEDINGS
CHAPTER 1300 - STRUCTURED SETTLEMENT TRANSFERS

Rule 15-1304. AFFIDAVIT OF INDEPENDENT PROFESSIONAL ADVISOR

The affidavit of the independent professional advisor shall include an affirmation that the affiant's compensation is not affected by whether the proposed structured settlement transfer occurs and shall state:

(1) The full name, address, e-mail address, and telephone number of the affiant;

(2) The status of the affiant as an attorney, certified public accountant, actuary, or other licensed professional advisor, including:

(A) each state in which the affiant is licensed in that capacity; and

(B) each state in which the affiant has been the subject of any disciplinary proceedings regarding such a license.

(3) The number of times in the past five years that the affiant has acted as an independent professional advisor with respect to a proposed transfer of structured settlement payment rights to the petitioner or to an affiliate or predecessor of the petitioner.

(4) The nature and extent of personal contact by the affiant with the payee regarding the proposed transfer, including the date and place of each such contact and whether the contact was

in-person, by telephone, or by e-mail.

(5) The fee charged by the affiant for the services rendered to the payee and the name, address, e-mail address (if any), and telephone number of each person, other than the payee, from whom any compensation for services rendered with respect to the proposed transfer has been or will be sought.

(6) The amount of any fees, costs, expenses, or other charges that will be deducted from the amount payable to the payee under the transfer agreement and a particularized explanation of the nature of each such fee, cost, expense, or other charge.

(7) Whether there have been any prior transfers or proposed transfers of any of the payee's structured settlement rights and, if so, as to each such transfer or proposed transfer, whether the affiant acted as an independent professional advisor for the payee.

(8) Whether the structured settlement arose from a claim of lead poisoning or a case in which an allegation was made in a court record of a mental or cognitive impairment on the part of the payee, and, if so:

(A) The nature and extent of the affiant's investigation into the ability of the payee to understand the nature and economic consequences of the proposed transfer, including any contact with the payee's attorney in the claim or case leading to the structured settlement;

(B) The basis for the affiant's conclusion that the payee is capable of understanding, and does understand, the nature and

economic consequences of the transfer, and

(C) A list of any documents upon which the advisor relied in reaching that conclusion.

(9) The discounted present value of the payment rights being transferred and the applicable federal rate used in determining that value;

(10) The annual interest rate implied in the transfer, treating the net purchase price as the principal amount of a loan, to be repaid in installments corresponding to the transferred payments; and

(11) Whether the affiant investigated and advised the payee about possible alternatives to the proposed transfer, including any option for acceleration of future annuity payments; and

(12) That the advisor has advised the payee concerning the legal, tax, and financial implications of the transfer of settlement payment rights, to the extent permitted by the advisor's professional license.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1300 - STRUCTURED SETTLEMENT TRANSFER AGREEMENTS

Rule 15-1305. HEARING

(a) Generally

(1) The court may not act on a petition under this Chapter without holding a hearing.

(2) The petitioner shall have the burden of producing sufficient credible evidence to permit the court to make the findings required under Rule 15-1307.

(3) The payee or the payee's guardian shall testify at the hearing.

(b) Personal Attendance

Personal attendance at the hearing is required by:

(1) the payee, unless, for good cause, the court excuses the payee's personal attendance;

(2) if a person serves as a (A) guardian of the person of the payee, (B) guardian of the property of the payee, or (C) representative payee of the payee, each such person;

(3) the independent professional advisor; and

(4) the petitioner or a duly authorized officer or employee of the petitioner, other than an attorney for the petitioner bound by an attorney-client privilege.

Committee note: Section (b) of this Rule is not intended to preclude the court from exercising its discretion under Rule 2-513 to permit testimony of a witness by telephone. The court

should be mindful, however, that the petitioner bears the burden of providing sufficient evidence to permit the court to make the findings required under Rule 15-1307 and consider whether taking the testimony of a witness for the petitioner by telephone may adversely affect the credibility of that testimony. Except under extraordinary circumstances, the court should not permit testimony of the payee or a guardian of the payee by telephone.

(c) Examination

The court may examine under oath the payee, any guardian of the payee, the independent professional advisor, and the petitioner or representative of the petitioner, and any other witness.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE
TITLE 15 - OTHER SPECIAL PROCEEDINGS
CHAPTER 1300 - STRUCTURED SETTLEMENT TRANSFERS

Rule 15-1306. GUARDIAN AD LITEM; INDEPENDENT EVALUATION

If the structured settlement arose from a claim of lead poisoning or a case in which an allegation was made in a court record of a mental or cognitive impairment on the part of the payee, or if it otherwise appears that the payee may suffer from a mental or cognitive impairment, the court, at the expense of the petitioner, may:

- (1) appoint a guardian *ad litem* for the payee; or
- (2) require the payee to be examined by a qualified and independent mental health specialist designated by the court.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE
TITLE 15 - OTHER SPECIAL PROCEEDINGS
CHAPTER 1300 - STRUCTURED SETTLEMENT TRANSFERS

Rule 15-1307. FINDINGS

In deciding whether to grant the petition, the court shall consider the standards set forth in Code, Courts Article, §5-1102 and Internal Revenue Code, §5891 (b) (2) (A), and make a finding upon a preponderance of the evidence as to each and whether the payee's consent is knowing and voluntary.

Committee note: Internal Revenue Code, §5891 (b) (2) requires that, to avoid imposition of an excise tax on the transfer of structured settlement payment rights, there must be a final order of a court that finds that the transfer (i) does not contravene any federal or state statute or order of any court or responsible administrative authority, and (ii) is in the best interest of the payee, taking into account the welfare and support of the payee's dependents.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE
TITLE 16 - COURTS, JUDGES, AND ATTORNEYS
CHAPTER 1000 - ACCESS TO COURT RECORDS

AMEND Rule 16-1007 by adding a new section (f), as follows:

Rule 16-1007. REQUIRED DENIAL OF INSPECTION - SPECIFIC
INFORMATION IN CASE RECORDS

Except as otherwise provided by law, the Rules in this Chapter, or court order, a custodian shall deny inspection of a case record or a part of a case record that would reveal:

(a) The name, address, telephone number, e-mail address, or place of employment of a person who reports the abuse of a vulnerable adult pursuant to Code, Family Law Article, §14-302.

(b) Except as provided in Code, General Provisions Article, §4-331, the home address or telephone number of an employee of the State or a political subdivision of the State.

(c) The address, telephone number, and e-mail address of a victim or victim's representative in a criminal action, juvenile delinquency action, or an action under Code, Family Law Article, Title 4, Subtitle 5, who has requested that such information be shielded. Such a request may be made at any time, including in a victim notification request form filed with the clerk or a request or motion filed under Rule 16-1009.

(d) Any part of the social security or Federal Identification Number of an individual.

(e) Information about a person who has received a copy of a sex offender's or sexual predator's registration statement.

(f) The address, telephone number, and e-mail address of a payee contained in a Consent by the payee filed pursuant to Rule 15-1302 (c) (1) (G).

Cross reference: See Rule 16-1009 (b) (2) concerning information shielded upon a request authorized by Code, Courts Article, Title 3, Subtitle 15 (peace orders) or Code, Family Law Article, Title 4, Subtitle 5 (domestic violence) and in criminal actions.

Source: This Rule is new.