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 Ninety-First Report to the Court recommending the proposed deletion of current Title 18, Chapter 400 and Rules 4-215 and 16-806; adoption of new Title 12, Chapter 800 (Action to Quiet Title), new Title 18, Chapter 400 (Judicial Disabilities and Discipline), and new Rules 2-413.1, 2-422.1, 2-510.1, 4-215, 4-215.1, 4-601.1, 16-506, 16-804, and 16-806; and amendments to Title 15, Chapter 1300 (Structured Settlement Transfers) and Rules 1-101, 1-325, 1-325.1, 2-131, 2-402, 2-422, 2-510, 2-551, 3-131, 3-306, 3-308, 3-509, 3-701, 4-202, 4-212, 4-213, 4-213.1, 4-214, 4-216.1, 4-242, 4-347, 4-601, 5-609, 5-803, 5-902, 6-122, 6-125, 6-210, 6-302, 6-317, 6-416, 6-431, 6-432, 6-452, 7-202, 8-121, 8-122, 8-402, 8-412, 8-504, 14-216, 14-504, 15-205, 16-105, 16-207, 16-501, 16-906, 18-601, 19-301.2, 19-304.4, and 19-307.4, all as posted for comment on the website of the Maryland Judiciary; and

This Court having considered at an open meeting, notice of which was 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 13th day of December, 2016

ORDERED, by the Court of Appeals of Maryland, that Rule 16-806 be, and it is hereby, rescinded, effective April 1, 2017; and it is further

ORDERED that new Title 12, Chapter 800 (Action to Quiet Title and new Rules 2-413.1, 2-422.1, 2-510.1, 4-601.1, 16-506, 16-804, and 16-806 be, and they are hereby, adopted in the form attached to this Order; and it is further

ORDERED that amendments to Rules 1-101, 1-325, 1-325.1, 2-131, 2-402, 2-422, 2-510, 2-551, 3-131, 3-306, 3-308, 3-509, 3-701, 4-202, 4-213, 4-213.1, 4-214, 4-242, 4-601, 5-609, 5-803, 5-902, 6-122, 6-416, 6-431, 6-432, 6-452, 7-202, 8-121, 8-122, 8-402, 8-412, 8-504, 14-216, 14-504, 15-1301, 15-1302, 15-1303, 15-1304, 15-1305, 15-1307, 16-105, 16-501, 16-906, 18-601, 19-301.2, 19-304.4, and 19-307.4 be, and they are hereby, adopted in the form attached to this Order; and it is further

ORDERED that action on proposed new Rules 4-215 and 4-215.1, proposed amendments to Rules 4-212, 4-216.1, 4-347, 6-125, 6-210, 6-302, 6-317, 15-205, and 16-207, and the proposed revision of Title 18, Chapter 400 be, and it is hereby deferred; and it is further

ORDERED that the rules changes hereby adopted by this Court shall govern the courts of this State, all entities described in Rule 16-801 (a), and all parties and their attorneys in all actions and proceedings, and shall take effect and apply to all actions commenced on or after April 1, 2017 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

/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

/s/ Michele D. Hotten
_____
Michele D. Hotten

/s/ Joseph M. Getty
_____
Joseph M. Getty

Filed: December 13, 2016

/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 (l) to add severed mineral interests and actions to quiet title to the statement of the applicability of Title 12, as follows:

Rule 1-101. Applicability

. . .

(l) Title 12

Title 12 applies to property actions relating to writs of survey, lis pendens, actions for release of lien instruments, condemnation, mechanics' liens, partition, redemption of ground rents, replevin, ~~and~~ detinue, severed mineral interests, and actions to quiet title.

. . .

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-325 to add language to section (a) referring to requests for relief that are civil in nature filed in a criminal action, to add language to the Committee note after section (a), and to correct an internal reference, as follows:

Rule 1-325. WAIVER OF COSTS DUE TO INDIGENCE - GENERALLY

(a) Scope

This Rule applies only to (1) original civil actions in a circuit court or the District Court and (2) requests for relief that are civil in nature filed in a criminal action.

Committee note: Original civil actions in a circuit court include actions governed by the Rules in Title 7, Chapter 200, 300, and 400. Requests for relief that are civil in nature filed in a criminal action include petitions for expungement and requests to shield all or part of a record.

(b) Definition

In this Rule, "prepaid costs" means costs that, unless prepayment is waived pursuant to this Rule, must be paid prior to the clerk's docketing or accepting for docketing a pleading or paper or taking other requested action.

Committee note: "Prepaid costs" may include a fee to file an initial complaint or a motion to reopen a case, a fee for entry of the appearance of an attorney, and any prepaid compensation, fee, or expense of a magistrate or examiner. See Rules 1-501, 2-541, 2-542, 2-603, and 9-208.

(c) No Fee for Filing Request

No filing fee shall be charged for the filing of the request for waiver of prepaid costs pursuant to section (d) or (e) of this Rule.

(d) Waiver of Prepaid Costs by Clerk

On written request, the clerk shall waive the prepayment of prepaid costs, without the need for a court order, if:

(1) the party is an individual who is represented (A) by an attorney retained through a pro bono or legal services program on a list of programs serving low income individuals that is submitted by the Maryland Legal Services Corporation to the State Court Administrator and posted on the Judiciary website, provided that an authorized agent of the program provides the clerk with a statement that (i) names the program, attorney, and party; (ii) states that the attorney is associated with the program and the party meets the financial eligibility criteria of the Corporation; and (iii) attests that the payment of filing fees is not subject to Code, Courts Article, §5-1002 (the Prisoner Litigation Act), or (B) by an attorney provided by the Maryland Legal Aid Bureau, Inc. or the Office of the Public Defender, and

(2) except for an attorney employed or appointed by the Office of the Public Defender in a civil action in which that Office is required by statute to represent the party, the attorney certifies that, to the best of the attorney's

knowledge, information, and belief, there is good ground to support the claim, application, or request for process and it is not interposed for any improper purpose or delay.

Committee note: The Public Defender represents indigent individuals in a number of civil actions. See Code, Criminal Procedure Article, §16-204 (b).

Cross reference: See Rule 1-311 (b) and Rule 3.1 of the Maryland Lawyers' Rules of Professional Conduct.

(e) Waiver of Prepaid Costs by Court

(1) Request for Waiver

An individual unable by reason of poverty to pay a prepaid cost and not subject to a waiver under section (d) of this Rule may file a request for an order waiving the prepayment of the prepaid cost. The request shall be accompanied by (A) the pleading or paper sought to be filed; (B) an affidavit substantially in the form approved by the State Court Administrator, posted on the Judiciary website, and available in the Clerks' offices; and (C) if the individual is represented by an attorney, the attorney's certification that, to the best of the attorney's knowledge, information, and belief, there is good ground to support the claim, application, or request for process and it is not interposed for any improper purpose or delay.

Cross reference: See Rule 1-311 (b) and Rule 3.1 of the Maryland Lawyers' Rules of Professional Conduct.

(2) Review by Court; Factors to be Considered

The court shall review the papers presented and may require the individual to supplement or explain any of the

matters set forth in the papers. In determining whether to grant a prepayment waiver, the court shall consider:

(A) whether the individual has a family household income that qualifies under the client income guidelines for the Maryland Legal Services Corporation for the current year, which shall be posted on the Judiciary website; and

(B) any other factor that may be relevant to the individual's ability to pay the prepaid cost.

(3) Order; Payment of Unwaived Prepaid Costs

If the court finds that the party is unable by reason of poverty to pay the prepaid cost and that the pleading or paper sought to be filed does not appear, on its face, to be frivolous, it shall enter an order waiving prepayment of the prepaid cost. In its order, the court shall state the basis for granting or denying the request for waiver. If the court denies, in whole or in part, a request for the waiver of its prepaid costs, it shall permit the party, within 10 days, to pay the unwaived prepaid cost. If, within that time, the party pays the full amount of the unwaived prepaid costs, the pleading or paper shall be deemed to have been filed on the date the request for waiver was filed. If the unwaived prepaid costs are not paid in full within the time allowed, the pleading or paper shall be deemed to have been withdrawn.

(f) Award of Costs at Conclusion of Action

(1) Generally

At the conclusion of an action, the court and the clerk shall allocate and award costs as required or permitted by law.

Cross reference: See Rules 2-603, 3-603, 7-116, and *Mattison v. Gelber*, 202 Md. App. 44 (2011).

(2) Waiver

(A) Request

At the conclusion of an action, a party may seek a final waiver of open costs, including any unpaid appearance fee, by filing a request for the waiver, together with (i) an affidavit substantially in the form prescribed by subsection ~~(e)(1)(A)~~ (e)(1)(B) of this Rule, or (ii) if the party was granted a waiver of prepayment of prepaid costs by court order pursuant to section (e) of this Rule and remains unable to pay the costs, an affidavit that recites the existence of the prior waiver and the party's continued inability to pay by reason of poverty.

(B) Determination by Court

In an action under Title 9, Chapter 200 of these Rules or Title 10 of these Rules, the court shall grant a final waiver of open costs if the requirements of Rules 2-603 (e) or 10-107 (b), as applicable, are met. In all other civil matters, the court may grant a final waiver of open costs if the party against whom the costs are assessed is unable to pay them by reason of poverty.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-325.1 to remove language that provides that if unwaived prepaid costs are not paid in full within the time allowed the "appeal shall be deemed to have been withdrawn," and to add language to require the court to "enter an order striking the appeal" if unwaived prepaid costs are not paid in full within the time allowed, as follows:

Rule 1-325.1. WAIVER OF PREPAID APPELLATE COSTS IN CIVIL ACTIONS

(a) Scope

This Rule applies (1) to an appeal from an order or judgment of the District Court or an orphans' court to a circuit court in a civil action, and (2) to an appeal as defined in subsection (b)(1) of this Rule seeking review in the Court of Special Appeals or the Court of Appeals of an order or judgment of a lower court in a civil action.

(b) Definitions

In this Rule, the following definitions apply:

(1) Appeal

"Appeal" means an appeal, an application for leave to appeal to the Court of Special Appeals, and a petition for

certiorari or other extraordinary relief filed in the Court of Appeals.

(2) Clerk

"Clerk" includes a Register of Wills.

(3) Prepaid Costs

"Prepaid costs" means (A) the fee charged by the clerk of the lower court for assembling the record, (B) the cost of preparation of a transcript in the District Court, if a transcript is necessary to the appeal, and (C) the filing fee charged by the clerk of the appellate court.

Cross reference: See the schedule of appellate court fees following Code, Courts Article, §7-102 and the schedule of circuit court fees following Code, Courts Article, §7-202.

(c) Waiver

(1) Generally

Waiver of prepaid costs under this Rule shall be governed generally by section (d) or (e) of Rule 1-325, as applicable, except that:

(A) the request for waiver of both the lower and appellate ~~court~~ prepaid costs shall be filed in the lower court with the notice of appeal;

(B) a request to waive prepayment of the fee for filing a petition for certiorari or other extraordinary relief in the Court of Appeals shall be filed in, and determined by, that Court;

(C) waiver of the fee charged for assembling the record

shall be determined in the lower court;

(D) waiver of the appellate court filing fee shall be determined by the appellate court, but the appellate court may rely on a waiver of the fee for assembling the record ordered by the lower court;

(E) both fees shall be waived if (i) the appellant received a waiver of prepaid costs under section (d) of Rule 1-325 and will be represented in the appeal by an eligible attorney under that section, (ii) the attorney certifies that the appellant remains eligible for representation in accordance with Rule 1-325 (d), and (iii) except for an attorney employed or appointed by the Office of the Public Defender in a civil action in which that Office is required by statute to represent the party, the attorney further certifies that to the best of the attorney's knowledge, information, and belief there is good ground to support the appeal and it is not interposed for any improper purpose or delay; and

(F) if the appellant received a waiver of prepaid costs under section (e) of Rule 1-325, the lower court and appellate court may rely on a supplemental affidavit of the appellant attesting that the information supplied in the affidavit provided under Rule 1-325 (e) remains accurate and that there has been no material change in the appellant's financial condition or circumstances.

(2) Procedure

(A) If an appellant requests the waiver of the prepaid costs in both the lower and appellate courts, the lower court, within five days after the filing of the request, shall act on the request for waiver of its prepaid cost and transmit to the appellate court the request for waiver of the appellate court prepaid cost, together with a copy of the request and order regarding the waiver of the lower court prepaid cost.

(B) The appellate court shall act on the request for the waiver of its prepaid cost within five business days after receipt of the request from the lower court.

(C) If either court denies, in whole or in part, a request for the waiver of its prepaid cost, it shall permit the appellant, within 10 days, to pay the unwaived prepaid cost. If, within that time, the appellant pays the full amount of the unwaived prepaid cost, the appeal shall be deemed to have been filed on the day the request for waiver was filed in the lower court or, as to a petition for certiorari or other extraordinary relief, in the Court of Appeals. If the unwaived prepaid costs are not paid in full within the time allowed, the ~~appeal shall be deemed to have been withdrawn~~ court shall enter an order dismissing the appeal.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 100 – COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 2-131 to delete the option of an oral entry of appearance and to make a stylistic change, as follows:

Rule 2-131. APPEARANCE

. . .

(c) How Entered

Except as otherwise provided in section (b) of this Rule, an appearance may be entered by filing a pleading or motion~~,~~ or by filing a written ~~request for the entry~~ notice of ~~an~~ appearance~~, or, if the court permits, by orally requesting the entry of an appearance in open court~~.

. . .

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 400 - DISCOVERY

AMEND Rule 2-402 to add to section (e) a certain notification requirement pertaining to items that may have been inadvertently sent, to delete a sentence pertaining to options available to a party that had received certain information, to permit any party to file a motion under section (e) and add language clarifying the circumstances under which the motion is appropriate, to require preservation of a certain item pending a ruling by the court, to add a cross reference following section (e), to delete "attorney-client" from references to "privilege," to delete "work product" from references to "protection," and to make stylistic changes, as follows:

Rule 2-402. SCOPE OF DISCOVERY

Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(a) Generally

A party may obtain discovery regarding any matter that is not privileged, including the existence, description, nature, custody, condition, and location of any documents, electronically stored information, and tangible things and the

identity and location of persons having knowledge of any discoverable matter, if the matter sought is relevant to the subject matter involved in the action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. It is not ground for objection that the information sought is already known to or otherwise obtainable by the party seeking discovery or that the information will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. An interrogatory or deposition question otherwise proper is not objectionable merely because the response involves an opinion or contention that relates to fact or the application of law to fact.

(b) Limitations and Modifications; Electronically Stored Information Not Reasonably Accessible

(1) Generally

In a particular case, the court, on motion or on its own initiative and after consultation with the parties, by order may limit or modify these rules on the length and number of depositions, the number of interrogatories, the number of requests for production of documents, and the number of requests for admissions. The court shall limit the frequency or extent of use of the discovery methods otherwise permitted under these rules if it determines that (A) the discovery sought is unreasonably cumulative or duplicative or is obtainable from

some other source that is more convenient, less burdensome, or less expensive; (B) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (C) the burden or cost of the proposed discovery outweighs its likely benefit, taking into account the complexity of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues.

(2) Electronically Stored Information Not Reasonably Accessible

A party may decline to provide discovery of electronically stored information on the ground that the sources are not reasonably accessible because of undue burden or cost. A party who declines to provide discovery on this ground shall identify the sources alleged to be not reasonably accessible and state the reasons why production from each identified source would cause undue burden or cost. The statement of reasons shall provide enough detail to enable the requesting party to evaluate the burdens and costs of providing the discovery and the likelihood of finding responsive information in the identified sources. On a motion to compel discovery, the party from whom discovery is sought shall first establish that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the party requesting discovery shall establish that its need for the discovery

outweighs the burden and cost of locating, retrieving, and producing the information. If persuaded that the need for discovery does outweigh the burden and cost, the court may order discovery and specify conditions, including an assessment of costs.

Committee note: The term "electronically stored information" has the same broad meaning in this Rule that it has in Rule 2-422, encompassing, without exception, whatever is stored electronically. Subsection (b)(2) addresses the difficulties that may be associated with locating, retrieving, and providing discovery of some electronically stored information. Ordinarily, the reasonable costs of retrieving and reviewing electronically stored information are borne by the responding party. At times, however, the information sought is not reasonably available to the responding party in the ordinary course of business. For example, restoring deleted data, disaster recovery tapes, residual data, or legacy systems may involve extraordinary effort or resources to restore the data to an accessible format. This subsection empowers the court, after considering the factors listed in subsection (b)(1), to shift or share costs if the demand is unduly burdensome because of the nature of the effort involved to comply and the requesting party has demonstrated substantial need or justification. See, The Sedona Conference, The Sedona Principles: Best Practices Recommendations and Principles for Addressing Electronic Document Production, (2d ed. 2007), Principle 13 and related Comment.

(c) Insurance Agreement

A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business might be liable to satisfy part or all of a judgment that might be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For

purposes of this section, an application for insurance shall not be treated as part of an insurance agreement.

(d) Work Product

Subject to the provisions of sections (f) and (g) of this Rule, a party may obtain discovery of documents, electronically stored information, and tangible things prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including an attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the materials are discoverable under section (a) of this Rule and that the party seeking discovery has substantial need for the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of these materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

(e) Claims of Privilege or Protection

(1) Information Withheld

A party who withholds information on the ground that it is privileged or subject to protection shall describe the nature of the documents, electronically stored information, communications, or things not produced or disclosed in a manner

that, without revealing the privileged or protected information, will enable other parties to assess the applicability of the privilege or protection.

(2) Duty of Recipient

A party who receives a document, electronically stored information, or other property that the party knows or reasonably should know was inadvertently sent shall promptly notify the sender.

~~(2)~~ (3) Information Produced

Within a reasonable time after information is produced in discovery that is subject to a claim of privilege or of protection, the party who produced the information shall notify each party who received the information of the claim and the basis for it. ~~Promptly after being notified, each receiving party shall return, sequester, or destroy the specified information and any copies and may not use or disclose the information until the claim is resolved.~~ A ~~receiving~~ party who wishes to determine the validity of a claim of privilege or protection that is not controlled by a court order or a disclosure agreement entered into pursuant to subsection (e)(5) of this Rule shall promptly file a motion under seal requesting that the court determine the validity of the claim. ~~A receiving party who disclosed the information before being notified shall take reasonable steps to retrieve it. The person who produced the information shall preserve it until the claim is resolved.~~

A party in possession of information that is the subject of the motion shall appropriately preserve the information pending a ruling. A receiving party may not use or disclose the information until the claim is resolved and shall take reasonable steps to retrieve any information the receiving party disclosed before being notified.

Cross reference: Rule 19-304.4 (b) of the Maryland Attorneys' Rules of Professional Conduct.

Committee note: Subsection ~~(c)(2)~~ (e)(3) allows a producing party to assert a claim of privilege or ~~work-product~~ protection after production because it is increasingly costly and time-consuming to review all electronically stored information in advance. Unlike the corresponding federal rule, a party must raise a claim of privilege or ~~work product~~ protection within a "reasonable time." See *Elkton Care Center Associates v. Quality Care Management, Inc.*, 145 Md. App. 532 (2002).

~~(3)~~ (4) Effect of Inadvertent Disclosure

A disclosure of a communication or information covered by ~~the attorney-client~~ a privilege or ~~work product~~ protection does not operate as a waiver if the holder of the privilege or ~~work product~~ protection (A) made the disclosure inadvertently, (B) took reasonable precautions to prevent disclosure, and (C) took reasonably prompt measures to rectify the error once the holder knew or should have known of the disclosure.

Committee note: Courts in other jurisdictions are in conflict over whether an inadvertent disclosure of privileged or protected information ~~or work product~~ constitutes a waiver. A few courts find that a disclosure must be intentional to be a waiver. Most courts find a waiver only if the disclosing party acted carelessly in disclosing the communication or information and failed to request its return in a timely manner. A few other courts hold that any mistaken disclosure of protected information constitutes waiver without regard to the protections

taken to avoid such a disclosure. See generally *Hopson v. City of Baltimore*, 232 F.R.D. 228 (D. Md. 2005) for a discussion of this case law.

This subsection opts for the middle ground: inadvertent disclosure of privileged or protected information in connection with a state or federal proceeding constitutes a waiver only if the party did not take reasonable precautions to prevent disclosure and did not make reasonable and prompt efforts to rectify the error. This position is in accord with Maryland common law, see, e.g., *Elkton Care Center Associates v. Quality Care Management, Inc.*, 145 Md. App. 532 (2002), and the majority view on whether inadvertent disclosure is a waiver. See, e.g., *Zapata v. IBP, Inc.*, 175 F.R.D. 574, 576-77 (D. Kan. 1997) (work product); *Hydraflow, Inc. v. Enidine, Inc.*, 145 F.R.D. 626, 637 (W.D.N.Y. 1993) (attorney-client privilege); *Edwards v. Whitaker*, 868 F.Supp. 226, 229 (M.D. Tenn. 1994) (attorney-client privilege).

~~(4)~~ (5) Controlling Effect of Court Orders and Agreements

Unless incorporated into a court order, an agreement as to the effect of disclosure of a communication or information covered by ~~the attorney-client~~ a privilege or ~~work product~~ protection is binding on the parties to the agreement but not on other persons. If the agreement is incorporated into a court order, the order governs all persons or entities, whether or not they are or were parties.

Committee note: Parties may agree to certain protocols to minimize the risk of waiver of a claim of privilege or protection. One example is a "clawback" agreement, meaning an agreement that production will occur without a waiver of privilege or protection as long as the producing party promptly identifies the privileged or protected documents that have been produced. See The Sedona Conference, The Sedona Principles: Best Practices Recommendations and Principles for Addressing Electronic Document Production, (2d ed. 2007), Comment 10.a. Another example is a "quick peek" agreement, meaning that the responding party provides certain requested materials for initial examination without waiving any privilege or protection. The requesting party then designates the documents it wishes to have actually produced, and the producing party may assert any

privilege or protection. Id., Comment 10.d.

Subsection ~~(e)(4)~~ (e)(5) codifies the well-established proposition that parties can enter into an agreement to limit the effect of waiver by disclosure between or among them. See, e.g., *Dowd v. Calabrese*, 101 F.R.D. 427, 439 (D.D.C. 1984) (no waiver where the parties stipulated in advance that certain testimony at a deposition "would not be deemed to constitute a waiver of the attorney-client or work product privileges"); *Zubulake v. UBS Warburg LLC*, 216 F.R.D. 280, 290 (S.D.N.Y. 2003) (noting that parties may enter into "so-called 'claw-back' agreements that allow the parties to forego privilege review altogether in favor of an agreement to return inadvertently produced privileged documents"). Of course, such an agreement can bind only the parties to the agreement. The subsection makes clear that if parties want protection from a finding of waiver by disclosure in separate litigation, the agreement must be made part of a court order. Confidentiality orders are important in limiting the costs of privilege review and retention, especially in cases involving electronic discovery. The utility of a confidentiality order is substantially diminished if it provides no protection outside the particular litigation in which the order is entered. Parties are unlikely to be able to reduce the costs of preproduction review for privilege ~~and work product~~ or protection if the consequence of disclosure is that the information can be used by nonparties to the litigation.

Subsection ~~(e)(4)~~ (e)(5) provides that an agreement of the parties governing confidentiality of disclosures is enforceable against nonparties only if it is incorporated in a court order, but there can be no assurance that this enforceability will be recognized by courts other than those of this State. There is some dispute as to whether a confidentiality order entered in one case can bind nonparties from asserting waiver by disclosure in separate litigation. See generally *Hopson v. City of Baltimore*, 232 F.R.D. 228 (D.Md. 2005), for a discussion of this case law.

(f) Trial Preparation - Party's or Witness' Own Statement

A party may obtain a statement concerning the action or its subject matter previously made by that party without the showing required under section (d) of this Rule. A person who is not a party may obtain, or may authorize in writing a party

to obtain, a statement concerning the action or its subject matter previously made by that person without the showing required under section (d) of this Rule. For purposes of this section, a statement previously made is (1) a written statement signed or otherwise adopted or approved by the person making it, or (2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, that is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(g) Trial Preparation - Experts

(1) Expected to be Called at Trial

(A) Generally

A party by interrogatories may require any other party to identify each person, other than a party, whom the other party expects to call as an expert witness at trial; to state the subject matter on which the expert is expected to testify; to state the substance of the findings and the opinions to which the expert is expected to testify and a summary of the grounds for each opinion; and to produce any written report made by the expert concerning those findings and opinions. A party also may take the deposition of the expert.

Committee note: This subsection requires a party to disclose the name and address of any witness who may give an expert opinion at trial, whether or not that person was retained in anticipation of litigation or for trial. Cf. *Dorsey v. Nold*, 362 Md. 241 (2001). See Rule 104.10 of the Rules of the U.S. District Court for the District of Maryland. The subsection does not require, however, that a party name himself or herself

as an expert. See *Turgut v. Levin*, 79 Md. App. 279 (1989).

(B) Additional Disclosure with Respect to Experts Retained in Anticipation of Litigation or for Trial

In addition to the discovery permitted under subsection (g)(1)(A) of this Rule, a party by interrogatories may require the other party to summarize the qualifications of a person expected to be called as an expert witness at trial and whose findings and opinions were acquired or obtained in anticipation of litigation or for trial, to produce any available list of publications written by that expert, and to state the terms of the expert's compensation.

(2) Not Expected to be Called at Trial

When an expert has been retained by a party in anticipation of litigation or preparation for trial but is not expected to be called as a witness at trial, discovery of the identity, findings, and opinions of the expert may be obtained only if a showing of the kind required by section (d) of this Rule is made.

(3) Fees and Expenses of Deposition

Unless the court orders otherwise on the ground of manifest injustice, the party seeking discovery: (A) shall pay each expert a reasonable fee, at a rate not exceeding the rate charged by the expert for time spent preparing for a deposition, for the time spent in attending a deposition and for the time and expenses reasonably incurred in travel to and from the

deposition; and (B) when obtaining discovery under subsection (g)(2) of this Rule, shall pay each expert a reasonable fee for preparing for the deposition.

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 400 c and the 1980 version of Fed. R. Civ. P. 33 (b).

Section (b) is new and is derived from the 2000 version of Fed. R. Civ. P. 26 (b)(2), except that subsection (b)(2) is derived from the 2006 Fed. R. Civ. P. 26 (b)(2)(B).

Section (c) is new and is in part derived from the 1980 version of Fed. R. Civ. P. 26 (b)(2).

Section (d) is derived from former Rule 400 d.

Section (e) is new and is derived from the 2006 version of Fed. R. Civ. P. 26 (b)(5).

Section (f) is derived from former Rule 400 e.

Subsection (g)(1) is derived in part from the 1980 version of Fed. R. Civ. P. 26 (b)(4) and former Rule 400 f and is in part new.

Subsection (g)(2) is derived from the 1980 version of Fed. R. Civ. P. 26 (b)(4) and former Rule U12 b.

Subsection (g)(3) is derived in part from the 1980 version of Fed. R. Civ. P. 26 (b)(4) and is in part new.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 400 - DISCOVERY

ADD new Rule 2-413.1, as follows:

Rule 2-413.1. PERMITTED ATTENDANCE

Unless the parties agree or the court orders otherwise, the only persons allowed to attend a deposition are:

(a) the officer, or officer's designee, before whom the deposition is taken;

(b) an individual acting under the direction and in the presence of the officer;

(c) a party who is an individual;

(d) if the party is not an individual, one representative of that party other than the party's attorney;

(e) the parties' attorneys;

(f) a non-attorney member of the attorney's staff needed to assist in the representation;

(g) the witness;

(h) an attorney for the witness; and

(i) an expert witness expected to testify on the subject matter of the deposition.

Committee note: This Rule is subject to the requirements of any protective order entered in the action, the Americans with Disabilities Act, 42 U.S.C. §§12101, *et seq.*, and other law. The parties are encouraged to permit the attendance of non-

testifying party representatives, such as insurance claims adjusters.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 400 - DISCOVERY

AMEND Rule 2-422 to change the title of the Rule and to add a cross reference following section (a), as follows:

Rule 2-422. DISCOVERY OF DOCUMENTS, ELECTRONICALLY STORED INFORMATION, AND PROPERTY – FROM PARTY

(a) Scope

Any party may serve one or more requests to any other party (1) as to items that are in the possession, custody, or control of the party upon whom the request is served, to produce and permit the party making the request, or someone acting on the party's behalf, to inspect, copy, test or sample designated documents or electronically stored information (including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form) or to inspect and copy, test, or sample any designated tangible things which constitute or contain matters within the scope of Rule 2-402 (a); or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is

served for the purpose of inspection, measuring, surveying, photographing, testing, or sampling the property or any designated object or operation on the property, within the scope of Rule 2-402 (a).

Cross reference: For inspection of property of a nonparty in an action pending in this State and for discovery under the Maryland Uniform Interstate Depositions and Discovery Act that is not in conjunction with a deposition, see Rule 2-422.1.

(b) Request

A request shall set forth the items to be inspected, either by individual item or by category; describe each item and category with reasonable particularity; and specify a reasonable time, place, and manner of making the inspection and performing the related acts. The request may specify the form in which electronically stored information is to be produced.

(c) Response

The party to whom a request is directed shall serve a written response within 30 days after service of the request or within 15 days after the date on which that party's initial pleading or motion is required, whichever is later. The response shall state, with respect to each item or category, that (1) inspection and related activities will be permitted as requested, (2) the request is refused, or (3) the request for production in a particular form is refused. The grounds for each refusal shall be fully stated. If the refusal relates to part of an item or category, the part shall be specified. If a

refusal relates to the form in which electronically stored information is requested to be produced (or if no form was specified in the request) the responding party shall state the form in which it would produce the information.

Cross reference: See Rule 2-402 (b)(1) for a list of factors used by the court to determine the reasonableness of discovery requests and (b)(2) concerning the assessment of the costs of discovery.

(d) Production

(1) A party who produces documents or electronically stored information for inspection shall (A) produce the documents or information as they are kept in the usual course of business or organize and label them to correspond with the categories in the request, and (B) produce electronically stored information in the form specified in the request or, if the request does not specify a form, in the form in which it is ordinarily maintained or in a form that is reasonably usable.

(2) A party need not produce the same electronically stored information in more than one form.

Committee note: Onsite inspection of electronically stored information should be the exception, not the rule, because litigation usually relates to the informational content of the data held on a computer system, not to the operation of the system itself. In most cases, there is no justification for direct inspection of an opposing party's computer system. See *In re Ford Motor Co.*, 345 F.3d 1315 (11th Cir. 2003) (vacating order allowing plaintiff direct access to defendant's databases).

To justify onsite inspection of a computer system and the programs used, a party should demonstrate a substantial need to discover the information and the lack of a reasonable alternative. The inspection procedure should be documented by

agreement or in a court order and should be narrowly restricted to protect confidential information and system integrity and to avoid giving the discovering party access to data unrelated to the litigation. The data subject to inspection should be dealt with in a way that preserves the producing party's rights, as, for example, through the use of neutral court-appointed consultants. See, generally, The Sedona Conference, The Sedona Principles: Best Practices Recommendations and Principles for Addressing Electronic Document Production (2d ed. 2007), Comment 6. c.

Source: This Rule is derived from former Rule 419 and the 1980 and 2006 versions of Fed. R. Civ. P. 34.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 400 - DISCOVERY

ADD new Rule 2-422.1, as follows:

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

(a) Applicability; Use of Subpoena

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

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

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

(b) Definitions

(1) Statutory Definitions

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

(2) Additional Definitions

In this Rule, the following additional definitions apply:

(A) Domestic Subpoena

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

(B) Inspection

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

(C) Nonparty

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

(D) Foreign Party

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

(E) Foreign Attorney

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

(c) Issuance

(1) Domestic Subpoena

Upon the request of a person entitled to the issuance of a subpoena under this Rule for discovery in an action pending in

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

(2) Foreign Subpoena

(A) Request for Issuance

A party to an action pending in a foreign jurisdiction may request issuance of a subpoena by a court of this State based on a foreign subpoena issued in that action by submitting a request to the clerk of the circuit court for the county in which discovery is sought to be conducted. The request shall be accompanied by the foreign subpoena and a written undertaking in a form approved by the State Court Administrator, signed by the foreign party and the party's foreign attorney, if any, by which the party and the party's foreign attorney submit to the jurisdiction of the circuit court for the purpose of adjudicating discovery disputes, motions to quash, enforcement of the subpoena, and discovery sanctions. A foreign party and the party's foreign attorney, if any, who files a request or undertaking pursuant to this section does not, by so doing, submit to the jurisdiction of a court of this State for any other purpose.

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

(B) Issuance

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

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

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

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

(d) Form

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

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

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

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

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

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

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

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

(H) contain the date of issuance; and

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

(2) A subpoena issued pursuant to this Rule shall be accompanied by:

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

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

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

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

(iii) the objection must include or be accompanied by a

certificate of service, stating the date on which the person mailed a copy of the objection to the requesting party.

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

(e) Service

A subpoena shall be served by delivering a copy to the person named or to an agent authorized by appointment or by law to receive service for the person named or as permitted by Rule 2-121 (a)(3). Service of a subpoena upon a party represented by an attorney may be made by service upon the attorney under Rule 1-321 (a). A subpoena may be served by a sheriff of any county or by any person who is not a party and who is not less than 18 years of age. If a subpoena is to permit entry upon leased land or property, the subpoena shall be served on any record owner of the land or property and any occupant or person in possession or control of the land or property. Before the subpoena is served, the party on whose behalf the subpoena is issued shall serve a copy of it on each other party in the manner provided by Rule 1-321 and file with the court a certificate of service attesting to the fact of service on the other parties. A person may not serve or attempt to serve a subpoena more than 60 days after its issuance. A subpoena shall be served at least 45 days before the date of a requested entry.

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

General Article, §4-306 (b)(6) and Code, Financial Institutions Article, §1-304.

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

(1) Objection

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

(2) Procedure to Compel Entry

(A) Motion to Compel

If the requested discovery is refused or within 15 days after an objection is served, the requesting party may file a motion to compel entry. The requesting party shall (i) attach to the motion a copy of the subpoena and any objection, (ii) serve a copy of the motion in the manner provided by Rule 1-321 on all other parties and the person who filed the objection, and (iii) if the requesting party is seeking entry upon leased land or property, serve a copy of the motion on any record owner of the land or property and any occupant or person in possession or control of the land or property. A hearing may be requested by

including the heading "Request for Hearing" in the motion.

(B) Response

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

(C) Hearing

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

(D) Order

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

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

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-510 to change the title of the Rule; to add clarifying language to subsection (a)(3); to add a Committee note following section (b); to delete references to work product in sections (e), (f), and (k); to add to section (k) a certain notification requirement pertaining to items that may have been inadvertently sent; to delete a sentence pertaining to options available to a party that had received certain information; to permit any party to file a motion under section (k) and add language clarifying the circumstances under which the motion is appropriate; to require preservation of a certain item pending a ruling by the court; to add a cross reference following section (k); and to make stylistic changes; as follows:

Rule 2-510. SUBPOENAS – COURT PROCEEDINGS AND DEPOSITIONS

(a) Required, Permissive, and Non-permissive Use

(1) A subpoena is required:

(A) to compel the person to whom it is directed to attend, give testimony, and produce designated documents, electronically stored information, or tangible things at a court proceeding, including proceedings before a magistrate, auditor, or examiner; and

(B) to compel a nonparty to attend, give testimony, and produce and permit inspection, copying, testing, or sampling of designated documents, electronically stored information, or tangible things at a deposition.

(2) A subpoena may be used to compel a party over whom the court has acquired jurisdiction to attend, give testimony, and produce and permit inspection, copying, testing, or sampling of designated documents, electronically stored information, or tangible things at a deposition.

(3) ~~A~~ Except as otherwise permitted by law, a subpoena may not be used for any other purpose. If the court, on motion of a party or on its own initiative, after affording the alleged violator an opportunity for a hearing, finds that a person has used or attempted to use a subpoena or a copy or reproduction of a subpoena form for a purpose other than one allowed under this Rule, the court may impose an appropriate sanction, including an award of a reasonable attorney's fee and costs, the exclusion of evidence obtained as a result of the violation, and reimbursement of any person inconvenienced for time and expenses incurred.

(b) Issuance

A subpoena shall be issued by the clerk of the court in which an action is pending in the following manner:

(1) On the request of any person entitled to the issuance of a subpoena, the clerk shall (A) issue a completed subpoena, or

(B) provide to the person a blank form of subpoena, which the person shall fill in and return to the clerk to be signed and sealed by the clerk before service.

(2) On the request of a member in good standing of the Maryland Bar entitled to the issuance of a subpoena, the clerk shall issue a subpoena signed and sealed by the clerk, which the attorney shall fill in before service.

(3) An attorney of record in a pending action who is a registered user under Rule 20-101 may obtain from the clerk through MDEC, for use in that action, an electronic version of a blank form of subpoena containing the clerk's signature and the seal of the court, which the attorney may download, print, and fill in before service.

(4) Except as provided in subsections (b)(2) and (b)(3) of this Rule, a person other than the clerk may not copy and fill in any blank form of subpoena for the purpose of serving the subpoena. A violation of this section shall constitute a violation of subsection (a)(3) of this Rule.

Committee note: This Rule does not apply to subpoenas issued under Code, Courts Article, Title 9, Subtitle 4 (Maryland Uniform Interstate Depositions and Discovery Act) requiring attendance at a deposition in this State. For subpoenas issued under that Act in conjunction with a deposition, see Rule 2-510.1. For discovery of documents, electronically stored information, and property from a party to an action pending in this State, other than in conjunction with a deposition, see Rule 2-422. For inspection of property of a nonparty in an action pending in this State and for discovery under the Maryland Uniform Interstate Depositions and Discovery Act that is not in conjunction with a deposition, see Rule 2-422.1.

(c) Form

Except as otherwise permitted by the court for good cause, every subpoena shall be on a uniform form approved by the State Court Administrator. The form shall contain: (1) the caption of the action, (2) the name and address of the person to whom it is directed, (3) the name of the person at whose request it is issued, (4) the date, time, and place where attendance is required, (5) a description of any documents, electronically stored information, or tangible things to be produced and if testing or sampling is to occur, a description of the proposed testing or sampling procedure, (6) when required by Rule 2-412 (d), a notice to designate the person to testify, (7) the date of issuance, and (8) a statement that the subpoena may be served within 60 days after its issuance and may not be served thereafter. A subpoena may specify the form in which electronically stored information is to be produced.

Committee note: A subpoena may be used to compel attendance at a court proceeding or deposition that will be held more than 60 days after the date of issuance, provided that the subpoena is served within the 60-day period. The failure to serve a subpoena within the 60-day period does not preclude the reissuance of a new subpoena.

(d) Service

A subpoena shall be served by delivering a copy to the person named or to an agent authorized by appointment or by law to receive service for the person named or as permitted by Rule 2-121 (a)(3). Service of a subpoena upon a party represented by

an attorney may be made by service upon the attorney under Rule 1-321 (a). A subpoena may be served by a sheriff of any county or by any person who is not a party and who is not less than 18 years of age. Unless impracticable, a party shall make a good faith effort to cause a trial or hearing subpoena to be served at least five days before the trial or hearing. A person may not serve or attempt to serve a subpoena more than 60 days after its issuance. A violation of this provision shall constitute a violation of subsection (a)(3) of this Rule.

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

(e) Objection to Subpoena for Court Proceedings

On motion of a person served with a subpoena to attend a court proceeding (including a proceeding before a magistrate, auditor, or examiner) or a person named or depicted in an item specified in the subpoena filed promptly and, whenever practicable, at or before the time specified in the subpoena for compliance, the court may enter an order that justice requires to protect the person from annoyance, embarrassment, oppression, or undue burden or cost, including one or more of the following:

(1) that the subpoena be quashed or modified;

(2) that the subpoena be complied with only at some designated time or place other than that stated in the subpoena;

(3) that documents, electronically stored information, or tangible things designated in the subpoena be produced only upon the advancement by the party serving the subpoena of the reasonable costs of producing them; or

(4) that documents, electronically stored information, or tangible things designated in the subpoena be delivered to the court at or before the proceeding or before the time when they are to be offered in evidence, subject to further order of court to permit inspection of them.

A motion filed under this section based on a claim that information is privileged or subject to protection ~~as work product materials~~ shall be supported by a description of the nature of each item that is sufficient to enable the demanding party to evaluate the claim.

(f) Objection to Subpoena for Deposition

A person served with a subpoena to attend a deposition may seek a protective order pursuant to Rule 2-403. If the subpoena also commands the production of documents, electronically stored information, or tangible things at the deposition, the person served or a person named or depicted in an item specified in the subpoena may seek a protective order pursuant to Rule 2-403 or may file, within ten days after service of the subpoena, an objection to production of any or all of the designated materials. The objection shall be in writing and shall state the reasons for the objection. If an

objection is filed, the party serving the subpoena is not entitled to production of the materials except pursuant to an order of the court from which the subpoena was issued. At any time before or within 15 days after completion of the deposition and upon notice to the deponent, the party serving the subpoena may move for an order to compel the production.

A claim that information is privileged or subject to protection ~~as work product materials~~ shall be supported by a description of each item that is sufficient to enable the demanding party to evaluate the claim.

(g) Duties Relating to the Production of Documents, Electronically Stored Evidence, and ~~Tangible Things~~ Other Property

(1) Generally

A person responding to a subpoena to produce documents, electronically stored information, or ~~tangible things~~ other property at a court proceeding or deposition shall:

(A) produce the documents or information as they are kept in the usual course of business or shall organize and label the documents or information to correspond with the categories in the subpoena; and

(B) produce electronically stored information in the form specified in the subpoena or, if a form is not specified, in the form in which the person ordinarily maintains it or in a form that is reasonably usable.

(2) Electronically Stored Information

A person responding to a subpoena to produce electronically stored information at a court proceeding or deposition need not produce the same electronically stored information in more than one form and may decline to produce the information on the ground that the sources are not reasonably accessible because of undue burden or cost. A person who declines to produce information on this ground shall identify the sources alleged to be not reasonably accessible and state the reasons why production from each identified source would cause undue burden or cost. The statement of reasons shall provide enough detail to enable the demanding party to evaluate the burdens and costs of complying with the subpoena and the likelihood of finding responsive information in the identified sources. Any motion relating to electronically stored information withheld on the ground that it is not reasonably accessible shall be decided in the manner set forth in Rule 2-402 (b).

(h) Protection of Persons Subject to Subpoenas

A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or cost on a person subject to the subpoena.

Cross reference: For the availability of sanctions for violations of this section, see Rules 1-201 (a) and 1-341.

(i) Records Produced by Custodians

(1) Generally

A custodian of records served with a subpoena to produce records at trial may comply by delivering the records to the clerk of the court that issued the subpoena at or before the time specified for production. The custodian may produce exact copies of the records designated unless the subpoena specifies that the original records be produced. The records shall be delivered in a sealed envelope labeled with the caption of the action, the date specified for production, and the name and address of the person at whose request the subpoena was issued. The records shall be accompanied by a certificate of the custodian that they are the complete records requested for the period designated in the subpoena and that the records are maintained in the regular course of business. The certification shall be prima facie evidence of the authenticity of the records.

Cross reference: Code, Health-General Article, §4-306 (b)(6); Code, Financial Institutions Article, §1-304.

(2) During Trial

Upon commencement of the trial, the clerk shall release the records only to the courtroom clerk assigned to the trial. The courtroom clerk shall return the records to the clerk promptly upon completion of trial or at an earlier time if there is no longer a need for them. Upon final disposition of the

action the clerk shall return the original records to the custodian but need not return copies.

(3) Presence of Custodian

When the actual presence of the custodian of records is required, the subpoena shall state with specificity the reason for the presence of the custodian.

Cross reference: Code, Courts Article, §10-104 includes an alternative method of authenticating medical records in certain cases transferred from the District Court upon a demand for a jury trial.

(j) Attachment

A witness served with a subpoena under this Rule is liable to body attachment and fine for failure to obey the subpoena without sufficient excuse. The writ of attachment may be executed by the sheriff or peace officer of any county and shall be returned to the court issuing it. The witness attached shall be taken immediately before the court if then in session. If the court is not in session, the witness shall be taken before a judicial officer of the District Court for a determination of appropriate conditions of release to ensure the witness' appearance at the next session of the court that issued the attachment.

(k) Information Produced that is Subject to a Claim of Privilege or ~~Work Product~~ Protection

(1) A party who receives a document, electronically stored information, or other property that the party knows or

reasonably should know was inadvertently sent shall promptly notify the sender.

(2) Within a reasonable time after information is produced in response to a subpoena that is subject to a claim of privilege or ~~of~~ protection ~~as work product material~~, the person who produced the information shall notify each party who received the information of the claim and the basis for it. ~~Promptly after being notified, each receiving party shall return, sequester, or destroy the specified information and any copies and may not use or disclose the information until the claim is resolved.~~ A ~~receiving~~ party who wishes to determine the validity of a claim of privilege or protection that is not controlled by a court order or a disclosure agreement entered into pursuant to Rule 2-402 (e)(5), shall promptly file a motion under seal requesting that the court determine the validity of the claim. ~~A receiving party who disclosed the information before being notified shall take reasonable steps to retrieve it. The person who produced the information shall preserve it until the claim is resolved.~~ A party in possession of information that is the subject of the motion shall appropriately preserve the information pending a ruling. A receiving party may not use or disclose the information until the claim is resolved and shall take reasonable steps to retrieve any information the receiving party disclosed before being notified.

Cross reference: See Rule 19-304.4 (b) of the Maryland Attorneys' Rules of Professional Conduct. For issuing and enforcing legislative subpoenas, see Code, State Government Article, §§ 2-1802 and 2-1803.

Source: This Rule is derived as follows:

Section (a) is new but the first and second sentences are derived in part from the 2006 version of Fed. R. Civ. P. 45 (a)(1)(C); the second sentence also is derived in part from former Rule 407 a.

Section (b) is new.

Section (c) is derived from former Rules 114 a and b, 115 a and 405 a 2 (b), and from the 2006 version of Fed. R. Civ. P. 45 (a)(1)(D).

Section (d) is derived from former Rules 104 a and b and 116 b. Section (e) is derived from former Rule 115 b and the 2006 version of Fed. R. Civ. P. 45 (d)(2)(A).

Section (f) is derived from the 1980 version of Fed. R. Civ. P. 45 (d)(1), and the 2006 version of Fed. R. Civ. P. 45 (d)(2)(A).

Section (g) is new and is derived from the 2006 version of Fed. R. Civ. P. 45 (d)(1).

Section (h) is derived from the 1991 version of Fed. R. Civ. P. 45 (c)(1).

Section (i) is new.

Section (j) is derived from former Rules 114 d and 742 e.

Section (k) is new and is derived in part from the 2006 version of Fed. R. Civ. P. 45 (d)(2)(B).

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 500 - TRIAL

ADD new Rule 2-510.1, as follows:

Rule 2-510.1. FOREIGN SUBPOENAS IN CONJUNCTION WITH A DEPOSITION

(a) Applicability

This Rule applies only to a subpoena issued under Code, Courts Article, Title 9, Subtitle 4 (Maryland Uniform Interstate Depositions and Discovery Act) requiring a person to attend and give testimony at a deposition and, if applicable, produce at the deposition and permit inspection and copying of designated books, documents, records, electronically stored information, or tangible things in the possession, custody, or control of the person.

Cross reference: For the issuance of a subpoena based on a foreign subpoena that does not require a person to attend a deposition, see Rule 2-422.1.

(b) Definitions

(1) Statutory Definitions

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

(2) Inspection

In this Rule, "Inspection" includes inspecting,

measuring, surveying, photographing, testing, and sampling to the extent permitted by Rule 2-402 (a).

(3) Foreign Party

In this Rule, "foreign party" means the party on whose behalf a foreign subpoena is issued.

(4) Foreign Attorney

In this Rule, "foreign attorney" means an attorney licensed to practice law in a foreign jurisdiction, but not in the state of Maryland.

(c) Request for Issuance

A party to an action pending in a foreign jurisdiction may request issuance of a subpoena by a court of this State based on a foreign subpoena issued in that action by submitting a request to the clerk of the circuit court for the county in which discovery is sought to be conducted. The request shall be accompanied by the foreign subpoena and a written undertaking in a form approved by the State Court Administrator, signed by the foreign party and the party's foreign attorney, if any, by which the party and the party's foreign attorney submit to the jurisdiction of the circuit court for the purpose of adjudicating discovery disputes, motions to quash, enforcement of the subpoena, and discovery sanctions. A foreign party and the party's foreign attorney, if any, who files a request or undertaking pursuant to this section does not, by so doing, submit to the jurisdiction of a court of this State for any

other purpose.

Committee note: Section (c) of this Rule does not affect the jurisdiction of a court over a party or attorney who is otherwise subject to the court's jurisdiction.

(d) Issuance

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

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

(2) comply with the requirements of section (e) of this Rule; and

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

(e) Form

Except as otherwise permitted by the court for good cause, every subpoena shall be on a uniform form approved by the State Court Administrator. The form shall contain: (1) the caption of the action, including the civil action number for the Maryland court issuing the subpoena, (2) the name and address of the person to whom it is directed, (3) the name of the person at whose request it is issued, (4) the date, time, and place where attendance is required, (5) a description of any documents, electronically stored information, or tangible things to be produced and if testing or sampling is to occur, a description

of the proposed testing or sampling procedure, (6) when required by Rule 2-412 (d), a notice to designate the person to testify, (7) the date of issuance, and (8) a statement that the subpoena may be served within 60 days after its issuance and may not be served thereafter. A subpoena may specify the form in which electronically stored information is to be produced.

Committee note: A subpoena may be used to compel attendance at a deposition that will be held more than 60 days after the date of issuance, provided that the subpoena is served within the 60-day period. The failure to serve a subpoena within the 60-day period does not preclude the issuance of a new subpoena.

(f) Service

A subpoena shall be served by delivering a copy to the person named or to an agent authorized by appointment or by law to receive service for the person named or as permitted by Rule 2-121 (a)(3). A subpoena may be served by a sheriff of any county or by any person who is not a party and who is not less than 18 years of age. A person may not serve or attempt to serve a subpoena more than 60 days after its issuance.

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

(g) Objection to Subpoena for Deposition

A person served with a subpoena to attend a deposition may seek a protective order pursuant to Rule 2-403. If the

subpoena also commands the production of documents, electronically stored information, or tangible things at the deposition, the person served or a person named or depicted in an item specified in the subpoena may seek a protective order pursuant to Rule 2-403 or may file, within ten days after service of the subpoena, an objection to production of any or all of the designated materials. The objection shall be in writing and shall state the reasons for the objection. If an objection is filed, the party serving the subpoena is not entitled to production of the materials except pursuant to an order of the Maryland court from which the subpoena was issued. At any time before or within 15 days after completion of the deposition and upon notice to the deponent, the party serving the subpoena may move for an order to compel the production.

A claim that information is privileged or subject to protection shall be supported by a description of each item that is sufficient to enable the demanding party to evaluate the claim.

(h) Duties Relating to the Production of Documents, Electronically Stored Evidence, and Other Property

(1) Generally

A person responding to a subpoena to produce documents, electronically stored information, or other property at a deposition shall:

(A) produce the documents or information as they are kept

in the usual course of business or shall organize and label the documents or information to correspond with the categories in the subpoena; and

(B) produce electronically stored information in the form specified in the subpoena or, if a form is not specified, in the form in which the person ordinarily maintains it or in a form that is reasonably usable.

(2) Electronically Stored Information

A person responding to a subpoena to produce electronically stored information at a court proceeding or deposition need not produce the same electronically stored information in more than one form and may decline to produce the information on the ground that the sources are not reasonably accessible because of undue burden or cost. A person who declines to produce information on this ground shall identify the sources alleged to be not reasonably accessible and state the reasons why production from each identified source would cause undue burden or cost. The statement of reasons shall provide enough detail to enable the demanding party to evaluate the burdens and costs of complying with the subpoena and the likelihood of finding responsive information in the identified sources. Any motion relating to electronically stored information withheld on the ground that it is not reasonably accessible shall be decided in the manner set forth in Rule 2-402 (b).

(i) Protection of Persons Subject to Subpoenas

A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or cost on a person subject to the subpoena.

Cross reference: For the availability of sanctions for violations of this section, see Rules 1-201 (a) and 1-341.

(j) Permissive and Non-permissive Use

(1) A subpoena may be used to compel a witness to attend, give testimony, and produce and permit inspection, copying, testing, or sampling of designated documents, electronically stored information, or tangible things at a deposition to the extent permitted by Rule 2-402 (a).

(2) A subpoena issued under this Rule may not be used for any other purpose. If the court, on motion of a party or on its own initiative, after affording the alleged violator an opportunity for a hearing, finds that a person has used or attempted to use a subpoena or a copy or reproduction of a subpoena form for a purpose other than one allowed under this Rule, the court may impose an appropriate sanction, including an award of a reasonable attorney's fee and costs, and reimbursement of any person inconvenienced for time and expenses incurred.

(k) Attachment

A witness served with a subpoena under this Rule is

liable to body attachment and fine for failure to obey the subpoena without sufficient excuse. The writ of attachment may be executed by the sheriff or peace officer of any county and shall be returned to the court issuing it. The witness attached shall be taken immediately before the court if then in session. If the court is not in session, the witness shall be taken before a judicial officer of the District Court for a determination of appropriate conditions of release to ensure the witness' appearance at the next session of the court that issued the attachment.

(l) Information Produced that is Subject to a Claim of Privilege or Protection

(1) A party who receives a document, electronically stored information, or other property that the party knows or reasonably should know was inadvertently sent shall promptly notify the sender.

(2) Within a reasonable time after information is produced in response to a subpoena that is subject to a claim of privilege or of protection, the person who produced the information shall notify each party who received the information of the claim and the basis for it. A party who wishes to determine the validity of a claim of privilege or protection that is not controlled by a court order or a disclosure agreement entered into pursuant to Rule 2-402 (e)(5), shall promptly file a motion under seal requesting that the court

determine the validity of the claim. A party in possession of information that is the subject of the motion shall appropriately preserve the information pending a ruling. A receiving party may not use or disclose the information until the claim is resolved and shall take reasonable steps to retrieve any information the receiving party disclosed before being notified.

Cross reference: See Rule 19-304.4 (b) of the Maryland Attorneys' Rules of Professional Conduct.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-551 to provide that a notice for in banc review may be filed within 10 days after the withdrawal of certain post-judgment motions; to provide that a notice for in banc review filed before the withdrawal or disposition of these motions does not deprive the trial court of jurisdiction to dispose of the motion; to provide that if a notice for in banc review is filed before certain post-judgment motions are filed, the notice shall be treated as filed on the same day as, but after, the entry of a notice withdrawing the motion or an order disposing of it; to provide that a notice for in banc review filed after the announcement or signing by the trial court of a judgment but before entry of the judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket; and to make certain conforming and stylistic changes, as follows:

Rule 2-551. IN BANC REVIEW

(a) Generally

When review by a court in banc is permitted by the Maryland Constitution, a party may have a judgment or determination of any point or question reviewed by a court in

banc by filing a notice for in banc review. Issues are reserved for in banc review by making an objection in the manner set forth in Rules 2-517 and 2-520. Upon the filing of the notice, the Circuit Administrative Judge shall designate three judges of the circuit, other than the judge who tried the action, to sit in banc.

(b) Time for Filing

Except as otherwise provided in this ~~section~~ Rule, the notice for in banc review shall be filed within ten days after entry of judgment. When a timely motion is filed pursuant to Rule 2-532, 2-533, or 2-534, the notice for in banc review shall be filed within ten days after (1) entry of an order denying a motion pursuant to Rule 2-533 or disposing of a motion pursuant to Rule 2-532 or 2-534 or (2) withdrawal of the motion. A notice for in banc review filed before the withdrawal or disposition of any of these motions ~~that was timely filed shall have no effect, and a new notice for in banc review must be filed within the time specified in this section~~ does not deprive the trial court of jurisdiction to dispose of the motion. If a notice for in banc review is filed and thereafter a party files a timely motion pursuant to Rule 2-532, 2-533, or 2-534, the notice for in banc review shall be treated as filed on the same day as, but after, the entry of a notice withdrawing the motion or an order disposing of it.

(c) Memoranda

Within 30 days after the filing of the notice for in banc review, the party seeking review shall file four copies of a memorandum stating concisely the questions presented, any facts necessary to decide them, and supporting argument. Within 15 days thereafter, an opposing party who wishes to dispute the statement of questions or facts shall file four copies of a memorandum stating the alternative questions presented, any additional or different facts, and supporting argument. In the absence of such dispute, an opposing party may file a memorandum of argument.

(d) Transcript

Promptly after the filing of memoranda, a judge of the panel shall determine, by reviewing the memoranda and, if necessary, by conferring with counsel, whether a transcript of all or part of the proceeding is reasonably required for decision of the questions presented. If a transcript is required, the judge shall order one of the parties to provide the transcript and shall fix a time for its filing. The expenses of the transcript shall be assessed as costs against the losing party, unless otherwise ordered by the panel.

(e) Hearing and Decision

A hearing shall be scheduled as soon as practicable but need not be held if all parties notify the clerk in writing at least 15 days before the scheduled hearing date that the hearing has been waived. In rendering its decision, the panel shall

prepare and file or dictate into the record a brief statement of the reasons for the decision.

(f) Motion to Shorten or Extend Time Requirements

Upon motion of any party filed pursuant to Rule 1-204, any judge of the panel may shorten or extend the time requirements of this Rule, except the time for filing a notice for in banc review.

(g) Dismissal

(1) Generally

The panel, on its own initiative or on motion of any party, shall dismiss an in banc review if ~~(1)~~ (A) in banc review is not permitted by the Maryland Constitution, ~~(2)~~ (B) the notice for in banc review was prematurely filed or not timely filed except as provided in subsection (g)(2) of this Rule, or ~~(3)~~ (C) the case has become moot.~~, and the~~ The panel may dismiss if the memorandum of the party seeking review was not timely filed.

(2) Judgment Entered After Notice Filed

A notice for in banc review filed after the announcement or signing by the trial court of a judgment but before entry of the judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.

(h) Further Review

Any party who seeks and obtains review under this Rule has no further right of appeal. The decision of the panel does

not preclude an appeal to the Court of Special Appeals by an opposing party who is otherwise entitled to appeal.

Source: This Rule is new, is consistent with Md. Const., Art. IV, §22, and replaces former Rule 510.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 3-131 to delete the option of an oral entry of appearance and to make a stylistic change, as follows:

Rule 3-131. APPEARANCE

. . .

(c) How Entered

Except as otherwise provided in section (b) of this Rule, an appearance may be entered by filing a pleading, motion, or notice of intention to defend or, by filing a written ~~request for the entry~~ notice of ~~an~~ appearance~~, or, if the court permits, by orally requesting the entry of an appearance in open court~~.

. . .

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 300 – PLEADINGS AND MOTIONS

AMEND Rule 3-306 by adding a cross reference following section (d), as follows:

Rule 3-306. JUDGMENT ON AFFIDAVIT

. . .

(d) If Claim Arises from Assigned Consumer Debt

If the claim arises from consumer debt and the plaintiff is not the original creditor, the affidavit also shall include or be accompanied by (i) the items listed in this section, and (ii) an Assigned Consumer Debt Checklist, substantially in the form prescribed by the Chief Judge of the District Court, listing the items and information supplied in or with the affidavit in conformance with this Rule. Each document that accompanies the affidavit shall be clearly numbered as an exhibit and referenced by number in the Checklist.

(1) Proof of the Existence of the Debt or Account

Proof of the existence of the debt or account shall be made by a certified or otherwise properly authenticated photocopy or original of at least one of the following:

(A) a document signed by the defendant evidencing the debt or the opening of the account;

(B) a bill or other record reflecting purchases, payments, or other actual use of a credit card or account by the defendant; or

(C) an electronic printout or other documentation from the original creditor establishing the existence of the account and showing purchases, payments, or other actual use of a credit card or account by the defendant.

(2) Proof of Terms and Conditions

(A) Except as provided in subsection (d)(2)(B) of this Rule, if there was a document evidencing the terms and conditions to which the consumer debt was subject, a certified or otherwise properly authenticated photocopy or original of the document actually applicable to the consumer debt at issue shall accompany the affidavit.

(B) Subsection (d)(2)(A) of this Rule does not apply if (i) the consumer debt is an unpaid balance due on a credit card; (ii) the original creditor is or was a financial institution subject to regulation by the Federal Financial Institutions Examination Council or a constituent federal agency of that Council; and (iii) the claim does not include a demand or request for attorneys' fees or interest on the charge-off balance in excess of the Maryland Constitutional rate of six percent per annum.

Committee note: This Rule is procedural only, and subsection (d)(2)(B)(iii) is not intended to address the substantive issue of whether interest in any amount may be charged on a part of

the charge-off balance that, under applicable and enforceable Maryland law, may be regarded as interest.

Cross reference: See Federal Financial Institutions Examination Council Uniform Retail Credit Classification and Account Management Policy, 65 Fed. Reg. 36903 - 36906 (June 12, 2000).

(3) Proof of Plaintiff's Ownership

The affidavit shall contain a statement that the plaintiff owns the consumer debt. It shall include or be accompanied by:

(A) a chronological listing of the names of all prior owners of the debt and the date of each transfer of ownership of the debt, beginning with the name of the original creditor; and

(B) a certified or other properly authenticated copy of the bill of sale or other document that transferred ownership of the debt to each successive owner, including the plaintiff.

Committee note: If a bill of sale or other document transferred debts in addition to the consumer debt upon which the action is based, the documentation required by subsection (d)(3)(B) of this Rule may be in the form of a redacted document that provides the general terms of the bill of sale or other document and the document's specific reference to the debt sued upon.

(4) Identification and Nature of Debt or Account

The affidavit shall include the following information:

(A) the name of the original creditor;

(B) the full name of the defendant as it appears on the original account;

(C) the last four digits of the social security number for the defendant appearing on the original account, if known;

(D) the last four digits of the original account number; and

(E) the nature of the consumer transaction, such as utility, credit card, consumer loan, retail installment sales agreement, service, or future services.

(5) Future Services Contract Information

If the claim is based on a future services contract, the affidavit shall contain facts evidencing that the plaintiff currently is entitled to an award of damages under that contract.

(6) Account Charge-off Information

If there has been a charge-off of the account, the affidavit shall contain the following information:

(A) the date of the charge-off;

(B) the charge-off balance;

(C) an itemization of any fees or charges claimed by the plaintiff in addition to the charge-off balance;

(D) an itemization of all post-charge-off payments received and other credits to which the defendant is entitled; and

(E) the date of the last payment on the consumer debt or of the last transaction giving rise to the consumer debt.

(7) Information for Debts and Accounts Not Charged Off

If there has been no charge-off, the affidavit shall contain:

(A) an itemization of all money claimed by the plaintiff, (i) including principal, interest, finance charges, service charges, late fees, and any other fees or charges added to the principal by the original creditor and, if applicable, by subsequent assignees of the consumer debt and (ii) accounting for any reduction in the amount of the claim by virtue of any payment made or other credit to which the defendant is entitled;

(B) a statement of the amount and date of the consumer transaction giving rise to the consumer debt, or in instances of multiple transactions, the amount and date of the last transaction; and

(C) a statement of the amount and date of the last payment on the consumer debt.

(8) Licensing Information

The affidavit shall include a list of all Maryland collection agency licenses that the plaintiff currently holds and provide the following information as to each:

(A) license number,

(B) name appearing on the license, and

(C) date of issue.

Cross reference: See Code, Courts Article, §5-1203 (b)(2), concerning the plaintiff's requirements if a judgment on affidavit under section (d) of this Rule is denied.

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MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 300 – PLEADINGS AND MOTIONS

AMEND Rule 3-308 by adding to the Committee note a reference to Code, Courts Article, §5-1203 (b)(2), as follows:

Rule 3-308. DEMAND FOR PROOF

When the defendant desires to raise an issue as to (1) the legal existence of a party, including a partnership or a corporation, (2) the capacity of a party to sue or be sued, (3) the authority of a party to sue or be sued in a representative capacity, (4) the averment of the execution of a written instrument, or (5) the averment of the ownership of a motor vehicle, the defendant shall do so by specific demand for proof. The demand may be made at any time before the trial is concluded. If not raised by specific demand for proof, these matters are admitted for the purpose of the pending action. Upon motion of a party upon whom a specific demand for proof is made, the court may continue the trial for a reasonable time to enable the party to obtain the demanded proof.

Committee note: This Rule does not affect the proof requirements set forth in Code, Courts Article, §5-1203 (b)(2) and Rules 3-306 (d) and 3-509 (a) that are applicable to claims arising from consumer debt when the plaintiff is not the original creditor.

Source: This Rule is derived from former M.D.R. 302 a.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 500 – TRIAL

AMEND Rule 3-509 (a)(1) to make it mandatory in assigned consumer debt collection actions not resolved by judgment on affidavit for the court to require proof of liability and apply certain statutory requirements for admission of documents, as follows:

Rule 3-509. TRIAL UPON DEFAULT

(a) Requirements of Proof

When a motion for judgment on affidavit has not been filed by the plaintiff, or has been denied by the court, and the defendant has failed to appear in court at the time set for trial:

(1) if the defendant did not file a timely notice of intention to defend, the plaintiff shall not be required to prove the liability of the defendant, but shall be required to prove damages; except that for claims arising from consumer debt, as defined in Rule 3-306 (a)(3), when the plaintiff is not the original creditor, as defined in Rule 3-306 (a)(5), the court (A) ~~may~~ shall require proof of liability, (B) shall ~~consider~~ apply the requirements set forth in ~~Rule 3-306 (d)~~

Code, Courts Article, §5-1203 (b)(2), and (C) may also consider other competent evidence;

(2) if the defendant filed a timely notice of intention to defend, the plaintiff shall be required to introduce prima facie evidence of the defendant's liability and to prove damages. For claims arising from consumer debt, as defined in Rule 3-306 (a)(3), when the plaintiff is not the original creditor, as defined in Rule 3-306 (a)(5), the court shall ~~consider~~ require proof of liability and apply the requirements set forth in ~~Rule 3-306 (d)~~ Code, Courts Article, §5-1203 (b)(2). ~~and~~ The court may also consider other competent evidence.

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MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 700 – SPECIAL PROCEEDINGS

AMEND Rule 3-701 by adding a certain exception to section (f) and by adding to the cross reference following section (f) a citation to Code, Courts Article, §5-1203 (b)(2), as follows:

Rule 3-701. SMALL CLAIM ACTIONS

(a) Applicable Rules

The rules of this Title apply to small claim actions, except as provided in this Rule.

Cross reference: Code, Courts Article, §4-405.

(b) Forms

Forms for the commencement and defense of a small claim action shall be prescribed by the Chief Judge of the District Court and used by persons desiring to file or defend such an action.

(c) Trial Date and Time

A small claim action shall be tried at a special session of the court designated for the trial of small claim actions. Upon the filing of the complaint, the clerk shall fix the date and time for trial of the action. When the notice of intention to defend is due within 15 days after service, the original trial date shall be within 60 days after the complaint was

filed. When the notice of intention to defend is due within 60 days after service, the original trial date shall be within 90 days after the complaint was filed. With leave of court, an action may be tried sooner than on the date originally fixed.

Cross reference: See Rule 3-307 concerning the time for filing a notice of intention to defend.

(d) Counterclaims - Cross-claims - Third-party Claims

If a counterclaim, cross-claim, or third-party claim in an amount exceeding the jurisdictional limit for a small claim action (exclusive of interest, costs, and attorney's fees and exclusive of the original claim) is filed in a small claim action, this Rule shall not apply and the clerk shall transfer the action to the regular civil docket.

Cross reference: Rule 3-331 (f).

(e) Discovery Not Available

No pretrial discovery under Chapter 400 of this Title shall be permitted in a small claim action.

(f) Conduct of Trial

The court shall conduct the trial of a small claim action in an informal manner. Except as otherwise required by law, Title 5 of these rules does not apply to proceedings under this Rule.

Cross reference: See Code, Courts Article, §5-1203 (b)(2) and Rule 5-101 (b)(4).

Source: This Rule is derived in part from former M.D.R. 568 and 401 a and is in part new.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-202 to add language pertaining to collateral consequences of a conviction, including immigration consequences, to the form of a charging document, 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;

~~(C)~~ (D) helping you at trial;

~~(D)~~ (E) helping you protect your constitutional rights; and

~~(E)~~ (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 Public Defender.

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.

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MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-213 by adding language to subsection (a)(2) referring to a certain type of penalty, as follows:

Rule 4-213. INITIAL APPEARANCE OF DEFENDANT

(a) In District Court Following Arrest

When a defendant appears before a judicial officer of the District Court pursuant to an arrest, the judicial officer shall proceed as follows:

(1) Appointment, Appearance, or Waiver of Attorney for Initial Appearance

If the defendant appears without an attorney, the judicial officer shall first follow the procedure set forth in Rule 4-213.1 to assure that the defendant either is represented by an attorney or has knowingly and voluntarily waived the right to an attorney.

(2) Advice of Charges

The judicial officer shall inform the defendant of each offense with which the defendant is charged and of the allowable penalties, including <u>any</u> mandatory <u>or enhanced</u> penalties, if any, and shall provide the defendant with a copy of the charging document if the defendant does not already have one and one is

then available. If one is not then available, the defendant shall be furnished with a copy as soon as possible.

(3) Advice of Right to Counsel

The judicial officer shall require the defendant to read the notice to defendant required to be printed on charging documents in accordance with Rule 4-202 (a), or shall read the notice to a defendant who is unable for any reason to do so. A copy of the notice shall be furnished to a defendant who has not received a copy of the charging document. The judicial officer shall advise the defendant that if the defendant appears for trial without counsel, the court could determine that the defendant waived counsel and proceed to trial with the defendant unrepresented by counsel.

Cross reference: See Rule 4-213.1 with respect to the right to an attorney at an initial appearance before a judicial officer and Rule 4-216.1 (b) with respect to the right to an attorney at a hearing to review a pretrial release decision of a commissioner.

(4) Advice of Preliminary Hearing

When a defendant has been charged with a felony that is not within the jurisdiction of the District Court and has not been indicted, the judicial officer shall advise the defendant of the right to have a preliminary hearing by a request made then or within ten days thereafter and that failure to make a timely request will result in the waiver of a preliminary hearing. If the defendant then requests a preliminary hearing, the judicial officer may either set its date and time or notify

the defendant that the clerk will do so.

(5) Pretrial Release

The judicial officer shall comply with the applicable provisions of Rules 4-216 and 4-216.1 governing pretrial release.

(6) Certification by Judicial Officer

The judicial officer shall certify compliance with this section in writing.

(7) Transfer of Papers by Clerk

As soon as practicable after the initial appearance by the defendant, the judicial officer shall file all papers with the clerk of the District Court or shall direct that they be forwarded to the clerk of the circuit court if the charging document is filed there.

Cross reference: Code, Courts Article, §10-912. See Rule 4-231 (d) concerning the appearance of a defendant by video conferencing.

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MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-213.1 to add language to section (c), as follows:

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

. . .

(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.

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MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-214 to specify that an attorney enters an appearance by filing a written request for the entry of an appearance or by filing a pleading or motion, as follows:

Rule 4-214. DEFENSE COUNSEL

(a) Appearance

Counsel retained or appointed to represent a defendant shall enter an appearance ~~in writing~~ within five days after accepting employment, after appointment, or after the filing of the charging document in court, whichever occurs later. An appearance may be entered by filing a pleading or motion or by filing a written notice of appearance. An appearance entered in the District Court will automatically be entered in the circuit court when a case is transferred to the circuit court because of a demand for jury trial. In any other circumstance, counsel who intends to continue representation in the circuit court after appearing in the District Court must re-enter an appearance in the circuit court.

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MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-242 by adding to section (f) a reference to a plea of not guilty on an agreed statement of facts or on stipulated evidence, by deleting an obsolete sentence from the Committee note following section (f), by adding a cross reference after section (f), and by making stylistic changes, as follows:

Rule 4-242. PLEAS

(a) Permitted Pleas

A defendant may plead not guilty, guilty, or, with the consent of the court, nolo contendere. In addition to any of these pleas, the defendant may enter a plea of not criminally responsible by reason of insanity.

Committee note: It has become common in some courts for defendants to enter a plea of not guilty but, in lieu of a normal trial, to proceed either on an agreed statement of ultimate fact to be read into the record or on a statement of proffered evidence to which the defendant stipulates, the purpose being to avoid the need for the formal presentation of evidence but to allow the defendant to argue the sufficiency of the agreed facts or evidence and to appeal from a judgment of conviction. That kind of procedure is permissible only if there is no material dispute in the statement of facts or evidence. *See Bishop v. State*, 417 Md. 1 (2010); *Harrison v. State*, 382 Md. 477 (2004); *Morris v. State*, 418 Md. 194 (2011). Parties to a criminal action in a circuit court who seek to avoid a formal trial but to allow the defendant to appeal from specific adverse rulings are encouraged to proceed by way of a conditional plea

of guilty pursuant to section (d) of this Rule, to the extent that section is applicable.

(b) Method of Pleading

(1) Manner

A defendant may plead not guilty personally or by counsel on the record in open court or in writing. A defendant may plead guilty or nolo contendere personally on the record in open court, except that a corporate defendant may plead guilty or nolo contendere by counsel or a corporate officer. A defendant may enter a plea of not criminally responsible by reason of insanity personally or by counsel and the plea shall be in writing.

(2) Time in the District Court

In District Court the defendant shall initially plead at or before the time the action is called for trial.

(3) Time in Circuit Court

In circuit court the defendant shall initially plead within 15 days after the earlier of the appearance of counsel or the first appearance of the defendant before the circuit court pursuant to Rule 4-213 (c). If a motion, demand for particulars, or other paper is filed that requires a ruling by the court or compliance by a party before the defendant pleads, the time for pleading shall be extended, without special order, to 15 days after the ruling by the court or the compliance by a party. A plea of not criminally responsible by reason of

insanity shall be entered at the time the defendant initially pleads, unless good cause is shown.

(4) Failure or Refusal to Plead

If the defendant fails or refuses to plead as required by this section, the clerk or the court shall enter a plea of not guilty.

Cross reference: See *Treece v. State,* 313 Md. 665 (1988), concerning the right of a defendant to decide whether to interpose the defense of insanity.

(c) Plea of Guilty

The court may not accept a plea of guilty, including a conditional plea of guilty, until after an examination of the defendant on the record in open court conducted by the court, the State's Attorney, the attorney for the defendant, or any combination thereof, the court determines and announces on the record that (1) the defendant is pleading voluntarily, with understanding of the nature of the charge and the consequences of the plea; and (2) there is a factual basis for the plea. In addition, before accepting the plea, the court shall comply with section (f) of this Rule. The court may accept the plea of guilty even though the defendant does not admit guilt. Upon refusal to accept a plea of guilty, the court shall enter a plea of not guilty.

(d) Conditional Plea of Guilty

(1) Scope of Section

This section applies only to an offense charged by indictment or criminal information and set for trial in a circuit court or that is scheduled for trial in a circuit court pursuant to a prayer for jury trial entered in the District Court.

Committee note: Section (d) of this Rule does not apply to appeals from the District Court.

(2) Entry of Plea; Requirements

With the consent of the court and the State, a defendant may enter a conditional plea of guilty. The plea shall be in writing and, as part of it, the defendant may reserve the right to appeal one or more issues specified in the plea that (A) were raised by and determined adversely to the defendant, and, (B) if determined in the defendant's favor would have been dispositive of the case. The right to appeal under this subsection is limited to those pretrial issues litigated in the circuit court and set forth in writing in the plea.

Committee note: This Rule does not affect any right to file an application for leave to appeal under Code, Courts Article, §12-302 (e)(2).

(3) Withdrawal of Plea

A defendant who prevails on appeal with respect to an issue reserved in the plea may withdraw the plea.

Cross reference: Code, Courts Article, §12-302.

(e) Plea of Nolo Contendere

A defendant may plead nolo contendere only with the consent of court. The court may require the defendant or counsel to provide information it deems necessary to enable it to determine whether or not it will consent. The court may not accept the plea until after an examination of the defendant on the record in open court conducted by the court, the State's Attorney, the attorney for the defendant, or any combination thereof, the court determines and announces on the record that the defendant is pleading voluntarily with understanding of the nature of the charge and the consequences of the plea. In addition, before accepting the plea, the court shall comply with section (f) of this Rule. Following the acceptance of a plea of nolo contendere, the court shall proceed to disposition as on a plea of guilty, but without finding a verdict of guilty. If the court refuses to accept a plea of nolo contendere, it shall call upon the defendant to plead anew.

(f) Collateral Consequences of ~~a Plea of Guilty, Conditional Plea of Guilty, or Plea of Nolo Contendere~~ Certain Pleas

Before the court accepts a plea of not guilty on an agreed statement of facts or on stipulated evidence, a plea of guilty, a conditional plea of guilty, or a plea of nolo contendere, the court, the State's Attorney, the attorney for the defendant, or any combination thereof shall advise the defendant (1) that by entering the plea, if the defendant is not a United States citizen, the defendant may face additional

consequences of deportation, detention, or ineligibility for citizenship, (2) that by entering a plea to the offenses set out in Code, Criminal Procedure Article, §11-701, the defendant ~~shall~~ will have to register with the defendant's supervising authority as defined in Code, Criminal Procedure Article, §11-701 (p), and (3) that the defendant should consult with defense counsel if the defendant is represented and needs additional information concerning the potential consequences of the plea. The omission of advice concerning the collateral consequences of a plea does not itself mandate that the plea be declared invalid.

Committee note: In determining whether to accept the plea, the court should not question defendants about their citizenship or immigration status. Rather, the court should ensure that all defendants are advised in accordance with this section. ~~This Rule does not overrule *Yoswick v. State*, 347 Md. 228 (1997) and *Daley v. State*, 61 Md. App. 486 (1985)~~.

Cross reference: For the obligation of the defendant's attorney to correctly advise the defendant about the potential immigration consequences of a plea, see *Padilla v. Kentucky*, 559 U.S. 356 (2010) and *State v. Prado*, 448 Md. 664 (2016).

(g) Plea to a Degree

A defendant may plead not guilty to one degree and plead guilty to another degree of an offense which, by law, may be divided into degrees.

(h) Withdrawal of Plea

At any time before sentencing, the court may permit a defendant to withdraw a plea of guilty, a conditional plea of guilty, or a plea of nolo contendere when the withdrawal serves

the interest of justice. After the imposition of sentence, on motion of a defendant filed within ten days, the court may set aside the judgment and permit the defendant to withdraw a plea of guilty, a conditional plea of guilty, or a plea of nolo contendere if the defendant establishes that the provisions of section (c) or (e) of this Rule were not complied with or there was a violation of a plea agreement entered into pursuant to Rule 4-243. The court shall hold a hearing on any timely motion to withdraw a plea of guilty, a conditional plea of guilty, or a plea of nolo contendere.

Committee note: The entry of a plea waives objections to venue and may waive technical defects in the charging document ~~and waives objections to venue~~. See, e.g., Rule 4-202 (b) and *Kisner v. State*, 209 Md. 524~~, 122 A.2d 102~~ (1956).

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 731 a and M.D.R. 731 a.
Section (b)
Subsection (1) is derived from former Rule 731 b 1 and M.D.R. 731 b 1.
Subsection (2) is new.
Subsection (3) is derived from former Rule 731 b 2.
Subsection (4) is derived from former Rule 731 b 3 and M.D.R. 731 b 2.
Section (c) is derived from former Rule 731 c and M.D.R. 731 c.
Section (d) is new.
Section (d) is new.
Section (e) is derived from former Rule 731 d and M.D.R. 731 d.
Section (f) is new.
Section (g) is derived from former Rule 731 e.
Section (h) is derived from former Rule 731 f and M.D.R. 731 e.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 600 – CRIMINAL INVESTIGATIONS AND MISCELLANEOUS PROVISIONS

AMEND Rule 4-601 by deleting the second sentence of subsection (f)(3) and by changing the location for filing an executed search warrant and the papers associated with it, as follows:

Rule 4-601. SEARCH WARRANTS

. . .

(f) Executed Warrant--Return

(1) An officer who executes a search warrant shall prepare a detailed search warrant return, which shall include the date and time of the execution of the warrant and a verified inventory.

(2) The officer shall deliver the return to the judge who issued the warrant or, if that judge is not immediately available, to another judge of the same circuit, if the warrant was issued by a circuit court judge, or of the same district, if the warrant was issued by a District Court judge, as promptly as possible and, in any event, (A) within ten days after the warrant was executed, or (B) within any earlier time set forth in the warrant. The return shall be accompanied by the executed warrant and the verified inventory.

(3) Delivery of the return, warrant, and verified inventory may be in person, by secure facsimile, or by secure electronic mail that permits the judge to print the complete text of the documents. ~~If the delivery is by electronic mail, the officer shall sign the return and inventory as required by Rule 20-107 (c) and, no later than the next business day, deliver to the judge the original signed and dated return and inventory and the warrant that was executed~~.

(4) If the return is made to a judge other than the judge who issued the warrant, the officer shall notify the issuing judge of when and to whom the return was made, unless it is impracticable to give such notice.

(5) The officer shall deliver a copy of the return to an authorized occupant of the premises searched or, if such a person is not present, leave a copy of the return at the premises searched.

(g) Executed Warrant - Filing with Clerk

The judge to whom an executed search warrant is returned shall attach to the warrant the return, the verified inventory, and all other papers in connection with the issuance, execution, and return, including the copies retained by the issuing judge, and shall file them with the clerk of the court for the county ~~in~~ from which ~~the property was seized~~ the warrant was issued. The papers filed with the clerk shall be sealed and shall be

opened for inspection only upon order of the court. The clerk shall maintain a confidential index of the search warrants.

. . .

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 600 – CRIMINAL INVESTIGATIONS AND MISCELLANEOUS PROVISIONS

ADD new Rule 4-601.1 as follows:

Rule 4-601.1. PEN REGISTERS AND TRAP AND TRACE DEVICES

(a) Application for Order

Application for a court order under Code, Courts Article §10-4B-03 may be made either in person or by transmission of the application to the judge by secure and reliable electronic mail that permits the judge to print the complete text of the documents. If the documents are transmitted electronically, the application and proposed order shall be sent in an electronic text format approved by the State Court Administrator, and the judge shall retain a copy of the application.

(b) Signature on Application

The signature required on the application may be hand-signed or signed electronically.

(c) Order Authorizing Installation and Use

A court order issued pursuant to Code, Courts Article, §10-4B-04, may be hand-signed or signed electronically by the issuing judge and may be transmitted to the applicant by secure

and reliable electronic mail that permits the applicant to print the complete text of the order and the signature of the judge.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 600 - WITNESSES

AMEND Rule 5-609 (b) by adding an exception as to a conviction for perjury, as follows:

Rule 5-609. IMPEACHMENT BY EVIDENCE OF CONVICTION OF CRIME

(a) Generally

For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall be admitted if elicited from the witness or established by public record during examination of the witness, but only if (1) the crime was an infamous crime or other crime relevant to the witness's credibility and (2) the court determines that the probative value of admitting this evidence outweighs the danger of unfair prejudice to the witness or the objecting party.

Cross reference: Code, Courts Article, §10-905.

Committee note: The requirement that the conviction, when offered for purposes of impeachment, be brought out during examination of the witness is for the protection of the witness. It does not apply to impeachment by evidence of prior conviction of a hearsay declarant who does not testify.

(b) Time Limit

Evidence of a conviction is not admissible under this Rule if a period of more than 15 years has elapsed since the date of the conviction, except as to a conviction for perjury

for which no time limit applies.

(c) Other Limitations

Evidence of a conviction otherwise admissible under section (a) of this Rule shall be excluded if:

(1) the conviction has been reversed or vacated;

(2) the conviction has been the subject of a pardon; or

(3) an appeal or application for leave to appeal from the judgment of conviction is pending, or the time for noting an appeal or filing an application for leave to appeal has not expired.

(d) Effect of Plea of Nolo Contendere

For purposes of this Rule, "conviction" includes a plea of nolo contendere followed by a sentence, whether or not the sentence is suspended.

Committee note: See Code, Courts Article, §3-8A-23 for the effect of juvenile adjudications and for restrictions on their admissibility as evidence generally. Evidence of these adjudications may be admissible under the Confrontation Clause to show bias; see *Davis v. Alaska*, 415 U.S. 308 (1974).

Source: This Rule is derived from F.R.Ev. 609 and Rule 1-502.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 800 - HEARSAY

AMEND Rule 5-803 to permit the admissibility of certain electronic recordings made by a body camera or other device under certain circumstances and to add a Committee note pertaining to the new provision, as follows:

Rule 5-803. HEARSAY EXCEPTIONS: UNAVAILABILITY OF DECLARANT NOT REQUIRED

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(a) Statement by Party-Opponent

A statement that is offered against a party and is:

(1) The party's own statement, in either an individual or representative capacity;

(2) A statement of which the party has manifested an adoption or belief in its truth;

(3) A statement by a person authorized by the party to make a statement concerning the subject;

(4) A statement by the party's agent or employee made during the agency or employment relationship concerning a matter within the scope of the agency or employment; or

(5) A statement by a coconspirator of the party during the

course and in furtherance of the conspiracy.

Committee note: Where there is a disputed issue as to scope of employment, representative capacity, authorization to make a statement, the existence of a conspiracy, or any other foundational requirement, the court must make a finding on that issue before the statement may be admitted. These rules do not address whether the court may consider the statement itself in making that determination. Compare *Daugherty v. Kessler*, 264 Md. 281, 291-92 (1972) (civil conspiracy); and *Hlista v. Altevogt*, 239 Md. 43, 51 (1965) (employment relationship) with *Bourjaily v. United States*, 483 U.S. 171, 107 S.Ct. 775 (1987) (trial court may consider the out-of-court statement in deciding whether foundational requirements for coconspirator exception have been met.)

(b) Other Exceptions

(1) Present Sense Impression

A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

(2) Excited Utterance

A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3) Then Existing Mental, Emotional, or Physical Condition

A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), offered to prove the declarant's then existing condition or the declarant's future action, but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or

terms of declarant's will.

(4) Statements for Purposes of Medical Diagnosis or Treatment

Statements made for purposes of medical treatment or medical diagnosis in contemplation of treatment and describing medical history, or past or present symptoms, pain, or sensation, or the inception or general character of the cause or external sources thereof insofar as reasonably pertinent to treatment or diagnosis in contemplation of treatment.

(5) Recorded Recollection

See Rule 5-802.1 (e) for recorded recollection.

(6) Records of Regularly Conducted Business Activity

A memorandum, report, record, or data compilation of acts, events, conditions, opinions, or diagnoses if (A) it was made at or near the time of the act, event, or condition, or the rendition of the diagnosis, (B) it was made by a person with knowledge or from information transmitted by a person with knowledge, (C) it was made and kept in the course of a regularly conducted business activity, and (D) the regular practice of that business was to make and keep the memorandum, report, record, or data compilation. A record of this kind may be excluded if the source of information or the method or circumstances of the preparation of the record indicate that the information in the record lacks trustworthiness. In this paragraph, “business” includes business, institution,

association, profession, occupation, and calling of every kind, whether or not conducted for profit.

Cross reference: Rule 5-902 (b).

Committee note: Public records specifically excluded from the public records exceptions in subsection (b)(8) of this Rule may not be admitted pursuant to this exception.

(7) Absence of Entry in Records Kept in Accordance With Subsection (b)(6)

Unless the circumstances indicate a lack of trustworthiness, evidence that a diligent search disclosed that a matter is not included in the memoranda, reports, records, or data compilations kept in accordance with subsection (b)(6), when offered to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind about which a memorandum, report, record, or data compilation was regularly made and preserved.

(8) Public Records and Reports

(A) Except as otherwise provided in this paragraph, a memorandum, report, record, statement, or data compilation made by a public agency setting forth

(i) the activities of the agency;

(ii) matters observed pursuant to a duty imposed by law, as to which matters there was a duty to report;

(iii) in civil actions and when offered against the State in criminal actions, factual findings resulting from an investigation made pursuant to authority granted by law; or

(iv) in a final protective order hearing conducted pursuant to Code, Family Law Article, §4-506, factual findings reported to a court pursuant to Code, Family Law Article, §4-505, provided that the parties have had a fair opportunity to review the report.

Committee note: If necessary, a continuance of a final protective order hearing may be granted in order to provide the parties a fair opportunity to review the report and to prepare for the hearing.

(B) A record offered pursuant to paragraph (A) may be excluded if the source of information or the method or circumstance of the preparation of the record indicate that the record or the information in the record lacks trustworthiness.

(C) Except as provided in subsection (b)(8)(D) of this Rule, a record of matters observed by a law enforcement person is not admissible under this paragraph when offered against an accused in a criminal action.

(D) Subject to Rule 5-805, an electronic recording of a matter made by a body camera worn by a law enforcement person or by another type of recording device employed by a law enforcement agency may be admitted when offered against an accused if (i) it is properly authenticated, (ii) it was made contemporaneously with the matter recorded, and (iii) circumstances do not indicate a lack of trustworthiness.

Committee note: Subsection (b)(8)(D) establishes requirements for the admission of certain electronic recordings made by a body camera worn by a law enforcement person or by another type of recording device employed by a law enforcement agency against

an accused. Subsection (b)(8)(D) does not preclude an accused from offering on his or her own behalf a record of matters observed by a law enforcement person, including a recording made by a body camera. This section does not mandate following the interpretation of the term "factual findings" set forth in *Beech Aircraft Corp. v. Rainey*, 488 U.S. 153 (1988). See *Ellsworth v. Sherne Lingerie, Inc.*, 303 Md. 581 (1985).

(9) Records of Vital Statistics

Except as otherwise provided by statute, records or data compilations of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.

Cross reference: See Code, Health General Article, §4-223 (inadmissibility of certain information when paternity is contested) and §5-311 (admissibility of medical examiner's reports).

(10) Absence of Public Record or Entry

Unless the circumstances indicate a lack of trustworthiness, evidence in the form of testimony or a certification in accordance with Rule 5-902 that a diligent search has failed to disclose a record, report, statement, or data compilation made by a public agency, or an entry therein, when offered to prove the absence of such a record or entry or the nonoccurrence or nonexistence of a matter about which a record was regularly made and preserved by the public agency.

(11) Records of Religious Organizations

Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in

a regularly kept record of a religious organization.

(12) Marriage, Baptismal, and Similar Certificates

Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a member of the clergy, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(13) Family Records

Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones or the like.

(14) Records of Documents Affecting an Interest in Property

The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and a statute authorizes the recording of documents of that kind in that office.

(15) Statements in Documents Affecting an Interest in Property

A statement contained in a document purporting to establish or affect an interest in property if the matter stated

was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document or the circumstances otherwise indicate lack of trustworthiness.

(16) Statements in Ancient Documents

Statements in a document in existence twenty years or more, the authenticity of which is established, unless the circumstances indicate lack of trustworthiness.

(17) Market Reports and Published Compilations

Market quotations, tabulations, lists, directories, and other published compilations, generally used and reasonably relied upon by the public or by persons in particular occupations.

(18) Learned Treatises

To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination, statements contained in a published treatise, periodical, or pamphlet on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness, by other expert testimony, or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

(19) Reputation Concerning Personal or Family History

Reputation, prior to the controversy before the court, among members of a person's family by blood, adoption, or marriage, or among a person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, or other similar fact of personal or family history.

(20) Reputation Concerning Boundaries or General History

(A) Reputation in a community, prior to the controversy before the court, as to boundaries of, interests in, or customs affecting lands in the community.

(B) Reputation as to events of general history important to the community, state, or nation where the historical events occurred.

(21) Reputation as to Character

Reputation of a person's character among associates or in the community.

(22) [Vacant]

There is no subsection 22.

(23) Judgment as to Personal, Family, or General History, or Boundaries

Judgments as proof of matters of personal, family, or general history, or boundaries, essential to the judgment, if the matter would be provable by evidence of reputation under subsections (19) or (20).

(24) Other Exceptions

Under exceptional circumstances, the following are not

excluded by the hearsay rule: A statement not specifically covered by any of the hearsay exceptions listed in this Rule or in Rule 5-804, but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. A statement may not be admitted under this exception unless the proponent of it makes known to the adverse party, sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the intention to offer the statement and the particulars of it, including the name and address of the declarant.

Committee note: The residual exception provided by Rule 5-803 (b)(24) does not contemplate an unfettered exercise of judicial discretion, but it does provide for treating new and presently unanticipated situations which demonstrate a trustworthiness within the spirit of the specifically stated exceptions. Within this framework, room is left for growth and development of the law of evidence in the hearsay area, consistently with the broad purposes expressed in Rule 5-102.

It is intended that the residual hearsay exception will be used very rarely, and only in exceptional circumstances. The Committee does not intend to establish a broad license for trial judges to admit hearsay statements that do not fall within one of the other exceptions contained in Rules 5-803 and 5-804 (b). The residual exception is not meant to authorize major judicial revisions of the hearsay rule, including its present exceptions. Such major revisions are best accomplished by amendments to the

Rule itself. It is intended that in any case in which evidence is sought to be admitted under this subsection, the trial judge will exercise no less care, reflection, and caution than the courts did under the common law in establishing the now-recognized exceptions to the hearsay rule.

Source: This Rule is derived as follows:
Section (a) is derived from F.R.Ev. 801(d)(2).
Section (b) is derived from F.R.Ev. 803.

MARYLAND RULES OF PROCEDURE

TITLE 5 – EVIDENCE

CHAPTER 900 – AUTHENTICATION AND IDENTIFICATION

AMEND Rule 5-902 by adding language pertaining to Code, Courts Article, §5-1203 (b)(2) to the Committee note following subsection (b)(1), as follows:

Rule 5-902. SELF-AUTHENTICATION

. . .

(b) Certified Records of Regularly Conducted Business Activity

(1) Procedure

Testimony of authenticity as a condition precedent to admissibility is not required as to the original or a duplicate of a record of regularly conducted business activity, within the scope of Rule 5-803 (b)(6) that has been certified pursuant to subsection (b)(2) of this Rule, provided that at least ten days prior to the commencement of the proceeding in which the record will be offered into evidence, (A) the proponent (i) notifies the adverse party of the proponent's intention to authenticate the record under this subsection and (ii) makes a copy of the certificate and record available to the adverse party and (B) the adverse party has not filed within five days after service of the proponent's notice written objection on the ground that

the sources of information or the method or circumstances of preparation indicate lack of trustworthiness.

Committee note: An objection to self-authentication under subsection (b)(1) of this Rule made in advance of trial does not constitute a waiver of any other ground that may be asserted as to admissibility at trial.

In a consumer debt collection action not resolved by judgment on affidavit, Code, Courts Article, §5-1203 (b)(2) requires that a debt buyer or a collector acting on behalf of a debt buyer introduce specified documents "in accordance with the Rules of Evidence applicable to actions that are not small claims actions brought under §4-405 of this Article." Consequently, if the debt buyer or collector intends to offer business records into evidence in a small claim action without in-court testimony of a witness, the debt buyer must provide notice to the opposing party in conformance with Rule 5-902 (b).

(2) Form of Certificate

For purposes of subsection (b)(1) of this Rule, the original or duplicate of the business record shall be certified in substantially the following form:

Certification of Custodian of Records

or Other Qualified Individual

I, _____, do hereby certify that:

(1) I am the Custodian of Records of or am otherwise qualified to administer the records for:

_____ (identify the organization that maintains the records), and

(2) The attached records

(a) are true and correct copies of records that were made at or near the time of the occurrence of the matters set forth

by, or from the information transmitted by, a person with knowledge of these matters; and

(b) were kept in the course of regularly conducted activity; and

(c) were made and kept by the regularly conducted business activity as a regular practice.

I declare under penalty of perjury that the foregoing is true and correct.

Signature and Title: _____

Date: _____

Source: This Rule is in part derived from F.R.Ev. 902 and in part new.

MARYLAND RULES OF PROCEDURE

TITLE 6 – SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 6-122 by adding language to the forms in sections (c) and (d) and by making stylistic changes, as follows:

Rule 6-122. PETITIONS

. . .

(c) Limited Order to Locate Assets

Upon the filing of a verified petition pursuant to Rule 6-122 (a), the ~~orphans'~~ Orphans' Court may issue a limited order to search for assets titled in the sole name of a decedent. The petition shall contain the name, address, and date of death of the decedent and a statement as to why the limited order is necessary. The limited order to locate assets shall be in the following form:

IN THE ORPHANS' COURT FOR

(OR) _____, MARYLAND

BEFORE THE REGISTER OF WILLS FOR

IN THE ESTATE OF:

_____ LIMITED ORDER NO. _____

LIMITED ORDER TO LOCATE ASSETS

Upon the foregoing petition by a person interested in the proceedings and pursuant to Rule 6-122 (c), it is this _____ day of _____, _____ by the Orphans' Court for _____ (county), Maryland, ORDERED that:

1. The following institutions shall disclose to _____ the assets, and the values
(Name of petitioner)
thereof, titled in the sole name of the above decedent:

_____	_____
(Name of financial institution)	(Name of financial institution)
_____	_____
(Name of financial institution)	(Name of financial institution)
_____	_____
(Name of financial institution)	(Name of financial institution)

2. **THIS ORDER MAY NOT BE USED TO TRANSFER ASSETS.**

See Maryland Rule 6-122 (c).

(d) Limited Order to Locate Will

Upon the filing of a verified petition pursuant to Rule 6-122 (a), the ~~orphans'~~ Orphans' Court may issue a limited order to a financial institution to enter the safe deposit box of a decedent in the presence of the Register of Wills or the Register's authorized deputy for the sole purpose of locating the decedent's will and, if it is located, to deliver it to the Register of Wills or the authorized deputy. The limited order to locate a will shall be in the following form:

IN THE ORPHANS' COURT FOR

(OR) _____, MARYLAND

BEFORE THE REGISTER OF WILLS FOR

IN THE ESTATE OF:

_____ LIMITED ORDER NO. _____

LIMITED ORDER TO LOCATE WILL

Upon the foregoing Petition and pursuant to Rule 6-122 (d), it is this _____ day of _____ (month), _____ (year) by the Orphans' Court for _____ (County), Maryland,

ORDERED that:

_____, located at
(Name of financial institution)

_____ enter the
(Address)

safe deposit box titled in the sole name of _____

_____, in the presence of
(Name of decedent)

the Register of Wills _____ OR the Register's authorized deputy _____ for the sole purpose of locating the decedent's will and, if the will is located, deliver it to the Register of Wills OR the Register's authorized deputy.

_____
JUDGE

_____
JUDGE

_____
JUDGE

See Maryland Rule 6-122 (d).

Committee note: This procedure is not exclusive. Banks may also rely on the procedure set forth in Code, Financial Institutions Article, 12-603.

MARYLAND RULES OF PROCEDURE

TITLE 6 – SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER – 400 – ADMINISTRATION OF ESTATES

AMEND the form in Rule 6-416, Consent to Compensation for Personal Representative and/or Attorney, by changing some of the terminology and by adding a sentence to address when consents have not been obtained, as follows:

Rule 6-416. ATTORNEY'S FEES OR PERSONAL REPRESENTATIVE'S COMMISSIONS

(a) Subject to Court Approval

(1) Contents of Petition

When a petition for the allowance of attorney's fees or personal representative's commissions is required, it shall be verified and shall state: (A) the amount of all fees or commissions previously allowed, (B) the amount of fees or commissions that the petitioner reasonably estimates will be requested in the future, (C) the amount of fees or commissions currently requested, (D) the basis for the current request in reasonable detail, and (E) that the notice required by subsection (a) (3) of this Rule has been given.

(2) Filing - Separate or Joint Petitions

Petitions for attorney's fees and personal

representative's commissions shall be filed with the court and may be filed as separate or joint petitions.

(3) Notice

The personal representative shall serve on each unpaid creditor who has filed a claim and on each interested person a copy of the petition accompanied by a notice in the following form:

NOTICE OF PETITION FOR ATTORNEY'S FEES OR PERSONAL REPRESENTATIVE'S COMMISSIONS

You are hereby notified that a petition for allowance of attorney's fees or personal representative's commissions has been filed. You have 20 days after service of the petition within which to file written exceptions and to request a hearing.

(4) Allowance by Court

Upon the filing of a petition, the court, by order, shall allow attorney's fees or personal representative's commissions as it considers appropriate, subject to any exceptions.

(5) Exception

An exception shall be filed with the court within 20 days after service of the petition and notice and shall include the grounds therefor in reasonable detail. A copy of the exception shall be served on the personal representative.

(6) Disposition

If timely exceptions are not filed, the order of the court allowing the attorney's fees or personal representative's commissions becomes final. Upon the filing of timely exceptions, the court shall set the matter for hearing and notify the personal representative and other persons that the court deems appropriate of the date, time, place, and purpose of the hearing.

(b) Payment of Attorney's Fees and Personal Representative's Commissions Without Court Approval.

(1) Payment of contingency fee for services other than estate administration.

Payment of attorney's fees may be made without court approval if:

(A) the fee is paid to an attorney representing the estate in litigation under a contingency fee agreement signed by the decedent or by a previous personal representative;

(B) the fee is paid to an attorney representing the estate in litigation under a contingency fee agreement signed by the current personal representative of the decedent's estate provided that the personal representative is not acting as the retained attorney and is not a member of the attorney's firm;

(C) the fee does not exceed the terms of the contingency fee agreement;

(D) a copy of the contingency fee agreement is on file with the register of wills; and

(E) the attorney files a statement with each account stating that the scope of the representation by the attorney does not extend to the administration of the estate.

(2) Consent in Lieu of Court Approval

Payment of attorney's fees and personal representative's commissions may be made without court approval if:

(A) the combined sum of all payments of attorney's fees and personal representative's commissions does not exceed the amounts provided in Code, Estates and Trusts Article, §7-601; and

(B) a written consent stating the amounts of the payments signed by (i) each creditor who has filed a claim that is still open and (ii) all interested persons, is filed with the register in the following form:

BEFORE THE REGISTER OF WILLS FOR ....., MARYLAND

IN THE ESTATE OF:

_____ Estate No. _____

CONSENT TO COMPENSATION FOR
PERSONAL REPRESENTATIVE AND/OR ATTORNEY

I understand that the law, Estates and Trusts Article, §7-601, provides a formula to establish the maximum total ~~compensation~~ commissions to be paid for personal representative's commissions ~~and/or attorney's fees without order of court~~. If the total compensation for personal

representative's commissions and attorney's fees being requested falls within the maximum allowable ~~amount~~ commissions, and the request is consented to by all unpaid creditors who have filed claims and all interested persons, this payment need not be subject to review or approval by the Court. A creditor or an interested party may, but is not required to, consent to these fees.

The formula sets total compensation at 9% of the first $20,000 of the ~~gross~~ adjusted estate subject to administration PLUS 3.6% of the excess over $20,000. Based on this formula, the adjusted estate subject to administration known at this time is _____. ~~the~~ The total allowable statutory maximum commission based on the ~~gross~~ adjusted estate subject to administration known at this time is _____, LESS any personal representative's commissions and~~/or~~ attorney's fees previously approved as required by law and paid. To date, $_____ in personal representative's commissions and $_____ in attorney's fees have been paid.

IF ALL REQUIRED CONSENTS ARE NOT OBTAINED, A PETITION SHALL BE FILED, AND THE COURT SHALL DETERMINE THE AMOUNT TO BE PAID.

Cross reference: See 90 Op. Att'y. Gen. 145 (2005).

Total combined fees being requested are $_____, to be paid as follows:

Amount To Name of Personal Representative/Attorney

_____ _____

_____ _____

_____ _____

_____ _____

I have read this entire form and I hereby consent to the payment of personal representative and/or attorney's fees in the above amount.

Date	Signature	Name (Typed or Printed)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

_____
Attorney

_____
Address

_____
Address

_____
Telephone Number

_____
Facsimile Number

_____
E-mail Address

_____
Personal Representative

_____
Personal Representative

Committee note: Nothing in this Rule is intended to relax requirements for approval and authorization of previous payments.

(3) Designation of Payment

When rendering an account pursuant to Rule 6-417 or a final report under modified administration pursuant to Rule 6-455, the personal representative shall designate any payment made under this section as an expense.

Cross reference: Code, Estates and Trusts Article, §§7-502, 7-601, 7-602, 7-603, and 7-604.

MARYLAND RULES OF PROCEDURE

TITLE 6 – SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 – ADMINISTRATION OF ESTATES

AMEND Rule 6-431 to add language to section 1. of the form in section (e) after the line for date of the codicil, to add language to section 3. of the form in section (e) after the word "codicil," and to add another line for date of the will and language at the end of the first sentence of the form in section (f), as follows:

Rule 6-431. CAVEAT

(a) Petition

A petition to caveat may be filed by an heir of the decedent or a legatee in any instrument purporting to be a will or codicil of the decedent. The petition may challenge the validity of any instrument purporting to be the decedent's will or codicil, whether or not offered for or admitted to probate.

(b) Time for Filing

(1) Generally

Except as otherwise provided by this Rule, a petition to caveat shall be filed within six months after the first appointment of a personal representative under a will, even if there has been a subsequent judicial probate or appointment of a personal representative under that will. If another will or

codicil is subsequently offered for probate, a petition to caveat that will or codicil shall be filed within three months after that will or codicil is admitted to probate or within six months after the first appointment of a personal representative under the first probated will, whichever is later.

(2) Exceptions

Upon petition filed within 18 months after the death of the decedent, a person entitled to file a petition to caveat may request an extension of time for filing the petition to caveat on the grounds that the person did not have actual or statutory notice of the relevant probate proceedings, or that there was fraud, material mistake, or substantial irregularity in those proceedings. If the court so finds, it may grant an extension.

Cross reference: Code, Estates and Trusts Article, §§5-207, 5-304, 5-406, and 5-407.

(c) Contents

The petition to caveat shall be signed and verified by the petitioner and shall include the following:

(1) the name and address of the petitioner;

(2) the relationship of the petitioner to the decedent or the nature of the petitioner's interest in the decedent's estate upon which the petitioner claims the right to file the petition;

(3) the date of the decedent's death;

(4) an identification of the instrument being challenged

including a statement as to whether it has been offered for or admitted to probate;

(5) an allegation that the instrument challenged is not a valid will or codicil of the decedent and the grounds for challenging its validity;

(6) an identification of the instrument, if any, claimed by the petitioner to be the decedent's last will, with a copy of the instrument attached to the petition or an explanation why a copy cannot be attached;

(7) a statement that the list of interested persons filed with the petition contains the names and addresses of all interested persons who could be affected by the proceeding to the extent known by the petitioner; and

(8) the relief sought, including a request for the probate of the instrument, if any, that the petitioner claims is the true last will or codicil of the decedent.

(d) Additional Documents

A petition to caveat shall be accompanied by a list of all interested persons who could be affected by the proceeding in the form prescribed by Rule 6-316, a Notice of Caveat in the form set forth in section (e) of this Rule, and a Public Notice of Caveat in the form set forth in section (f) of this Rule.

(e) Notice to Interested Persons of Caveat

A notice to interested persons of the filing of a caveat shall be in the following form:

[CAPTION]

NOTICE OF CAVEAT

As an interested person, you are notified that:

(1) A petition to caveat challenging the decedent's will dated _____ or codicil dated _____ or both has been filed with the court _____ by_____
(name of petitioner and relationship to decedent or

_____
other basis for interest in the estate)

(2) The present status of the will or codicil or both being challenged is:

[ ] admitted to probate on _____, or
(date)

[ ] offered for probate but not admitted; or not offered for probate.

(3) As to defense of the will or codicil or both by a personal representative:

[ ] The following person has been appointed personal representative:

_____
name(s) and address(es)

[ ] No person is serving as personal representative. A copy of the petition to caveat is enclosed.

(4) This caveat proceeding may affect adversely any rights you may have in the decedent's estate. Further information can be obtained by reviewing the estate file in the office of the

Register of Wills or by contacting the personal representative or the attorney for the estate. If you want to respond, you must do so in writing filed with the court or with this office within 20 days after service of this notice or any extension of that period granted by the court. A copy of any response you file must be sent to the petitioner or the petitioner's attorney

_____
(name and address)

and to the personal representative or the personal representative's attorney.

Date: _____ _____
Register of Wills for

_____

_____
Address

_____
Telephone Number

(f) Public Notice of Caveat

A public notice of the filing of a caveat shall be in the following form:

[CAPTION]

PUBLIC NOTICE OF CAVEAT

To all persons interested in the above estate:

Notice is given that a petition to caveat has been filed by _____challenging the will dated _____ or codicil dated

_____ or both. You may obtain from the Register of Wills the date and time of any hearing on this matter.

_____
Register of Wills

(g) Number of Copies

The petitioner shall file a sufficient number of copies of the petition to caveat and Notice of Caveat for the register to comply with Rule 6-432.

MARYLAND RULES OF PROCEDURE

TITLE 6 – SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 – ADMINISTRATION OF ESTATES

AMEND Rule 6-432 to add language after the word "codicil" in sections (a) and (c) and to delete references to a certain type of mail and add references to another type, as follows:

Rule 6-432. ORDER TO ANSWER; REGISTER'S NOTICE AND SERVICE

Within five days after the filing of the petition to caveat, the Register shall:

(a) issue an Order to Answer requiring the personal representative appointed as a result of the probate of the will or codicil or both being challenged, if one is currently serving, to respond to the petition to caveat within 20 days after service;

(b) serve the Order together with a copy of the petition on the personal representative by ~~certified~~ first class mail, unless the petitioner requests service by the sheriff;

(c) serve on each interested person a copy of the Notice of Caveat by ~~certified~~ first class mail, and if no personal representative appointed under the will or codicil or both is currently serving, furnish with the notice a copy of the petition to caveat; and

(d) publish the Public Notice of Caveat once a week for two successive weeks in a newspaper of general circulation in the county where the petition to caveat is filed.

MARYLAND RULES OF PROCEDURE

TITLE 6 – SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 – ADMINISTRATION OF ESTATES

AMEND Rule 6-452 to remove certain language requiring permission by a court, to change the type of mail sent to the personal representative, to add language providing for a certain type of mail to be sent to interested persons, and to delete language referring to other persons, as follows:

Rule 6-452. REMOVAL OF A PERSONAL REPRESENTATIVE

(a) Commencement

The removal of a personal representative may be initiated by the court or the register, or on petition of an interested person.

(b) Show Cause Order and Hearing

The court shall issue an order (1) stating the grounds asserted for the removal, unless a petition for removal has been filed, (2) directing that cause be shown why the personal representative should not be removed, and (3) setting a hearing. The order may contain a notice that the personal representative, after being served with the order, may exercise only the powers of a special administrator or such other powers as the court may direct. ~~Unless otherwise permitted by the court, the~~ The order shall be ~~served~~ sent to the personal representative by ~~certified~~

first class mail ~~on the personal representative~~, unless otherwise required by the Court, and shall be sent by first class mail to ~~all~~ each interested person~~s, and such other persons as the court may direct~~. The court shall conduct a hearing for the purpose of determining whether the personal representative should be removed.

Cross reference: Rule 6-124.

(c) Appointment of Successor Personal Representative

Concurrently with the removal of a personal representative, the court shall appoint a successor personal representative or special administrator.

(d) Account of Removed Personal Representative

Upon appointment of a successor personal representative or special administrator, the court shall order the personal representative who is being removed from office to (1) file an account with the court and deliver the property of the estate to the successor personal representative or special administrator or (2) comply with Rule 6-417 (c).

Cross reference: Code, Estates and Trusts Article, §6-306 (removal of personal representative) and Courts Article, §12-701 (no stay by appeal; power of successor).

MARYLAND RULES OF PROCEDURE

TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW

IN CIRCUIT COURT

CHAPTER 200 - JUDICIAL REVIEW OF ADMINISTRATIVE AGENCY DECISIONS

AMEND Rule 7-202 to permit an administrative agency to provide a certain notice by electronic means to a party to the agency proceeding if the party has consented to receive notices from the agency electronically and to make stylistic changes, as follows:

Rule 7-202. METHOD OF SECURING REVIEW

. . .

(d) Copies; Filing; ~~Mailing~~ Notices

(1) Notice to Agency

Upon filing the petition, the petitioner shall deliver to the clerk a copy of the petition for the agency whose decision is sought to be reviewed. The clerk shall promptly mail a copy of the petition to the agency, informing the agency of the date the petition was filed and the civil action number assigned to the action for judicial review.

(2) Service by Petitioner in Workers' Compensation Cases

Upon filing a petition for judicial review of a decision of the Workers' Compensation Commission, the petitioner shall

serve a copy of the petition, together with all attachments, by first-class mail on the Commission and each other party of record in the proceeding before the Commission. If the petitioner is requesting judicial review of the Commission's decision regarding attorneys' fees, the petitioner also shall serve a copy of the petition and attachments by first-class mail on the Attorney General.

Committee note: The first sentence of this subsection is required by Code, Labor and Employment Article, §9-737. It does not relieve the clerk from the obligation under subsection (d)(1) of this Rule to mail a copy of the petition to the agency or the agency from the obligation under subsection (d)(3) of this Rule to give written notice to all parties to the agency proceeding.

(3) ~~By~~ Notice from Agency to Parties

(A) ~~Generally~~ Duty

Unless otherwise ordered by the court, the agency, upon receiving the copy of the petition from the clerk, shall give written notice promptly ~~by first-class mail or, if permitted by subsection (d)(3)(B) of this Rule, electronically~~ to all parties to the agency proceeding that:

(i) a petition for judicial review has been filed, the date of the filing, the name of the court, and the civil action number; and

(ii) a party ~~wishing~~ who wishes to oppose the petition must file a response within 30 days after the date the agency's notice was ~~mailed~~ sent unless the court shortens or extends the time.

(B) ~~Electronic Notification in Workers' Compensation Cases~~ Method

The ~~Commission~~ agency may give the ~~written~~ notice ~~required under subsection (d)(3)(A) of this Rule electronically to a party to the Commission proceeding if the party has subscribed to receive electronic notices from the Commission~~ by first class mail or, if the party has consented to receive notices from the agency electronically, by electronic means.

(e) Certificate of Compliance

Within five days after mailing or electronic transmission, the agency shall file with the clerk a certificate of compliance with section (d) of this Rule, showing the date the agency's notice was mailed or electronically transmitted and the names and addresses of the persons to whom it was ~~mailed~~ sent. Failure to file the certificate of compliance does not affect the validity of the agency's notice.

. . .

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 8-121 to remove the requirement in appeals from courts exercising juvenile jurisdiction that the proceeding be styled using the child's first name and the initial of the child's last name; to substitute the requirement that the proceeding be styled using the initials of the child's first and last names; and to add a requirement that only the initials of the name of a child, parent, or guardian be used in certain documents pertaining to the appeal; as follows:

Rule 8-121. APPEALS FROM COURTS EXERCISING JUVENILE JURISDICTION - CONFIDENTIALITY

(a) Scope

This Rule applies to an appeal from an order relating to a child entered by a court exercising juvenile jurisdiction.

(b) Caption

Unless the court orders otherwise, the proceedings shall be styled ~~"In re ..... (first name and initial of last name of child)"~~ "In re A. B. (initial of the child's first name and initial of child's last name).

(c) Confidentiality

The ~~last~~ name of the child, and any parent or guardian of the child, other than their initials, shall not be used in any opinion, oral argument, brief, record extract, petition, or other document pertaining to the appeal that is generally available to the public.

(d) Transmittal of Record

The record shall be transmitted to the appellate court in a manner that ensures the secrecy of its contents.

(e) Access to Record

Except by order of the Court, the record shall be open to inspection only by the Court, authorized court personnel, parties, and their attorneys.

Source: This Rule is derived from former Rules 1097 and 897.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 8-122 to remove the requirement in an appeal from certain orders relating to a child in a proceeding for adoption or for guardianship that the proceeding be styled using the child's first name and the initial of the child's last name; to substitute the requirement that the proceeding be styled using the initials of the child's first and last names; to require that only the first and last initials of a child, the parents of the child, and the adopting parents be used in any document pertaining to the appeal; as follows:

Rule 8-122. APPEALS FROM PROCEEDINGS FOR ADOPTION OR GUARDIANSHIP - CONFIDENTIALITY

(a) Scope

This Rule applies to an appeal from an order relating to a child in a proceeding for adoption or for guardianship with right to consent to adoption or long-term care short of adoption.

(b) Caption

The proceeding shall be styled ~~"In re Adoption/ Guardianship of .....(first name and initial of last name of adoptee or ward)"~~ "In re Adoption/Guardianship of

A. B. (initial of the adoptee or ward's first name and initial of adoptee or ward's last name)".

(c) Confidentiality

The ~~last~~ name of the child, the natural parents of the child, and the adopting parents, other than their initials, shall not be used in any opinion, oral argument, brief, record extract, petition, or other document pertaining to the appeal that is generally available to the public. The parties, with the approval of the appellate court, may waive the requirements of this section.

(d) Transmittal of Record

The record shall be transmitted to the appellate court in a manner that ensures the secrecy of its contents.

(e) Access to the Record

(1) Adoption Proceeding

Except by order of the Court and subject to reasonable conditions and restrictions imposed by the Court, the record in an appeal from an adoption proceeding shall be open to inspection only by the Court and authorized court personnel.

(2) Guardianship Proceeding

Except by order of the Court, the record in an appeal from a guardianship proceeding shall be open to inspection only by the Court, authorized court personnel, parties, and their attorneys.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 400 - PRELIMINARY PROCEDURES

AMEND Rule 8-402 to change the title of the Rule, to state that an individual may appear by an attorney or in proper person, to require that the appearance of a person other than an individual be by an attorney except as otherwise provided by rule or statute, and to make stylistic changes, as follows:

Rule 8-402. APPEARANCE ~~OF COUNSEL~~

(a) By Attorney or in Proper Person

Except as otherwise provided by rule or statute:

(1) an individual may appear by an attorney or in proper person, and

(2) a person other than an individual may enter an appearance only by an attorney.

~~(a)~~ (b) Continuance of Appearance from Lower Court

The appearance of an attorney entered in a lower court shall continue in the Court of Special Appeals and the Court of Appeals unless (1) the attorney's appearance has been stricken in the lower court pursuant to Rule 2-132 or 4-214, (2) the attorney notifies the Clerk of the appellate court in writing not to enter the attorney's appearance in the appellate court

and sends a copy of the notice to the clerk of the lower court and the client, or (3) the attorney's appearance has automatically terminated pursuant to section (g) of this Rule.

~~(b)~~ (c) New Appearance

An attorney newly appearing on appeal may enter an appearance by filing a written request (1) in the Court of Special Appeals if the record on appeal has already been filed in that Court, (2) in the Court of Appeals if a petition for a writ of certiorari has been filed or the Court has issued a writ on its own initiative, or (3) in the lower court in all other cases.

~~(c)~~ (d) In Certification Cases

In a proceeding pursuant to Rule 8-305, the appearance of an attorney entered in the certifying court shall continue in the Court of Appeals if the attorney has been admitted to practice law in this State. An attorney newly appearing in the case may enter an appearance by filing a written request in the Court of Appeals at any time after the certification order is filed.

Cross reference: For special admission of an out-of-state attorney, see Bar Admission Rule 14.

~~(d) Corporation~~

~~A corporation may enter an appearance only by an attorney, except as otherwise provided by rule or statute.~~

(e) When Entered by Clerk

The Clerk of the appellate court shall formally enter the appearance of the attorney (1) in the Court of Special Appeals when the record on appeal is filed, (2) in the Court of Appeals when a petition for a writ of certiorari is filed or, if the Court issues the writ on its own initiative, when the writ is issued, or (3) when properly requested pursuant to section (b) or (c).

(f) Striking Appearance

The appearance of an attorney may be stricken pursuant to Rule 2-132, except that a motion to withdraw an appearance must be in writing and may not be made in open court.

(g) Automatic Termination of Appearance

The appearance of an attorney entered in the lower court is automatically terminated upon the entry of an appearance by the Public Defender or an attorney designated by the Public Defender.

Source: This Rule is in part derived from former Rules 1005 a and 805 a and in part new.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 400 - PRELIMINARY PROCEDURES

AMEND Rule 8-412 to add a reference to Rule 8-204, as follows:

Rule 8-412. RECORD - TIME FOR TRANSMITTING

(a) To the Court of Special Appeals

Unless a different time is fixed by Rule 8-204 or by an order entered pursuant to section (d) of this Rule, the clerk of the lower court shall transmit the record to the Court of Special Appeals within the applicable time specified in this section:

(1) in a civil action proceeding under Rule 8-207 (a), thirty days after the first notice of appeal is filed;

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

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

Cross reference: Rule 8-207 (a).

(b) To the Court of Appeals

Unless a different time is fixed by order entered

pursuant to section (d) of this Rule, the clerk of the court having possession of the record shall transmit it to the Court of Appeals within 15 days after entry of a writ of certiorari directed to the Court of Special Appeals, or within sixty days after entry of a writ of certiorari directed to a lower court other than the Court of Special Appeals.

(c) When Record is Transmitted; Notice

For purposes of this Rule the record is transmitted when it is (1) delivered to the Clerk of the appellate court; (2) sent by certified mail by the clerk of the lower court, addressed to the Clerk of the appellate court; or (3) transmitted to the Clerk of the appellate court in accordance with Rule 20-402. Upon receipt and docketing of the record by the Clerk of the appellate court, the Clerk shall send a notice to the parties stating (1) the date the record was received and docketed and (2) the date by which an appellant other than a cross-appellant shall file a brief conforming with Rule 8-503. Unless otherwise ordered by the appellate court, the date by which the appellant's brief must be filed shall be no earlier than 40 days after the date the Clerk sends the notice.

(d) Shortening or Extending the Time

On motion or on its own initiative, the appellate court having jurisdiction of the appeal may shorten or extend the time for transmittal of the record. If the motion is filed after the prescribed time for transmitting the record has expired, the

Court will not extend the time unless the Court finds that the failure to transmit the record was caused by the act or omission of a judge, a clerk of court, the court reporter, or the appellee.

Source: This Rule is derived from former Rules 1025 and 825.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 500 - RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-504 to require that an appendix to a brief in certain appellate proceedings be separate from the brief and filed under seal, as follows:

Rule 8-504. CONTENTS OF BRIEF

(a) Contents

A brief shall comply with the requirements of Rule 8-112 and include the following items in the order listed:

(1) A table of contents and a table of citations of cases, constitutional provisions, statutes, ordinances, rules, and regulations, with cases alphabetically arranged. When a reported Maryland case is cited, the citation shall include a reference to the official Report.

Cross reference: Citation of unreported opinions is governed by Rule 1-104.

(2) A brief statement of the case, indicating the nature of the case, the course of the proceedings, and the disposition in the lower court, except that the appellee's brief shall not contain a statement of the case unless the appellee disagrees with the statement in the appellant's brief.

(3) A statement of the questions presented, separately

numbered, indicating the legal propositions involved and the questions of fact at issue expressed in the terms and circumstances of the case without unnecessary detail.

(4) A clear concise statement of the facts material to a determination of the questions presented, except that the appellee's brief shall contain a statement of only those additional facts necessary to correct or amplify the statement in the appellant's brief. Reference shall be made to the pages of the record extract supporting the assertions. If pursuant to these rules or by leave of court a record extract is not filed, reference shall be made to the pages of the record or to the transcript of testimony as contained in the record.

Cross reference: Rule 8-111 (b).

(5) A concise statement of the applicable standard of review for each issue, which may appear in the discussion of the issue or under a separate heading placed before the argument.

(6) Argument in support of the party's position on each issue.

(7) A short conclusion stating the precise relief sought.

(8) The citation and verbatim text of all pertinent constitutional provisions, statutes, ordinances, rules, and regulations except that the appellee's brief shall contain only those not included in the appellant's brief.

(9) If the brief is prepared with proportionally spaced type, the font used and the type size in points shall be stated

on the last page.

Cross reference: For requirements concerning the form of a brief, see Rule 8-112.

(b) Appendix

(1) Generally

Unless the material is included in the record extract pursuant to Rule 8-501, the appellant shall reproduce, as an appendix to the brief, the pertinent part of every ruling, opinion, or jury instruction of each lower court that deals with points raised by the appellant on appeal. If the appellee believes that the part reproduced by the appellant is inadequate, the appellee shall reproduce, as an appendix to the appellee's brief, any additional part of the instructions or opinion believed necessary by the appellee.

(2) Appeals in Juvenile and Termination of Parental Rights Cases

In an appeal from an order relating to a child entered by a court exercising juvenile jurisdiction or from an order in a proceeding involving termination of parental rights, each appendix shall be filed as a separate volume and, unless otherwise ordered by the court, shall be filed under seal.

Committee note: Rule 8-501 (j) allows a party to include in an appendix to a brief any material that inadvertently was omitted from the record extract.

(c) Effect of Noncompliance

For noncompliance with this Rule, the appellate court may

dismiss the appeal or make any other appropriate order with respect to the case, including an order that an improperly prepared brief be reproduced at the expense of the attorney for the party for whom the brief was filed.

Source: This Rule is derived as follows:
Section (a) is derived from former Rules 831 c and d and 1031 c 1 through 5 and d 1 through 5, with the exception of subsection (a)(6) which is derived from FRAP 28 (a)(5).
Section (b) is derived from former Rule 1031 c 6 and d 6.
Section (c) is derived from former Rules 831 g and 1031 f.

MARYLAND RULES OF PROCEDURE

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MARYLAND RULES OF PROCEDURE

TITLE 12 - PROPERTY ACTIONS

CHAPTER 800 - ACTION TO QUIET TITLE

Rule 12-801. DEFINITIONS

In this Chapter, the terms "claim," "holder," "property," and "security instrument" have the meanings set forth in Code, Real Property Article, §14-601.

Source: This Rule is new.

Rule 12-802. SCOPE

(a) Generally

An action may be brought under this Chapter to establish title to property pursuant to Code, Real Property Article, Title 14, Subtitle 6.

(b) Authority of Court

(1) Possession and Control

In an action under this Chapter, the court is deemed to have obtained possession and control of the property.

(2) Court Not Limited

This Chapter does not limit any authority the court may have to grant equitable relief that may be proper under the circumstances of the case.

Cross reference: See Code, Real Property Article, §§14-602 and 14-603.

Source: This Rule is new.

Rule 12-803. VENUE

An action to quiet title shall be filed in the circuit court for the county where the property lies or where any part of the property is located.

Cross reference: See Code, Real Property Article, §§14-108. See Rule 12-102 for property located in more than one jurisdiction.

Source: This Rule is new.

Rule 12-804. COMPLAINT TO QUIET TITLE

The complaint shall be signed and verified by the plaintiff and shall contain at least the following information:

(a) a description of the property that is the subject of the action, including its legal description and its street address or common designation, if any;

(b) the title of the plaintiff as to which a determination is sought and the basis of the title;

(c) if the title is based on adverse possession, the specific facts constituting the adverse possession;

(d) the names of all persons having adverse claims to the title of the plaintiff that are of record, known to the plaintiff, or reasonably apparent from an inspection of the property;

(e) the adverse claims asserted against plaintiff's title for which determination is sought;

(f) if the plaintiff admits the validity of any adverse claim, a statement to this effect;

(g) if the name of a person required to be named as a defendant is not known to the plaintiff, a statement that the name is unknown and, if applicable, a statement that there are

persons unknown to the plaintiff who may (1) have a legal or equitable interest in the property or (2) assert that there may be a cloud on plaintiff's title;

(h) if the claim of a person required to be named as a defendant is unknown, uncertain, or contingent, a statement by the plaintiff to this effect;

(i) if the lack of knowledge, uncertainty, or contingency is caused by a transfer to an unborn or unascertained person or class member, or by a transfer in the form of a contingent remainder, vested remainder subject to defeasance, executory interest, or similar disposition, the name, age, and legal disability, if any, of the person in being who would be entitled to assert the claim had the contingency on which the claim depends occurred before the commencement of the action, if known; and

(j) a prayer for a determination of the title of the plaintiff against the adverse claims.

Cross reference: See Code, Real Property Article, §§14-606, 14-608, and 14-609.

Source: This Rule is new.

Rule 12-805. JOINDER OF ADDITIONAL PARTIES

(a) Generally

The court on its own motion or on motion of any party may issue any appropriate order to require joinder of any additional parties that are necessary or proper.

(b) By Plaintiff - Deceased Defendants

(1) Personal Representative Known

If a person required to be named as a defendant pursuant to Rule 12-804 (d) is dead or is believed by the plaintiff to be dead, and the plaintiff knows of a personal representative, the plaintiff shall join the personal representative as a defendant.

(2) Personal Representative Unknown

If a person required to be named as defendant pursuant to Rule 12-804 (d) is dead, or is believed by the plaintiff to be dead, and the plaintiff knows of no personal representative, the plaintiff shall state those facts in an affidavit filed with the court.

(3) Testate and Intestate Successors

If, by affidavit under subsection (b)(2) of this Rule, the plaintiff states that a person is dead, or is believed to be dead, the plaintiff may join as defendants "the testate and

intestate successors of _____
(Naming the decedent)

or _____, and all
(Naming the person believed to be deceased)

persons claiming by, through or under _____
(Naming the decedent)

or _____."
(Naming the person believed to be deceased)

Cross reference: See Code, Real Property Article, §§14-610, 14-611, and 14-612.

(c) By Any Other Claimant

A person who has a claim to the property described in a complaint under this Chapter may appear in the proceeding.

Source: This Rule is new.

Rule 12-806. APPOINTMENT OF ATTORNEY TO PROTECT INDIVIDUALS NOT IN BEING OR WHOSE IDENTITY OR WHEREABOUTS IS UNKNOWN

The court on its own motion or on motion of any party may issue an order for appointment of an attorney to protect the interest of any party to the same extent and effect as provided under Rule 2-203 with respect to individuals not in being or of any party whose identity or whereabouts is unknown.

Cross reference: See Code, Real Property Article, §14-614.

Source: This Rule is new.

Rule 12-807. NOTICE TO HOLDERS NOT NAMED AS DEFENDANTS

(a) Contents of Notice

At the time a complaint is filed, the plaintiff shall send each holder that is not named as a party in the action a copy of the complaint with exhibits as well as a statement that the holder is not a party in the proceeding, and that any judgment in the proceeding will not affect any claims of the holder. If the holder elects to appear in the proceeding, the holder will appear as a defendant and be bound by any judgment entered in the proceeding.

(b) By Certified and First-Class Mail

The complaint and statement shall be sent by certified mail, return receipt requested, and by first-class mail to the holder at the address set forth in the security instrument for the holder’s receipt of notices, or if no address for the holder’s receipt of notices is set forth in the security instrument, at the last known address of the holder.

Cross reference: See Code, Real Property Article, §14-605.

Source: This Rule is new.

Rule 12-808. PROCESS

(a) Service on Defendants Named in Complaint

Upon the filing of the complaint, the clerk shall issue a summons as in any other civil action. The summons, complaint, and exhibits shall be served in accordance with Rule 2-121 on each defendant required by the plaintiff to be named pursuant to Rule 12-804 (d).

(b) Service by Publication

(1) Generally

If, on affidavit of the plaintiff, it appears to the satisfaction of the court that the plaintiff has used reasonable diligence to ascertain the identity and residence of the persons named as unknown defendants and persons joined as testate or intestate successors of a person known or believed to be dead, the court shall order service by publication in accordance with Rule 2-122 of the Maryland Rules and the provisions of this Chapter.

(2) Exception

Subsection (b)(1) of this Rule does not authorize service by publication on any person named as an unknown defendant who is in open and actual possession of the property.

(3) Content and Posting of Order of Publication

If the court orders service by publication, the plaintiff shall:

(A) use the legal description of the property and its street address, or other common description, if any;

(B) not later than 10 days after the date the order is issued, post a copy of the summons and complaint in a conspicuous place on the property that is the subject of the action; and

(C) file proof that the summons has been served, posted, and published as required in the order.

Cross reference: See Code, Real Property Article, §§14-608, 14-615, and 14-616.

Source: This Rule is new.

Rule 12-809. ANSWER

(a) Generally

An answer to a complaint under this Chapter shall be verified and shall set forth:

(1) any claim the defendant has to the property that is the subject of the action;

(2) any facts tending to controvert material allegations of the complaint; and

(3) a statement of any new facts constituting a defense to the plaintiff's claim.

(b) No Recovery of Costs

If the defendant disclaims any interest in the title of the property in the answer or allows judgment to be taken by default, the plaintiff may not recover costs.

Cross reference: See Code, Real Property Article, §14-607.

Source: This Rule is new.

Rule 12-810. HEARING

In all contested cases, the plaintiff shall submit evidence at a hearing to establish plaintiff's title. The court may receive any evidence offered supporting the claims of any defendant other than those defendants' claims admitted by the plaintiff in the complaint.

Committee note: This Rule is a procedural Rule in an action to quiet title and does not affect any right to a jury trial that a party may have.

Cross reference: See Code, Real Property Article, §§14-612 and 14-617.

Source: This Rule is new.

Rule 12-811. JUDGMENT

(a) Recording

The prevailing party in an action under this Chapter shall cause the judgment to be recorded in the land records of the counties in which any portion of the property is located.

(b) Indexing

The clerk shall index the judgment in accordance with Code, Real Property Article, §3-302, with the parties against whom the judgment is entered as grantor, and the party in whose favor the judgment is entered as grantee.

Cross reference: Code, Real Property Article, §14-617. See Code, Real Property Article, §§14-618 through 14-621 for the effects of a judgment in an action to quiet title.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-216 by requiring that all motions for a deficiency judgment be served in accordance with Rule 2-121, as follows:

Rule 14-216. PROCEEDS OF SALE

(a) Distribution of surplus

At any time after a sale of property and before final ratification of the auditor's account, any person claiming an interest in the property or in the proceeds of the sale of the property may file an application for the payment of that person's claim from the surplus proceeds of the sale. The court shall order distribution of the surplus equitably among the claimants.

(b) Deficiency Judgment

At any time within three years after the final ratification of the auditor's report, a secured party or any appropriate party in interest may file a motion for a deficiency judgment if the proceeds of the sale, after deducting all costs and expenses allowed by the court, are insufficient to satisfy the debt and accrued interest. ~~If the person against whom the judgment is sought is a party to the action, the motion shall be~~

~~served in accordance with Rule 1-321. Otherwise, the~~ The motion shall be served in accordance with Rule 2-121. ~~and~~ It shall be accompanied by a notice advising the person that any response to the motion must be filed within 30 days after being served or within any applicable longer time prescribed by Rule 2-321 (b) for answering a complaint. A copy of Rule 2-321 (b) shall be attached to the notice.

Source: This Rule is derived in part from the 2008 version of former Rule 14-208 and is in part new.

MARYLAND RULES OF PROCEDURE

TITLE 14 - SALES OF PROPERTY

CHAPTER 500 - TAX SALES

AMEND Rule 14-504 by deleting a reference to a common area and by adding two references to a condominium association, as follows:

Rule 14-504. NOTICE TO PERSONS NOT NAMED AS DEFENDANTS

The plaintiff shall send the notice prescribed by Rule 14-502 (c)(3) to each person having a recorded interest, claim or judgment, or other lien who has not been made a defendant in the proceeding. If all or part of the property is ~~a common area~~ owned by or legally dedicated to a homeowners' association or condominium association, the plaintiff shall also send the notice to the homeowners' association or condominium association governing the property. The notice shall be sent to the person's last reasonably ascertainable address by certified mail, postage prepaid, return receipt requested, bearing a postmark from the United States Postal Service, and shall be accompanied by a copy of the complaint. The plaintiff shall file the return receipt from the notice or an affidavit that the provisions of this section have been complied with or that the address of the holder of the subordinate interest is not reasonably ascertainable. If the filing is made before final

ratification of the sale, failure of a holder of a subordinate interest to receive the notice does not invalidate the sale.

The plaintiff shall send notice to each tenant of the property, as required by Code, Tax - Property Article, §14-836 (b)(4).

Source: This Rule is new but is derived from Code, Tax-Property Article, §14-836.

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

AMEND Rule 15-1301 to correct a reference to the definitions in Code, Courts Article, §5-1101 as applying to the "Chapter," rather than just to the Rule, as follows:

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~~ Chapter, 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

AMEND Rule 15-1302 to conform to Chapter 722, Laws of 2016 (SB 734); to add a Committee note following subsection (c)(5); and to make stylistic changes, as follows:

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.~~ If the payee does not reside in this State and:

(A) the structured settlement was approved by a Maryland court, the petition shall be filed in the circuit court for the county in which the structured settlement was approved; or

(B) the structured settlement arose from an action pending in a Maryland court but the structured settlement was not court-approved, the petition shall be filed in the circuit court for the county in which the action was pending when the parties entered into the structured settlement agreement.

(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;

(H) a copy of any complaint that was pending when the structured settlement was established; and

(I) proof of the petitioner's current registration with the Office of the Attorney General as a structured settlement transferee or a copy of a pending application for registration as specified in Code, Courts Article, §5-1107, if the Office of the Attorney General has not acted within the time specified in Code, Courts Article, Title 5, Subtitle 11.

(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)~~ (e);

(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) identify any allegations or statements in any complaint attached under subsection (c)(1)(H) of this Rule that describe the nature, extent, or consequences of the payee's cognitive injuries or disabling impairment;

Committee note: To comply with subsection (c)(5) of this Rule, the petitioner should refer to places in the complaint containing the allegations or statements, rather than repeating the allegations or statements in the petition.

~~(5)~~ (6) 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)~~ (7) state the amounts and due dates of the structured settlement payments to be transferred and the aggregate amount

of these payments;

~~(7)~~ (8) 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)~~ (9) 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)~~ (10) state whether, prior to the filing of the petition, 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)~~ (11) 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, complaint, 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

AMEND Rule 15-1303 to conform to Chapter 722, Laws of 2016 (SB 734), as follows:

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 _____ (Name of court(s)) to pay a total of $___ per _____ (week/month) in spousal support

[ ] 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 _____ (week/month) in child support [ ] 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, taking into account the welfare and support of my dependents.

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

AMEND Rule 15-1304 to conform to Chapter 722, Laws of 2016 (SB734) and to make stylistic changes, as follows:

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

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

~~(A)~~ (1) each state in which the affiant is licensed in that capacity; and

~~(B)~~ (2) each state in which the affiant has been the subject of any disciplinary proceedings regarding such a license.

~~(3)~~ (c) 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)~~ (d) 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)~~ (e) 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)~~ (f) 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)~~ (g) 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)~~ (h) 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)~~ (1) 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)~~ (2) 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)~~ (3) A list of any documents upon which the advisor relied in reaching that conclusion.

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

~~(10)~~ (j) 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)~~ (k) 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)~~ (l) 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~~ whether the proposed transfer would be in the best interest of the payee, taking into account

the welfare and support of the payee's dependents; and;

(m) That the advisor is not affiliated with or compensated by the transferee.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 15 – OTHER SPECIAL PROCEEDINGS

CHAPTER 1300 – STRUCTURED SETTLEMENT TRANSFERS

AMEND Rule 15-1305 to modify language in subsection (b)(4) pertaining to who may satisfy the requirement of personal attendance by the petitioner, as follows:

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~~ an officer or

employee of the petitioner~~, other than an attorney for the petitioner bound by an attorney-client privilege~~ authorized to testify on behalf of the petitioner in the proceeding.

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.

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

AMEND Rule 15-1307 to conform to Chapter 722, Laws of 2016 (SB 734), as follows:

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~~ an express 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 - COURT ADMINISTRATION

CHAPTER 100 – ADMINISTRATIVE STRUCTURE

AMEND Rule 16-105 by adding a cross reference following subsection (b)(10) and by replacing the word "plan" with the phrase "policies and procedures" in section (c), as follows:

Rule 16-105. CIRCUIT COURT - COUNTY ADMINISTRATIVE JUDGE

(a) Designation

After considering the recommendation of the Circuit Administrative Judge, the Chief Judge of the Court of Appeals shall designate a County Administrative Judge for each circuit court, to serve in that capacity at the pleasure of the Chief Judge. Except as permitted by Rule 16-104 (b)(1), the County Administrative Judge shall be a judge of that circuit court.

(b) Duties

Subject to the provisions of this Chapter, other applicable law, the general supervision of the Chief Judge of the Court of Appeals, and the general supervision of the Circuit Administrative Judge, the County Administrative Judge is responsible for the administration of the circuit court, including:

(1) supervision of the judges, officials, and employees of the court;

(2) assignment of judges within the court pursuant to Rule 16-302 (Assignment of Actions for Trial; Case Management Plan);

(3) supervision and expeditious disposition of cases filed in the court, control over the trial and other calendars of the court, assignment of cases for trial and hearing pursuant to Rule 16-302 (Assignment of Actions for Trial; Case Management Plan) and Rule 16-304 (Chambers Judge), and scheduling of court sessions;

(4) preparation of the court's budget;

(5) preparation of a case management plan for the court pursuant to Rule 16-302;

(6) preparation of a continuity of operations plan for the court pursuant to Rule 16-803;

(7) preparation of a jury plan for the court pursuant to Code, Courts Article, Title 8, Subtitle 2 and implementation of that plan;

Cross reference: See Rule 16-402 (e).

(8) preparation of any plan to create a problem-solving court program for the court pursuant to Rule 16-207;

(9) ordering the purchase of all equipment and supplies for (A) the court, and (B) the ancillary services and officials of the court, including magistrates, auditors, examiners, court administrators, court reporters, jury commissioner, staff of the medical offices, and all other court personnel except personnel comprising the Clerk of Court's office;

(10) except as otherwise provided in section (c) of this Rule, supervision of and responsibility for the employment, discharge, and classification of court personnel and personnel of its ancillary services and the maintenance of personnel files, unless a majority of the judges of the court disapproves of a specific action;

Cross reference: See Rule 16-806 (Judicial Personnel Policies and Procedures).

Committee note: Article IV, §9, of the Maryland Constitution gives the judges of any court the power to appoint officers and, thus, requires joint exercise of the personnel power.

(11) implementation and enforcement of all administrative policies, rules, orders, and directives of the Court of Appeals, the Chief Judge of the Court of Appeals, the State Court Administrator, and the Circuit Administrative Judge of the judicial circuit; and

(12) performance of any other administrative duties necessary to the effective administration of the internal management of the court and the prompt disposition of litigation in it.

Cross reference: See *St. Joseph Medical Center v. Turnbull*, 432 Md. 259 (2013) for authority of the county administrative judge to assign and reassign cases but not to countermand judicial decisions made by a judge to whom a case has been assigned.

(c) Circuit Judge's Personal Secretary and Law Clerk

Subsection (b)(10) of this Rule does not apply to a personal secretary or law clerk of a circuit court judge. Each judge has the exclusive right, subject to budget limitations,

any applicable administrative order, and any applicable personnel ~~plan~~ policies and procedures, to employ and discharge the judge's personal secretary and law clerk.

(d) Delegation of Authority

(1) A County Administrative Judge may delegate one or more of the administrative duties and functions imposed by this Rule to (A) another judge or a committee of judges of the court, including by designation of another judge of the court to serve as acting County Administrative Judge during a temporary absence of the County Administrative Judge, or (B) one or more other officials or employees of the court.

(2) Except as provided in subsection (d)(3) of this Rule, in the implementation of Code, Criminal Procedure Article, §6-103 and Rule 4-271 (a), a County Administrative Judge may (A) with the approval of the Chief Judge of the Court of Appeals, authorize one or more judges to postpone criminal cases on appeal from the District Court or transferred from the District Court because of a demand for jury trial, and (B) authorize not more than one judge at a time to postpone all other criminal cases.

(3) The administrative judge of the Circuit Court for Baltimore City may authorize one judge sitting in the Clarence M. Mitchell courthouse to postpone criminal cases set for trial in that courthouse and one judge sitting in Courthouse East to postpone criminal cases set for trial in that courthouse.

Source: This Rule is derived from former Rule 16-101 d (2016).

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 500 – RECORDING OF PROCEEDINGS

AMEND Rule 16-501 by adding a reference to recording proceedings before a District Court commissioner, as follows:

Rule 16-501. APPLICATION OF CHAPTER

The Rules in this Chapter apply to the recording of proceedings in the circuit and District courts by the respective courts and to the recording of proceedings before a District Court commissioner on an audio recording device provided by the District Court. See Chapter 600 for Rules governing the recording of court proceedings by other persons.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 500 – RECORDING OF PROCEEDINGS

ADD new Rule 16-506, as follows:

Rule 16-506. PROCEEDINGS BEFORE DISTRICT COURT COMMISSIONERS

(a) Applicability

This Rule applies to the recording of proceedings before a District Court commissioner on an audio recording device provided by the District Court.

Cross reference: For the recording of proceedings before a judge in the District Court, see Rule 16-502.

(b) Definition

In this Rule, "mute" means to cause an audio recording to be inaudible or unintelligible.

(c) Proceedings to be Recorded

Except as otherwise provided in section (d) of this Rule, all proceedings under Rules 4-213, 4-213.1, and 4-216 and any other proceeding at which an advice of rights is given to a person charged with a crime shall be recorded verbatim in their entirety.

(d) Recordings of Portions of Proceedings to be Muted

The following portions of a recording of a proceeding shall be muted:

(1) a communication pertaining to the disclosure of

financial information regarding a defendant's eligibility for representation by the Public Defender or appointed attorney, and

(2) a confidential, privileged communication between an attorney and the attorney's client.

(e) Control of and Direct Access to Audio Recordings

(1) Under Control of District Court

Audio recordings made pursuant to this Rule shall be under the control of the District Court. The recordings shall be made, filed, and maintained by the court in accordance with the standards specified in an administrative order of the Chief Judge of the District Court.

(2) Restricted Access or Possession

No person other than an authorized court official or employee of the District Court may have direct access to or possession of an official audio recording.

(f) Right to Obtain Copy of Audio Recording

Subject to section (d) of this Rule, the authorized custodian of an official audio recording shall make a copy of the audio recording available to any person upon written request and, unless waived by the court, upon payment of the reasonable costs of making the copy.

(g) Effect of System Malfunction or Unavailability of Recording

Except as otherwise provided in Rule 4-215, a malfunction of the audio recording system or the unavailability of an

intelligible recording does not affect the validity of the determinations and actions of the commissioner at a proceeding otherwise required to be recorded pursuant to section (c) of this Rule.

Committee note: The requirement of making an audio recording under this Rule is in addition to, and not in substitution for, the requirement of a written record in Rule 4-216 (h).

In order to permit a judge, acting under Rule 4-215, to rely on advice regarding the right to an attorney given to a defendant by a commissioner, the audio recording of that proceeding, if needed, must be accessible by the judge without undue delay.

This Rule is not intended to affect Code, Courts Article, §10-922, declaring statements made during the course of a defendant's appearance before a commissioner pursuant to Rule 4-213 inadmissible against the defendant in a criminal or juvenile proceeding.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 800 - MISCELLANEOUS COURT ADMINISTRATION MATTERS

ADD new Rule 16-804, as follows:

Rule 16-804. CONTINUANCES OR POSTPONEMENTS FOR CONFLICTING CASE ASSIGNMENTS OR LEGISLATIVE DUTIES

(a) Responsibilities of Attorneys

(1) Ascertaining Potential Conflict

When consulted as to the availability of dates or times for a trial or other proceeding, an attorney shall check his or her calendar to determine whether the attorney has a conflicting assignment before agreeing to a particular date and time.

(2) When Conflict Exists

If an attorney accepts employment in a case in which a date or time for trial or other proceeding has already been set, the attorney shall:

(A) advise the client that the attorney has a conflicting assignment, that the attorney will promptly attempt to resolve the conflict, and that, after consulting with the client, the attorney will attempt to make suitable arrangements in the event the attorney is unsuccessful in obtaining a continuance or postponement in the client's case;

(B) unless impracticable, within five business days,

contact the other parties in either or both cases to attempt to obtain (i) consent to a postponement or continuance and (ii) at least three alternative dates for which no conflict exists for any party; and

(C) unless impracticable, no later than 30 days prior to scheduled argument in an appellate court or 15 days prior to the scheduled proceeding in a circuit court or in the District Court, request a postponement or continuance in one or more of the conflicting cases, advise the court whether the other parties consent to the request, and provide to the court the alternative dates obtained in accordance with subsection (a)(2)(B)(ii) of this Rule.

(b) Grant of Postponement or Continuance

Courts shall liberally exercise their discretion to grant a postponement or continuance if (1) the conditions set forth in Code, Courts Article, §6-409 are satisfied, (2) no party or witness will be substantially prejudiced, and (3) the court will not be unduly inconvenienced.

Committee note: Courts should be particularly lenient when the request can be accommodated without undue inconvenience by moving the case to a different position on the docket or on another docket scheduled for the same day or when the defendant otherwise may have been entitled to a postponement to obtain an attorney.

(c) Where Conflict Develops After Representation Accepted

If a conflict in assignment dates or times develops after representation has been accepted, the attorney shall (1) notify

the court having a lesser priority under section (d) of this Rule as soon as practicable upon becoming aware of the conflict, (2) make a prompt and good faith effort to resolve the conflict informally, including where practicable, by obtaining another qualified attorney acceptable to the client to act in one of the cases before a continuance or postponement is requested, subject to any specific obligation that the attorney has to the client, and (3) if a change in an existing scheduling order is required, immediately file a motion for such a change.

(d) Priorities Where Conflicting Assignments Exist

(1) Publicly-Employed Attorneys

Except for good cause, an attorney who (A) holds public office or employment as an attorney, (B) is permitted to engage also in the private practice of law, and (C) faces an assignment conflict between an action in which the attorney appears in a public capacity and an action in which the attorney appears in a private capacity, may not be granted a continuance or postponement in the action in which the attorney appears in a public capacity if the attorney knew of the conflict prior to accepting employment in the private action.

(2) Conflicts in Trial Court Assignments

In the event of a conflict in a hearing or trial date or time between a Maryland circuit court, the United States District Court for the District of Maryland, the United States Bankruptcy Court for the District of Maryland, or the District

Court of Maryland, priority shall be given in accordance with the earliest date on which an assignment for hearing or trial was made, except that:

(A) if the Federal Speedy Trial Act so requires, first priority shall be given to a criminal proceeding in the United States District Court; and

(B) subject to subsection (d)(2)(A) of this Rule, if the provisions of Rule 4-271 so require, first priority shall be given to a criminal proceeding in a Maryland circuit court.

(3) Conflicts Between Appellate and Trial Court Proceedings

In the event of a conflict in a hearing or trial date or time between an action or proceeding pending in (A) the Court of Appeals of Maryland, the Court of Special Appeals, or the United States Court of Appeals for the Fourth Circuit, and (B) a Federal or State trial court, the appellate proceeding shall be given priority over the trial court proceeding unless otherwise agreed by the respective appellate and trial courts.

(4) Conflicts Between Judicial and Administrative Proceedings

In the event of a conflict between a judicial proceeding and an administrative proceeding, even where the attorney in the judicial proceeding is a member of the administrative agency, the judicial proceeding ordinarily will have priority.

(e) Attorneys Who are Members or Desk Officers of the General Assembly

A proceeding shall be continued or postponed in

conformance with Code, Courts Article, §6-402 upon request by an attorney of record in the action who is a member or desk officer of the General Assembly. In accepting employment in the action, however, the attorney should consider the inconvenience to the public, the bar, and the judicial system produced by excessive continuances or postponements.

(f) Resolution of Conflict by Courts

Nothing in this Rule precludes the affected courts, when apprised of a conflict, from attempting to resolve the conflict informally in a manner other than in accordance with the priorities established in section (d) of this Rule.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 800 -- MISCELLANEOUS COURT ADMINISTRATION MATTERS

DELETE current Rule 16-806 and ADD new Rule 16-806, as follows:

~~Rule 16-806. JUDICIAL PERSONNEL SYSTEM~~

~~(a) Development by State Court Administrator~~

~~The State Court Administrator shall develop one or more comprehensive personnel plans for all employees of the Judiciary other than judges. The plans may vary, as necessary, for different categories of Judiciary employees, but all individuals hired by or subject to supervision and discipline by a court, a judge, or other judicial unit shall be included in a plan, without regard to the source of the funding of their compensation.~~

~~(b) Content~~

~~(1) For all Judiciary employees, regardless of whether they are at-will employees, the plans shall include policies regarding:~~

~~(A) nepotism – the employment of relatives;~~

~~(B) whistleblower protection;~~

~~(C) rights under the Americans with Disabilities Act;~~

~~(D) rights under civil rights and anti-discrimination laws;~~

~~(E) disciplinary actions;~~

~~(F) grievances, including fair notice of how to present grievances;~~

~~(G) other employment;~~

~~(H) standards of conduct; and~~

~~(I) substance abuse.~~

~~(2) For employees who are not at-will employees, the plans shall contain clear and specific standards and procedures for selection, promotion, classification, transfer, demotion, and other discipline of employees and shall require authorization from the State Court Administrator, or the Administrator's designee, to fill a vacancy. The State Court Administrator may review the selection, promotion, transfer, demotion, or other discipline of such employees to ensure compliance with the standards and procedures in the personnel plan.~~

~~(c) Approval by Chief Judge of the Court of Appeals~~

~~The State Court Administrator shall submit the plans for consideration by the Chief Judge of the Court of Appeals. The plans shall take effect upon approval and as directed by the Chief Judge.~~

~~Source: This Rule is new.~~

Rule 16-806. JUDICIAL PERSONNEL POLICIES AND PROCEDURES

(a) Duty of State Court Administrator

(1) Generally

The State Court Administrator shall develop personnel policies and procedures applicable to employees in the Judicial Branch of the State Government, other than judges and employees of the Orphans' Courts and the Registers of Wills, without regard to the source of the funding of their compensation.

(2) Content

(A) For all such employees, the policies and procedures shall address the rights and responsibilities of employees and management in implementing applicable Federal and Maryland equal opportunity, anti-discrimination, anti-harassment, anti-retaliation, and anti-nepotism laws and provide for the reporting and redressing of violations.

(B) For employees who by statute or Rule are included in a State personnel system or are employed by Judicial units that are required by Rule to comply with personnel standards and guidelines promulgated by the State Court Administrator, the policies and procedures shall address such other matters as are commonly included in such personnel systems and that the State Court Administrator deems appropriate.

Cross reference: See Rules 16-401 and 16-801.

(b) Duty of County Administrative Judges

The county administrative judge shall develop personnel policies and procedures for employees of the circuit court which

shall be consistent with the policies and procedures developed by the State Court Administrator under subsection (a)(2)(A).

(c) Approval by Chief Judge of the Court of Appeals

The State Court Administrator or the county administrative judge who developed the policies and procedures required by this Rule shall submit them for consideration by the Chief Judge of the Court of Appeals. The policies and procedures shall take effect upon approval as directed by the Chief Judge.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 900 - ACCESS TO COURT RECORDS

AMEND Rule 16-906 to add at the end of section (h) a cross reference to a certain statute, as follows:

Rule 16-906. REQUIRED DENIAL OF INSPECTION - CERTAIN CATEGORIES OF CASE RECORDS

Except as otherwise provided by law, court order, or the Rules in this Chapter, the custodian shall deny inspection of:

(a) All case records filed in the following actions involving children:

(1) Actions filed under Title 9, Chapter 100 of the Maryland Rules for:

(A) adoption;

(B) guardianship; or

(C) revocation of a consent to adoption or guardianship for which there is no pending adoption or guardianship proceeding in that county.

(2) Delinquency, child in need of assistance, and child in need of supervision actions in Juvenile Court, except that, if a hearing is open to the public pursuant to Code, Courts Article, §3-8A-13 (f), the name of the respondent and the date, time, and location of the hearing are open to inspection unless the record

was ordered expunged.

(b) The following case records pertaining to a marriage license:

(1) A certificate of a physician or certified nurse practitioner filed pursuant to Code, Family Law Article, §2-301, attesting to the pregnancy of a child under 18 years of age who has applied for a marriage license.

(2) Until a license becomes effective, the fact that an application for a license has been made, except to the parent or guardian of a party to be married.

Cross reference: See Code, Family Law Article, §2-402 (f).

(c) Case records pertaining to petitions for relief from abuse filed pursuant to Code, Family Law Article, §4-504, which shall be sealed until the earlier of 48 hours after the petition is filed or the court acts on the petition.

(d) Case records required to be shielded pursuant to Code, Courts Article, §3-1510 or Code, Family Law Article, §4-512.

(e) In any action or proceeding, a record created or maintained by an agency concerning child abuse or neglect that is required by statute to be kept confidential.

(f) The following papers filed by a guardian of the property of a disabled adult:

(1) The annual fiduciary account filed pursuant to Rule 10-706, and

(2) The inventory and information report filed pursuant to

Rule 10-707.

Committee note: Statutes that require child abuse or neglect records to be kept confidential include Code, Human Services Article, §§1-202 and 1-203 and Code, Family Law Article, §5-707.

(g) The following case records in actions or proceedings involving attorneys or judges:

(1) Records and proceedings in attorney grievance matters declared confidential by Rule 19-707 (b).

(2) Case records with respect to an investigative subpoena issued by Bar Counsel pursuant to Rule 19-712.

(3) Subject to the provisions of Rule 19-105 (b), (c), and (d) of the Rules Governing Admission to the Bar, case records relating to bar admission proceedings before the Accommodations Review Committee and its panels, a Character Committee, the State Board of Law Examiners, and the Court of Appeals.

(4) Case records consisting of IOLTA Compliance Reports filed by an attorney pursuant to Rule 19-409 and Pro Bono Legal Service Reports filed by an attorney pursuant to Rule 19-503.

(5) Case records relating to a motion filed with respect to a subpoena issued by Investigative Counsel for the Commission on Judicial Disabilities pursuant to Rule 18-405.

(h) The following case records in criminal actions or proceedings:

(1) A case record that has been ordered expunged pursuant to Rule 4-508.

(2) The following case records pertaining to search

warrants:

(A) The warrant, application, and supporting affidavit, prior to execution of the warrant and the filing of the records with the clerk.

(B) Executed search warrants and all papers attached thereto filed pursuant to Rule 4-601.

(3) The following case records pertaining to an arrest warrant:

(A) A case record pertaining to an arrest warrant issued under Rule 4-212 (d) and the charging document upon which the warrant was issued until the conditions set forth in Rule 4-212 (d)(3) are satisfied.

(B) Except as otherwise provided in Code, General Provisions Article, §4-316, a case record pertaining to an arrest warrant issued pursuant to a grand jury indictment or conspiracy investigation and the charging document upon which the arrest warrant was issued.

(4) A case record maintained under Code, Courts Article, §9-106, of the refusal of an individual to testify in a criminal action against the individual's spouse.

(5) A presentence investigation report prepared pursuant to Code, Correctional Services Article, §6-112.

(6) A case record pertaining to a criminal investigation by (A) a grand jury, (B) a State's Attorney pursuant to Code, Criminal Procedure Article, §15-108, (C) the State Prosecutor

pursuant to Code, Criminal Procedure Article, §14-110, or (D) the Attorney General when acting pursuant to Article V, §3 of the Maryland Constitution or other law.

Committee note: Although this Rule shields only case records pertaining to a criminal investigation, there may be other laws that shield other kinds of court records pertaining to such investigations. This Rule is not intended to affect the operation or effectiveness of any such other law.

(7) A case record required to be shielded by Code, Criminal Procedure Article, Title 10, Subtitle 3.

Cross reference: See Code, Criminal Law Article, §5-601.1 governing confidentiality of court records pertaining to a citation issued for a violation of Code, Criminal Law Article, §5-601 involving the use or possession of less than 10 grams of marijuana.

(i) A transcript, tape recording, audio, video, or digital recording of any court proceeding that was closed to the public pursuant to rule or order of court.

(j) Backup audio recordings made by any means, computer disks, and notes of a court reporter that are in the possession of the court reporter and have not been filed with the clerk.

(k) The following case records containing medical information:

(1) A case record, other than an autopsy report of a medical examiner, that (A) consists of a medical or psychological report or record from a hospital, physician, psychologist, or other professional health care provider, and (B) contains medical or psychological information about an individual.

(2) A case record pertaining to the testing of an individual

for HIV that is declared confidential under Code, Health-General Article, §18-338.1 or §18-338.2.

(3) A case record that consists of information, documents, or records of a child fatality review team, to the extent they are declared confidential by Code, Health-General Article, §5-709.

(4) A case record that contains a report by a physician or institution concerning whether an individual has an infectious disease, declared confidential under Code, Health-General Article, §18-201 or §18-202.

(5) A case record that contains information concerning the consultation, examination, or treatment of a developmentally disabled individual, declared confidential by Code, Health-General Article, §7-1003.

(6) A case record relating to a petition for an emergency evaluation made under Code, Health-General Article, §10-622 and declared confidential under Code, Health-General Article, §10-630.

(l) A case record that consists of the federal or Maryland income tax return of an individual.

(m) A case record that:

(1) a court has ordered sealed or not subject to inspection, except in conformance with the order; or

(2) in accordance with Rule 16-910 (b), is the subject of a motion to preclude or limit inspection.

(n) As provided in Rule 9-203 (d), a case record that consists of a financial statement filed pursuant to Rule 9-202.

(o) A document required to be shielded under Rule 20-203 (e)(1).

(p) An unredacted document filed pursuant to Rule 1-322.1 or Rule 20-203 (e)(2).

Source: This Rule is derived from former Rule 16-1006 (2016).

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 600 – MISCELLANEOUS PROVISIONS

AMEND Rule 18-601 to add a statement of the scope of the Rule; to delete a certain definition and add two definitions; to provide for the development, approval, and implementation of a policy on judicial absences; to delete an obsolete subsection; to modify provisions pertaining to personal leave entitlement during the first calendar year of the initial term of certain judges; to revise a provision pertaining to the use of leave for observance of religious holidays; to provide for certain reports to the State Court Administrator; and to make stylistic changes, as follows:

Rule 18-601. JUDICIAL LEAVE

(a) ~~Definition of "Judge"~~ Scope of Rule; Definitions

~~In this~~ This Rule, ~~"judge" means a judge~~ applies to judges of the Court of Appeals ~~of Maryland~~, the Court of Special Appeals, a circuit court ~~or~~, and the District Court ~~of Maryland~~. In this Rule, (1) "qualifies" or "qualified" means when a judge, having received a commission, timely takes the oath of office and signs the appropriate test book; and (2) "Policy on Judicial Absences" means the policy on judicial absences approved in accordance with section (b) of this Rule.

(b) Policy on Judicial Absences

The State Court Administrator shall develop and submit to the Court of Appeals for its consideration and approval a Policy on Judicial Absences. Upon approval by the Court, the Policy shall be implemented.

~~(b)~~ (c) Annual Leave

(1) ~~In General~~ Generally

Subject to ~~the provisions of subsection (b)(2) and section (f)~~ sections (g) and (h) of this Rule, a judge is entitled to annual leave of not more than 27 working days. The leave accrues as of the first day of the calendar year, except that:

~~(1)~~ (A) during the first year of a judge's initial term of office, annual leave accrues at the rate of 2.25 days per month accounting from the date the judge qualifies for office, and

~~(2)~~ (B) during the calendar year in which the judge retires, annual leave accrues at the rate of 2.25 days per month to the date the judge retires.

~~(2) Calendar Year 2010~~

~~(A) Subject to the provisions of subsection (b)(2)(B) and section (f) of this Rule, in calendar year 2010 a judge is entitled to annual leave of not more than 17 working days. The leave accrues as of the first day of the calendar year except that (1) during the first year of a judge's initial term of office, annual leave accrues at the rate of 1.42 days per month~~

~~accounting from the date the judge qualifies for office, and (2) during calendar year 2010, if the judge retires in that year, annual leave accrues at the rate of 1.42 days per month to the date the judge retires.~~

~~(B) For each day, up to ten days, that a judge contributes to the State of Maryland an amount equal to the average daily compensation, after federal and state tax and FICA withholdings, of a judge serving on the court or level of court on which the judge serves, based on a 22-day work month, as calculated by the State Court Administrator, the judge shall be entitled to one additional day of annual leave. The judge shall make the contribution prior to taking the additional day of annual leave in the manner determined by the State Court Administrator.~~

~~(3)~~ (2) Accumulation

~~If in any year a judge takes less than the full amount of annual leave the judge has accrued in that year, the judge may accumulate within any consecutive three year period, the difference between the leave accrued and the annual leave actually taken by the judge in any year during the period. However, no~~ A judge may accumulate and carry over not more than ten working days of unused annual leave ~~may be accumulated~~ in any one calendar year~~,~~ and ~~no judge may accumulate~~ not more than 20 working days of unused annual leave in the aggregate.

~~(c)~~ (d) Personal Leave

(1) ~~In General~~ Generally

In addition to the annual leave ~~as~~ provided ~~above and except as otherwise provided in subsection (2) of this section~~ in section (c) of this Rule, a judge is entitled to six days of personal leave in each calendar year ~~and~~. Personal leave accrues on the first day of each calendar year. Any personal leave unused at the end of the calendar year is forfeited.

(2) First Calendar Year of Initial Term

During the first calendar year of a judge's initial term ~~of office~~, the judge is entitled to:

(A) six days of personal leave if the judge qualified for office in January or February;

(B) five days of personal leave if the judge qualified for office in March or April;

(C) four days of personal leave if the judge qualified for office in May or June; or

(D) three days of personal leave if the judge qualified for office on or after July 1;

(E) two days of personal leave if the judge qualified for office in September or October; or

(F) one day of personal leave if the judge qualified for office in November or December.

~~(d)~~ (e) Sick Leave

(1) Generally

In addition to the annual leave and personal leave as provided for in this Rule, a judge:

~~(1)~~ (A) subject to verification in accordance with the Policy on Judicial Absences, is entitled to unlimited sick leave for any period of the judge's illness or temporary disability that precludes the judge from performing judicial duties; and

~~(2)~~ (B) may take a reasonable amount of sick leave ~~(A)~~ (i) for the judge's medical appointments; ~~(B)~~ (ii) due to the illness or disability of family members; or ~~(C)~~ (iii) ~~due to~~ upon the birth of the judge's child, adoption of a child by the judge, or the foster care placement of a child with the judge, all subject to the ~~definitions,~~ procedures, conditions, and limitations~~, and procedures~~ in ~~an Administrative Order issued by the Chief Judge of the Court of Appeals~~ the Policy on Judicial Absences.

(2) Limitation

Sick leave used for the purposes allowed by subsections ~~(2) of this section~~ (e)(1)(B)(ii) and (iii) of this Rule, together with annual leave and personal leave taken for ~~these~~ purposes~~,~~ of subsections (e)(1)(B)(ii) and (iii) of this Rule may not exceed an aggregate total of 12 weeks for the calendar year. ~~The Chief Judge of the Court of Appeals shall issue an Administrative Order implementing this section. The Order shall be posted on the Judiciary's website and otherwise made publicly available.~~

Committee note: The authority of the Commission on Judicial Disabilities with respect to a disability as defined in Rule 18-401 (h) is not affected by this Rule.

~~(4)~~ (f) Consecutive Appointment

A judge who is appointed or elected as a judge of another Maryland court and whose term on the second court begins immediately following service on the first court has the same leave status as though the judge had remained on the first court.

~~(e)~~ (g) Termination of Judicial Service

A judge whose judicial service is terminated for any reason~~,~~ and who is not appointed or elected ~~or appointed~~ to another Maryland court without a break in service, loses any annual or personal leave unused as of the date of termination of service.

~~(f)~~ (h) ~~Discretion of Chief Judge or Administrative Judge~~ When Annual or Personal Leave May be Taken; Exercise of Discretion

(1) Generally

A judge's annual leave and personal leave shall be taken at the time or times prescribed or permitted:

(A) if the judge is a judge of an appellate court, by the Chief Judge of ~~the judge's appellate~~ that court;

(B) if the judge is a judge of ~~an appellate~~ a circuit court, by the Circuit Administrative Judge ~~of the judge's judicial circuit,~~; or

(C) if the judge is a judge of ~~a circuit court; or the Chief Judge of~~ the District Court, ~~if the judge is a judge of that court~~ by the Chief Judge of that court.

(2) Exercise of Discretion

In determining when a judge may take annual leave and for what period of time, the judge exercising ~~supervisory~~ administrative authority under this Rule shall be mindful of the necessity of retention of sufficient judicial staffing in the court or courts under the judge's ~~supervisory~~ administrative authority to permit at all times the prompt and effective disposition of the business of that court or those courts. ~~A~~ Subject to subsection (h)(3) of this Rule, a request for leave at a certain time or for a certain period of time may be rejected by the judge exercising ~~supervision under this Rule~~ administrative authority if the granting of the requested leave would prevent the prompt and effective disposition of business of that court or those courts~~, except that personal leave requested for observance of a religious holiday may not be denied~~.

(3) Limitation on Discretion

Where a sufficient leave balance exists, annual or personal leave requested for observance of a religious holiday may not be denied.

Cross reference: See 100 Op. Att'y Gen. 136 (2015).

(i) Other Excused Absences

A judge's entitlement to any other excused absence, including administrative leave, shall be as prescribed in the Policy on Judicial Absences and shall be subject to the procedures, conditions, and limitations set forth in that document.

(j) Reports to State Court Administrator

Each judge shall report to the State Court Administrator in the manner and form and at the times specified by the State Court Administrator the leave taken by the judge.

~~(g)~~ (k) Supervision by Chief Judge of the Court of Appeals

The operation of this Rule is at all times subject to the supervision and control of the Chief Judge of the Court of Appeals.

Source: This Rule is derived from former Rule 16-104 (2016).

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 300 – MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-301.2 by adding a Comment pertaining to advice given by an attorney about activities involving marijuana that are permitted by Maryland law but forbidden by other law, as follows:

Rule 19-301.2. SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND ATTORNEY (1.2)

(a) Subject to sections (c) and (d) of this Rule, an attorney shall abide by a client's decisions concerning the objectives of the representation and, when appropriate, shall consult with the client as to the means by which they are to be pursued. An attorney may take such action on behalf of the client as is impliedly authorized to carry out the representation. An attorney shall abide by a client's decision whether to settle a matter. In a criminal case, the attorney shall abide by the client's decision, after consultation with the attorney, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) An attorney's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral

views or activities.

(c) An attorney may limit the scope of the representation in accordance with applicable Maryland Rules if (1) the limitation is reasonable under the circumstances, (2) the client gives informed consent, and (3) the scope and limitations of any representation, beyond an initial consultation or brief advice provided without a fee, are clearly set forth in a writing, including any duty on the part of the attorney under Rule 1-324 to forward notices to the client.

(d) An attorney shall not counsel a client to engage, or assist a client, in conduct that the attorney knows is criminal or fraudulent, but an attorney may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

COMMENT

Scope of Representation - [1] Both attorney and client have authority and responsibility in the objectives and means of representation. The client has ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the attorney's professional obligations. Within those limits, a client also has a right to consult with the attorney about the means to be used in pursuing those objectives. At the same time, an attorney is not required to pursue objectives or employ means simply because a client may wish that the attorney do so. A clear distinction between objectives and means sometimes cannot be drawn, and in many cases the client-attorney relationship partakes of a joint undertaking. In questions of means, the attorney should assume responsibility for technical and legal tactical issues, but

should defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected.

[2] On occasion, however, an attorney and a client may disagree about the means to be used to accomplish the client's objectives. Because of the varied nature of the matters about which an attorney and client might disagree and because the actions in question may implicate the interests of a tribunal or other persons, this Rule does not prescribe how such disagreements are to be resolved. Other law, however, may be applicable and should be consulted by the attorney. The attorney should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the attorney has a fundamental disagreement with the client, the attorney may withdraw from the representation. See Rule 19-301.16 (b)(4) (1.16). Conversely, the client may resolve the disagreement by discharging the attorney. See Rule 19-301.16 (a)(3) (1.16).

[3] At the outset of a representation, the client may authorize the attorney to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to Rule 19-301.4 (1.4), an attorney may rely on such an advance authorization. The client may, however, revoke such authority at any time.

[4] In a case in which the client appears to be suffering diminished capacity, the attorney’s duty to abide by the client's decisions is to be guided by reference to Rule 19-301.14 (1.14).

Independence from Client's Views or Activities - [5] Legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client does not constitute approval of the client's views or activities.

Agreements Limiting Scope of Representation - [6] The scope of services to be provided by an attorney may be limited by agreement with the client or by the terms under which the attorney’s services are made available to the client. When an attorney has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited

representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the attorney regards as repugnant or imprudent.

[7] Although this Rule affords the attorney and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the attorney and client may agree that the attorney's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt an attorney from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 19-301.1 (1.1).

[8] An attorney and a client may agree that the scope of the representation is to be limited to clearly defined specific tasks or objectives, including: (1) without entering an appearance, filing papers, or otherwise participating on the client's behalf in any judicial or administrative proceeding, (i) giving legal advice to the client regarding the client's rights, responsibilities, or obligations with respect to particular matters, (ii) conducting factual investigations for the client, (iii) representing the client in settlement negotiations or in private alternative dispute resolution proceedings, (iv) evaluating and advising the client with regard to settlement options or proposed agreements, or (v) drafting documents, performing legal research, and providing advice that the client or another attorney appearing for the client may use in a judicial or administrative proceeding; or (2) in accordance with applicable Maryland Rules, representing the client in discrete judicial or administrative proceedings, such as a court-ordered alternative dispute resolution proceeding, a pendente lite proceeding, or proceedings on a temporary restraining order, a particular motion, or a specific issue in a multi-issue action or proceeding. Before entering into such an agreement, the attorney shall fully and fairly inform the client

of the extent and limits of the attorney's obligations under the agreement, including any duty on the part of the attorney under Rule 1-324 to forward notices to the client.

[9] Representation of a client in a collaborative law process is a type of permissible limited representation. It requires a collaborative law participation agreement that complies with the requirements of Code, Courts Article, §3-1902 and Rule 17-503 (b) and is signed by all parties after informed consent.

[10] All agreements concerning an attorney's representation of a client must accord with the Maryland Attorneys' Rules of Professional Conduct and other law. See, e.g., Rule 19-301.1 (1.1), 19-301.8 (1.8) and 19-305.6 (5.6).

Criminal, Fraudulent and Prohibited Transactions - [11] Section (d) of this Rule prohibits an attorney from knowingly counseling or assisting a client to commit a crime or fraud. This prohibition, however, does not preclude the attorney from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. The fact that a client uses advice in a course of action that is criminal or fraudulent does not, of itself, make an attorney a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

[12] Maryland enacted a medical marijuana law in 2013. See Code, Health General Article, §13-3301 et seq. As a matter of State law, some medical marijuana activities are permissible, and are subject to regulation. Notwithstanding Maryland law, the Federal Controlled Substances Act, 21 U.S.C. §§801 - 904, continues to criminalize the production, use, and distribution of marijuana, even in the context of medical use. As of 2014, the federal government has taken the position, however, that it generally does not wish to interfere with retail sales of medical marijuana permitted under State law.

In this narrow context, an attorney may counsel a client about compliance with the State's medical marijuana law without violating Rule 19-301.2 (d) and provide legal services in connection with business activities permitted by the State statute, provided that the attorney also advises the client about the legal consequences, under other applicable law, of the

client's proposed course of conduct.

~~[12]~~ [13] When the client's course of action has already begun and is continuing, the attorney's responsibility is especially delicate. The attorney is required to avoid assisting the client, for example, by drafting or delivering documents that the attorney knows are fraudulent or by suggesting how the wrongdoing might be concealed. An attorney may not continue assisting a client in conduct that the attorney originally supposed was legally proper but then discovers is criminal or fraudulent. The attorney must, therefore, withdraw from the representation of the client in the matter. See Rule 19-301.16 (a) (1.16). In some cases withdrawal alone might be insufficient. It may be necessary for the attorney to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. See Rules 19-301.6 (1.6), 19-304.1 (4.1).

~~[13]~~ [14] Where the client is a fiduciary, the attorney may be charged with special obligations in dealings with a beneficiary.

~~[14]~~ [15] Section (d) of this Rule applies whether or not the defrauded party is a party to the transaction. Hence, an attorney must not participate in a transaction to effectuate criminal or fraudulent avoidance of tax liability. Section (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of section (d) of this Rule recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

~~[15]~~ [16] If an attorney comes to know or reasonably should know that a client expects assistance not permitted by the Maryland Attorneys' Rules of Professional Conduct or other law or if the attorney intends to act contrary to the client's instructions, the attorney must consult with the client regarding the limitations on the attorney's conduct. See Rule 19-301.4 (a)(4) (1.4).

Model Rules Comparison - Rule 19-301.2 (1.2) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct except for wording changes in Rule 19-301.2 (a) (1.2), the addition of Comments [8], ~~and~~

[9], and [12], and the retention of existing Maryland language in Comment [1].

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-304.4 by conforming it to Model Rule 4.4 of the Ethics 2000 amendments to the ABA Model Rules of Professional Conduct, with stylistic changes, as follows:

Rule 19-304.4. RESPECT FOR RIGHTS OF THIRD PERSONS (4.4)

(a) In representing a client, an attorney shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) ~~In communicating with third persons, A lawyer~~ An attorney ~~representing a client in a matter shall not seek~~ who receives a document, electronically stored information, or other property relating to the ~~matter that the attorney~~ representation of the attorney's client and knows or reasonably should know ~~is protected from disclosure by statute or by an established evidentiary privilege, unless the protection has been waived. The Attorney who receives information that is protected from disclosure shall (1) terminate the communication immediately and (2) give notice of the disclosure to any tribunal in which the matter is pending and to the person entitled to enforce the~~

~~protection against disclosure~~ that the document, electronically stored information, or other property was inadvertently sent shall promptly notify the sender.

~~Committee note: If the person entitled to enforce the protection against disclosure is represented by an attorney, the notice required by this Rule shall be given to the person's attorney. See Md. Rule 1-331 and Maryland Attorneys' Rules of Professional Conduct, Rule 19-304.2 (4.2).~~

COMMENT

[1] Responsibility to a client requires an attorney to subordinate the interests of others to those of the client, but that responsibility does not imply that an attorney may disregard the rights of third persons. It is impractical to catalogue all such rights, but they include legal restrictions on methods of obtaining evidence from third persons and unwarranted intrusions into privileged relationships, such as the client-attorney relationship.

[2] ~~Third persons may possess information that is confidential to another person under an evidentiary privilege or under a law providing specific confidentiality protection, such as trademark, copyright, or patent law. For example, present or former organizational employees or agents may have information that is protected as a privileged attorney-client communication or as work product. An attorney may not knowingly seek to obtain confidential information from a person who has no authority to waive the privilege. Regarding current employees of a represented organization, see also Rule 19-304.2 (4.2).~~ Section (b) recognizes that attorneys sometimes receive a document, electronically stored information, or other property that was inadvertently sent or produced by opposing parties or their attorneys. A document, electronically stored information, or other property is inadvertently sent when it is accidentally transmitted, such as when an email or letter is misaddressed or a document, electronically stored information, or other property is accidentally included with information that was intentionally transmitted. If ~~a lawyer~~ an attorney knows or reasonably should know that such a document, electronically stored information, or other property was sent inadvertently, this Rule requires the attorney promptly to notify the sender in order to permit that person to take protective measures. Whether the attorney is required to take additional steps, such as returning the document, electronically stored information, or other property, is a matter of law beyond the scope of these Rules, as is the

question of whether the privileged status of a document, electronically stored information, or other property has been waived. Similarly, this Rule does not address the legal duties of an attorney who receives a document, electronically stored information, or other property that the attorney knows or reasonably should know may have been inappropriately obtained by the sending person. For purposes of this Rule, "document, electronically stored information, or other property" includes, in addition to paper documents, email and other forms of electronically stored information, including embedded data (commonly referred to as "metadata"), that is subject to being read or put into readable form. Metadata in electronic documents creates an obligation under this Rule only if the receiving attorney knows or reasonably should know that the metadata was inadvertently sent to the receiving attorney.

[3] Some attorneys may choose to return a document or delete electronically stored information unread, for example, when the attorney learns before receiving it that it was inadvertently sent. Where an attorney is not required by applicable law to do so, the decision to voluntarily return such a document or delete electronically stored information is a matter of professional judgment ordinarily reserved to the attorney. See Rules 19-301.2 and 19-301.4.

Model Rules Comparison - ~~This Rule substantially retains Maryland language as amended November 1, 2001 and does not adopt Ethics 200 Amendments to the ABA Model Rules of Professional Conduct.~~ Rule 19-304.4 is substantially similar to the language of Model Rule 4.4 of the Ethics 2000 amendments to the ABA Model Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 300 – MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-307.4 by deleting the second sentence of paragraph (a) and by revising the Model Rule Comparison, as follows:

Rule 19-307.4. COMMUNICATION OF FIELDS OF PRACTICE (7.4)

(a) An attorney may communicate the fact that the attorney does or does not practice in particular fields of law, subject to the requirements of Rule 19-307.1 (7.1). ~~An attorney shall not hold himself or herself out publicly as a specialist.~~

(b) An attorney admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation.

COMMENT

[1] This Rule permits an attorney to indicate areas of practice in communications about the attorney's services; for example, in a telephone directory or other advertising. If attorney practices only in such fields, or will not accept matters except in such fields, the attorney is permitted so to indicate.

[2] Section (b) of this Rule recognizes the long-established policy of the Patent and Trademark Office for the designation of attorneys practicing before the Office.

Model Rules Comparison - This Rule ~~substantially retains existing Maryland language and does not adopt Ethics 2000 Amendments to the~~ adopts Rule 7.4 (a) and (b) of the ABA Model

Rules of Professional Conduct, ~~with the exception of: 1) adding ABA Rule 7.4 (c) (incorporated as Rule 19-307.4 (b) (7.4) above); 2) the first sentence of ABA Comment [2] (included as Comment [2] above)~~ and expressly makes section (a) "subject to the requirement of Rule 19-307.1 (7.1)." The substance of the first two sentences of the ABA Comment on Rule 7.4 (a) is included in Comment [1], and the ABA Comment on Rule 7.4 (b) is included as Comment [2].