

**MARYLAND
LAW COMPONENT
SUBJECT MATTER
OUTLINES**

TABLE OF CONTENTS

Acknowledgements	3
Important Notice – Please Read	6
Maryland Courts – Jurisdiction and Procedure	8
Criminal Law and Procedure	20
Estates and Trusts	29
Evidence	34
Family Law	42
Torts	62
Professional Responsibility	73

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After extensive hearings, meetings, and thoughtful recommendations by the Advisory Committee to Explore the Feasibility of Maryland’s Adoption of the Uniform Bar Exam (“Advisory Committee”), Maryland’s highest court, the Court of Appeals, decided that Maryland would join the many states that administer the Uniform Bar Examination.

However, Maryland has significant distinctions from Federal law and the law of other states, which are critical to the successful practice of law in this state. At the request of the Court of Appeals, the Maryland Law Component Sub-Committee was tasked with seeking the assistance of distinguished expert practitioners in many areas of law to draft materials for use by Maryland bar applicants to prepare for the Maryland Law Component.

On behalf of the Maryland Court of Appeals, and myself, I would like to thank the following attorneys, professors, and judges without whom this outline would not be possible.

The following persons contributed drafts, materials, and/or thoughtful comment in their respective areas of expertise without any compensation beyond a hearty thank you and this recognition and acknowledgement. Thank you for sharing your hard-earned expertise.

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Honorable Sherrie R. Bailey
Associate Judge, Circuit Court for Baltimore County

IMPORTANT NOTICE – PLEASE READ

The Maryland State Law Component Subject Matter Outlines (“Outlines”) are provided as a tool to be used by Maryland Bar applicants in preparing to complete the online portion of the Maryland Law Component, pursuant to Rule 19-212. Please be aware that the Outlines are not intended to be a complete or comprehensive summary of Maryland law. They were created to provide new Maryland practitioners with an introduction to the significant distinctions between Maryland law and that of other jurisdictions, Federal and State.

Although the Outlines are updated periodically, there may be times when recent changes have been enacted that are not included in these materials.

The Outlines shall not be used to provide legal advice or cited as legal authority in any matter. The Outlines are not a substitute for a thorough review of the appropriate Maryland Rules, Statutes, and case law.

TABLE OF ABBREVIATIONS

Maryland Code, Courts and Judicial Proceedings Article	CJP
Maryland Code, Criminal Law Article	CL
Maryland Code, Criminal Procedure Article	CP
Maryland Code, Family Law Article	FL
Maryland Code, Estates and Trusts Article	ET
Maryland Code, State Government Article	SG
Maryland Code, Tax General Article	TG
Maryland Constitution	Md. Const.
Maryland Constitution, Declaration of Rights	Md. Const., Decl. of Rights

MARYLAND COURTS – JURISDICTION AND PROCEDURE

I. Scope of Topic

In this section, we will outline the jurisdiction and venue of Maryland courts as well as statutes of limitations and judgments. The statutes governing these topics are found in the Maryland Code, Courts and Judicial Proceedings Article (“CJP”).

We will also highlight important provisions of the Maryland Rules, which are distinct from federal procedural rules.

As a practicing attorney in Maryland, you will need to refer often to the CJP Article and the Maryland Rules during litigation. Failure to know and follow these statutes and rules can result in your client losing a meritorious case on procedural or jurisdictional grounds. We strongly recommend that you have up-to-date versions of the CJP Article and Maryland Rules readily available for use in your practice of law.

II. Maryland Courts

There are 5 Maryland Courts, including the Orphans’ Court. Md. Const. Art. IV, §1.

A. District Court - Md. Const. Art. IV, §§ 41A-41I

1. Jurisdiction in civil cases. The District Court is a court of limited jurisdiction. CJP § 1-601. The District Court has **exclusive** jurisdiction in civil actions including:
 - a. An action in contract or tort if the debt or damages do not exceed \$30,000, exclusive of prejudgment or post-judgment interest, costs and attorneys’ fees if attorneys’ fees are recoverable by law or contract;
 - b. An action of replevin regardless of the value of the thing in controversy;
 - c. A matter of attachment before judgment if the sum claimed does not exceed \$30,000 exclusive of prejudgment or post-judgment interest, costs and attorneys’ fees, if attorneys’ fees are recoverable by law or contract;
 - d. An action involving landlord and tenant, distraint, or wrongful detainer, regardless of the amount involved.

i. Exceptions to exclusive District Court jurisdiction

In a case of tort or contract or a matter of attachment before judgment if the amount exceeds \$5,000, exclusive of prejudgment or post-judgment interest, costs and attorneys’ fees, if attorneys’ fees are recoverable by law or contract, the circuit court has concurrent jurisdiction with the District Court. CJP § 4-402(d)(1)(i).

In an action on a dishonored check or instrument under Title 15, Subtitle 8 of the Commercial Law Article, where the amount in controversy does not

exceed \$25,000, the defendant is entitled to transfer the action from District Court to an appropriate circuit court by filing an appropriate demand. CJP § 4-402(f).

ii. Other limitations on District Court jurisdiction

The District Court does not generally have equity jurisdiction, jurisdiction to decide ownership of property or jurisdiction to render a declaratory judgment. Additionally, the District Court does not have the authority to conduct jury trials. Its criminal jurisdiction is limited to misdemeanor crimes. CJP § 4-402(a)–(c).

B. Circuit Courts - Md. Const. Art. IV §§ 1, 19-20

Each county has a circuit court. The circuit courts are the highest common law courts of record exercising original jurisdiction within the state. They have full legal and equitable powers in all civil and criminal cases within the county except where jurisdiction has been conferred exclusively upon another tribunal. The District Court and Circuit Court have concurrent jurisdiction over civil protection order proceedings. All family law matters, except for the concurrent jurisdiction of District Courts in civil protection order cases, juvenile cases, including child abuse, neglect, and delinquency, and most felony criminal matters are heard in the Circuit Court. CJP § 1-501.

1. Appellate jurisdiction over District Court. The circuit courts have appellate jurisdiction over final judgments of the District Court in the county in which the District Court judgment is entered. If the amount in controversy exceeds \$5,000 exclusive of interest, costs and attorneys' fees, if attorneys' fees are recoverable by law or contract, the appeal is on the record in the District Court. If the amount in controversy does not exceed \$5,000, the appeal is *de novo*. CJP §§ 12-401(f), 12-403.

C. Court of Special Appeals – Md. Const. Art. IV §§ 1, 14A

The Court of Special Appeals is an intermediate appellate court. CJP § 1-401. Except where CJP § 12-307 confers jurisdiction on the Court of Appeals, the Court of Special Appeals has exclusive appellate jurisdiction over any reviewable judgment, order, or other action of a circuit court and an orphans' court. CJP § 12-308.

D. Court of Appeals – Md. Const. Art. IV §§ 1, 18

The Court of Appeals is the highest court in the state. CJP § 1-301. It has jurisdiction to review cases or proceedings pending in or decided by the Court of Special Appeals, cases on appeal to the circuit court from the District Court and with respect to certified questions of law under the Uniform Certification of Questions of Law Act. CJP § 12-307.

III. Venue

A. General Rule

Generally, a civil action shall be brought in a county where the defendant resides, carries on a regular business, is employed, or habitually engages in a vocation. In addition, a corporation also may be sued where it maintains its principal offices in the state. CJP § 6-201(a).

B. Multiple Defendants

If there is more than one defendant, and there is no single venue applicable to all defendants, all may be sued in a county in which any one of them could be sued or in the county where the cause of action arose. CJP § 6-201(b).

C. Additional Venue

In addition to venue under the general rule above and in local actions under CJP § 6-203, the following actions may be brought in the indicated county:

1. Divorce – where plaintiff resides;
2. Annulment – where plaintiff resides, or where the marriage ceremony was performed;
3. Against a corporation which has no principal place of business in the state – where the plaintiff resides;
4. Replevin or detinue – where the property sought to be recovered is located;
5. Action related to custody, guardianship, maintenance, or support of a child – where the father, alleged father, or mother of the child resides, or where the child resides;
6. Suit on a bond against a corporate surety – where the bond is filed, or where the contract is to be performed;
7. Action for possession of real property – where a portion of the land upon which the action is based is located;
8. Tort based negligence – where the cause of action arose;
9. Attachment on original process – where the property is located, or where the garnishee resides;
10. Non-delivery or injury of goods against master or captain of a vessel – where the goods are received on board the vessel, or where delivery is to be made under the contract;
11. Action for damages against a nonresident individual – any county in the state;

12. Action against a person who absconds from a county or leaves the state before the statute of limitations has run – where the defendant is found; and
13. In a local action in which the defendant cannot be found in the county where the subject matter of the action is located – in any county in which venue is proper under the general rule of CJP § 6-201.

D. The general rule under CJP § 6-201 does not apply to certain “local actions” which have their own venue rules:

1. certain actions related to land, CJP§ 6-203(b);
2. action against railroad for injury to livestock, CJP§ 6-203(c);
3. action for guardianship; adoption of individual physically in Maryland, CJP § 6-203(c).

IV. Personal Jurisdiction

A. Generally

A court may exercise personal jurisdiction as to any cause of action over a person domiciled in, served with process in, organized under the laws of, or who maintains his principal place of business in Maryland. CJP § 6-102(a).

B. Director of a Maryland corporation or trustee of REIT

An individual who accepts election or serves as a director of a Maryland corporation or trustee of a Maryland real estate investment trust is deemed to consent to appointment of the resident agent or such entity for service of process, or if none, to the State Department of Assessments and Taxation, as agent on which service of process may be made in any civil action or proceeding brought in Maryland by or on behalf of or against the corporation or the REIT and to which the individual is a necessary or proper part or against the individual for an internal corporate claim. CJP § 6-102.1(a)-(b).

C. Causes of action arising out of conduct in Maryland or tortious injury outside state

Under CJP § 6-103(a), if jurisdiction over a person is founded solely upon the bases enumerated below, the cause of action must arise from such act. Under CJP § 6-103(b) a court may exercise personal jurisdiction over a person who, directly or by an agent:

1. Transacts any business or performs any character of work or service in the state;
2. Contracts to supply goods, food, services, or manufactured products in the state, tortious injury in the state by an act or omission in the state;
3. Causes tortious injury in the state by an act or omission in the state;

4. Causes tortious injury in the state or outside of the state by an act or omission outside of the state if he regularly does or solicits business, engages in any other persistent course of conduct in the state or derives substantial revenue from goods, food, services, or manufactured products used or consumed in the state;
5. Has an interest in, uses, or possess real property in the state; or
6. Contracts to insure or act as surety for, or on, any person property, risk, contract, obligation, or agreement located, executed, or to be performed within the state at the time the contract is made, unless the parties otherwise providing in writing.

D. Computer Information

The provisions immediately above apply to computer information and computer programs as defined in Md. Code Ann., Comm. Law, § 22-109, but see also CL §7-302(g).

E. Jurisdiction over nonresidents relating to child support, etc.

A Maryland court may exercise personal jurisdiction over a nonresident defendant in any civil proceeding arising out of the marital relationship or involving a demand for child support, spousal support or counsel fees if the plaintiff resides in the state at the time the suit is filed and the nonresident defendant has been served with process and (1) Maryland was the matrimonial domicile of the parties immediately before their separation; or (2) the obligation to pay child support, spousal support or counsel fees arose under the laws of Maryland or under an agreement executed by one of the parties in Maryland. CJP § 6-103.1.

F. Jurisdiction over nonresidents related to paternity actions

A court may exercise personal jurisdiction over a nonresident defendant alleged to be the father in a paternity proceeding if (1) the mother resides in Maryland at the time the suit is filed; (2) the nonresident alleged father personally has been served with process in accordance with the Maryland rules; and (3) the act of conception is alleged to have occurred in Maryland. CJP § 6-103.2

V. Judgments

A. Interest on Judgments

1. Generally:

The legal rate of interest on a money judgment is 10% per annum on the amount of the judgment. The legal rate of interest on a judgment for rent of residential premises is 6% per annum on the amount of the judgment. CJP § 11-107(a), (b).

B. Noneconomic damages

Noneconomic damages for personal injuries may not exceed \$500,000 plus an additional \$15,000 following October 1 of each year after 1995. As of 2019 they are \$860,000 for one person, and \$1,290,000 in, for example, a wrongful death cases with 2 or more beneficiaries

for a single cause of action. There is currently an \$860,000 non-economic damages cap on survival actions. CJP § 11-108(b)(2).

C. Lien of Judgment

1. Real property – circuit court judgment

If indexed and recorded, a money judgment of a court constitutes a lien to the amount and from the date of judgment on the debtor’s interest in land located in the county where rendered except for a lease from year to year or for a term of not more than 5 years. CJP § 11-402(b).

2. Real property – District Court judgment in Baltimore City

If recorded and indexed, a money judgment of the District Court in Baltimore City constitutes a lien on real property in Baltimore City from the date of entry. Md. Rule 3-621(b).

3. Real property – circuit court judgment in county other than where rendered

A judgment of a circuit court constitutes a lien on real property in a county other than where it was rendered from the date the holder of the judgment presents a copy of such judgment to the clerk of such court for recording and indexing. CJP § 11-402 (c).

4. Real property – District Court other than in Baltimore City, constitutes a lien on real property from the date it is recorded and indexed in the circuit court. Md. Rules 2-621(c), 2-623(c).

5. Personal property – lien of judgment. A money judgment becomes a lien on personal property only when a writ of execution is levied on such property. CJP § 11-403, Md. Rule 2-642(b).

VI. Statutes of Limitation

A. Civil actions generally

Civil actions generally must be filed within three years from the date the action accrues unless another provision of the code provides a different period of time. The discovery rule provides, however, that the limitation period is tolled until the time plaintiff discovers, or through exercise of reasonable diligence should have discovered, the injury. CJP § 5-101. Frederick Road Ltd. Partnership v. Brown & Sturm, 360 Md. 76, 95-96 (2000).

B. Actions on specialties

An action on the following specialties should be filed within twelve years after the cause of action accrues or within twelve years from the date of death of the last to die of the principal debtor or creditor, whichever is sooner. Payment of principal or interest on a debt suspends the operation of limitations for three years after the date of payment. CJP § 5-102(a)–(c).

C. Adverse possession

An action to recover possession of a corporeal freehold or leasehold in land shall be commenced within 20 years of the accrual of the cause of action CJP § 5-103(a)(1).

D. Action for assault, libel, and slander

An action for assault, libel, or slander shall be filed within one year from the date it accrues. CJP § 5-105.

E. Abatement of action for slander

An action for slander abates upon the death of either party unless an appeal has been taken from a judgment entered in favor of the plaintiff. CJP § 6-401(b).

F. Suits for fine, penalty or forfeiture

Generally, a prosecution or suit for a fine, penalty, or forfeiture shall be instituted within one year after the offense was committed. CJP § 5-107.

G. Suits against health care providers

For an action for injury arising out of the rendering or failure to render professional services by a health care provider, when the claimant was a minor, the statute of limitations shall commence running when the claimant reaches the age of 18 years old. Piselli v. 75th Street Medical, 371 Md. 188 (2002).

H. Fraudulent actions

If knowledge of a cause of action is kept from a party by fraud of an adverse party, the cause of action shall be deemed to accrue at the time when the party discovered or by the exercise of ordinary diligence, should have discovered the fraud. CJP § 5-203.

I. Foreign corporations or limited partnerships

A foreign corporation or limited partnership required to qualify or register to do business in Maryland, or a person claiming under the foreign corporation or limited partnership, may not benefit from any statute of limitations in an action at law or in equity (1) arising out of a contract or liability incurred while doing business in Maryland without having qualified or registered or (2) instituted while the foreign corporation or limited partnership is doing intrastate or interstate or foreign business in Maryland without having qualified or registered. CJP § 5-204.

J. Injuries after improvements to property

The Courts Article also imposes statutes of repose for actions relating to defective or unsafe conditions of real property (20 years), and against architects, professional engineers, and contractors (10 years) from the date the entire improvement first became available for its intended use. CJP § 5-108.

K. Criminal Statutes of Limitations

See the Criminal Law Section for the criminal statutes of limitations.

VII. Maryland Rules of Procedure

A. Pleadings and Preliminary Motions – Circuit Court

1. Mandatory defenses

Motions to dismiss for lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process, must be filed before an answer to the complaint is filed, or those defenses are waived. Md. Rule 2-322(a)(1)-(4), (f).

2. Answer without preliminary motion

Generally, when a defendant is served within Maryland with a Complaint, the defendant has 30 days after service of the Complaint to file an answer. Md. Rule 2-321(a). If served outside of the state of Maryland, but within the United States, a defendant has 60 days after service to file an answer. If served outside of the United States, a defendant has 90 days after service to file an answer. Md. Rule 2-321(b).

3. General denial

A defendant may answer a Complaint in an action for breach of contract, debt or tort for money only, with a general denial. Md. Rule 2-323(d).

4. Affirmative defenses

Whether an Answer to a Complaint contains general or specific denials, a defendant who intends to rely on an affirmative defense, must assert those defenses in the answer. Failure to do so amounts to a waiver of such defenses. Bagwell v. Peninsula Regional Medical Center, 106 Md. App. 470, 665 A. 2d 297 (1995). Md. Rule 2-323(g).

B. Motions – Circuit Court

Generally, a party responding to a motion has 15 days after being served with the motion plus three extra days if the motion was served by mail, to respond to the motion. Md. Rules 2-311; 1-203(c).

C. Discovery and Pretrial Proceedings – Circuit Court

1. Discovery methods

Parties may obtain discovery by: (a) deposition or oral examination or written questions, (b) written interrogatories, (c) production or inspection of documents or other tangible things or permission to enter upon land or other property, (d) mental or physical examination, and (e) requests for admission of facts and genuineness of documents. Md. Rule 2-401(a). The actual discovery material is generally not filed

with the court, only a notice of the type of discovery sought, date, manner of service, and the party or person served. Md. Rule 2-401(d).

a. Interrogatories

Any party may only serve a total of 30 written interrogatories to any other party.

b. Answer to Interrogatories/Document Requests/Request for Admissions.
Md. Rule 2-421.

A party has 30 days after service of written interrogatories, requests for the production of documents, and requests for admissions to serve a response. Md. Rules 2-422, 2-423, and 2-424.

c. Response to Requests for Admissions

Each matter for which an admission is requested shall be automatically deemed admitted unless within 30 days after service or 15 days after the date on which that party's initial pleading is required, whichever is later, the party who received the request serves a response. Md. Rule 2-424.

d. Certificate requirement

A court will not consider the merits of a discovery dispute unless the party seeking action by the court has filed a certificate describing the good faith attempts to discuss with the opposing attorney resolution of the dispute, including the date, time, and circumstances of each discussion and certifying that the parties are unable to reach agreement on the disputed issue. Md. Rule 2-431.

e. Discovery Agreements Between Counsel

Counsel must seek the court's approval for any agreement between counsel to conduct discovery beyond any deadlines set by the court's scheduling order. Md. Rule 2-401(g); Discovery Guideline 4.

D. Discovery and Pretrial Proceedings – District Court

1. Discovery method

If the matter is over \$5,000, parties may obtain discovery by: (1) Interrogatories which include the attachment of documents; and (2) by deposition if agreed to by the parties by stipulation filed with the District Court. Md. Rule 3-401.

Claims involving disputes of \$5000 or less are considered small claims. No jury trial is permitted for such matters and no discovery. In addition, the formal rules of evidence do not apply. Md. Rule 3-701.

The actual discovery material is generally not filed with the District Court, only a notice of the type of discovery served, date, manner of service, and the party or person served. Md. Rule 3-401(b)(2).

2. Interrogatories

The plaintiff may serve a total of 15 interrogatories on the defendant no later than 10 days after the date on which the clerk of the court mails notice to the plaintiff that the defendant has filed a Notice of Intention to Defend. Md. Rule 3-421(b).

The defendant may serve 15 interrogatories on the plaintiff no later than 10 days after the time for filing a Notice of Intention to Defend. Md. Rule 3-421(b).

Answer to Interrogatories in District Court – A party has 15 days after service of written interrogatories to respond. Md. Rule 3-421(d).

E. Trial – Circuit Court

1. Demand for trial by jury trial in Circuit Court

A party may demand trial by jury of any issue so triable by filing a demand for a jury as a separate paper or separately titled at the conclusion of a pleading and immediately preceding any required certificate of service. Md. Rule 2-325(a).

2. Waiver of jury trial

Failure to file a demand for jury trial within 15 days after the last pleading filed by any party, constitutes waiver of a jury trial. Md. Rule 2-325(b).

F. Trial – District Court

1. Demand for jury trial in District Court

A plaintiff may request a jury trial in District Court if the plaintiff's claims exceed \$15,000 by filing with the complaint a separate written demand therefor. Md. Rule 3-325(a)(1).

A defendant, counter-defendant, or third-party defendant may elect a trial by jury for claims over \$15,000 by filing a separate written demand within 10 days after the time for filing a Notice of Intention to Defend. Md. Rule 3-325(a)(2).

2. Waiver of jury trial

Failure of a party to demand trial by jury as provided within the required period constitutes a waiver of trial by jury. Md. Rule 3-325(b).

G. Post-Trial

1. Judgment Notwithstanding the Verdict – Circuit Court

In a jury trial, a party may move for judgment notwithstanding the verdict only if that party made a motion for judgment at the close of all the evidence and only on the grounds advanced in support of the earlier motion. The motion must be filed within 10 days of the judgment. Md. Rules 2-532.

2. Other Post-Trial Motions – Circuit Court and District Court

Within 10 days of the judgment, any party may file a Motion: (1) for a New Trial, or (2) to alter or amend the judgment. Md. Rules 2-533, 2-534 (Circuit Court); Md. Rules 3-533, 3-534 (District Court)

3. Revisory Power– Circuit Court and District Court

Within 30 days after the judgment, any party may file a motion requesting that the court exercise its power to revise the judgment. Md. Rule 2-535 (Circuit Court), Md. Rule 3-535 (District Court).

In the event of fraud, mistake, or irregularity with regard to the judgment, any party may file a motion at any time requesting that the court exercise revisory power and control over the judgment. Md. Rule 2-535 (Circuit Court), Md. Rule 3-535 (District Court).

H. Appeal

1. Time for appeal

A notice of appeal shall be filed within 30 days after entry of the judgment or order from which appeal is taken. Md. Rule 8-202(a). Lovero v. DaSilva, 200 Md. App. 433, 441-42 (2011).

I. Criminal Actions

1. Charging Documents

In the District Court, an offense may be tried: (1) on an information filed by a State’s Attorney, (2) on a statement of charges filed by, or before, a judicial officer, or (3) on a citation in the case of a petty offense or when authorized by statute. Md. Rule 4-201(b).

In the Circuit Court, an offense may be tried: (1) on an indictment, or (2) on an information if the offense is: (A) a misdemeanor, or (B) a felony within the jurisdiction of the District Court, or (C) any other felony and lesser included offense if the defendant requests or consents in writing to be charged by information, or if the defendant has been charged with the felony and a preliminary hearing has resulted in a finding of probable cause, or if the defendant has been charged with the felony as to which a preliminary hearing has been waived, or (3) on a charging document filed in the District Court for an offense within its jurisdiction if the defendant is entitled to and demands a jury trial or appeals from the judgment of the District Court. Md. Rule 4-201(c).

2. Right to Representation by Attorney

In Maryland a defendant has the right to be represented by an attorney at an initial appearance before a judicial officer. Unless waived, this right to counsel includes initial appearances before a District Court commissioner. Md. Rule 4-213.1.

3. Criminal Trial

The date for trial in the circuit court shall be set within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the circuit court and shall be not later than 180 days after the earlier of those events. Md. Rule 4-271.

CRIMINAL LAW AND PROCEDURE

I. Generalities

A. Role of the Common Law

1. Substantive criminal law and criminal procedure in most American jurisdictions is governed by statute with very little residual influence from the common law.
2. Article V of the Maryland Declaration of Rights guarantees to those in Maryland the protections of the common law.
 - a. Although Maryland has a criminal code, many Maryland statutes incorporate Maryland common law.
 - b. Maryland courts retain authority to elaborate common law crimes.
 - c. Maryland common law preserves two forms of common law pleas to dismiss charges on double jeopardy grounds, pleas “autrefois acquit (former acquittal) and autrefois convict (former conviction).” Copsey v. State, 67 Md. App. 223 (1986).

B. Victims’ Rights

1. Other jurisdictions vary widely in terms of rights afforded to victims.
2. Article 47 of the Maryland Declaration of Rights guarantees the right of victims to be treated with “dignity, respect, and sensitivity,” including the right to be notified about hearings and trials and the right to be heard.

C. Court Structure

1. Many jurisdictions have one court of original jurisdiction for criminal matters and jurisdictions vary widely in terms of their appellate court structures.
2. Maryland has two courts that have original jurisdiction over criminal matters.
 - a. District Courts have original jurisdiction over motor vehicle violations, misdemeanors, and minor felonies, including those punishable by up to three years’ imprisonment or \$2,500 fine. Proceedings in the District Court are limited to bench trials. CJP §§ 4-301, 4-302. Md. Const. Art. IV §§ 41A-41I.
 - b. Circuit Courts have original jurisdiction over serious crimes, including serious felonies. CJP § 1-501. Proceedings in the Circuit Court include both jury trials and bench trials. CJP § 4-302. Circuit Courts also hear criminal appeals from District Courts. These appeals are *de novo*. CJP § 12-401. Md. Const. Art. IV §§ 1, 19-20.

3. Maryland has a two-tiered appellate court structure.
 - a. The Court of Special Appeals is the intermediate court of appeals. All persons convicted of a crime have an automatic right of appeal to the Court of Special Appeals. CJP § 1-401.
 - b. The Court of Appeals is the court of final appeal in Maryland. The Court of Appeals has a discretionary docket. CJP § 1-301.

D. Criminal Statute of Limitations

1. Unless there is a statute providing for a limitation on charges for a crime, there is no statute of limitations in Maryland for felonies and misdemeanors with a statutory penalty of penitentiary confinement. *State v. Stowe*, 376 Md. 436, 454 (2003).
2. The general limitations period for misdemeanors not punishable by imprisonment in a penitentiary is one year.

II. Substantive Criminal Law

A. Negligent Homicide

1. Negligence generally is not sufficient to establish criminal liability.
2. Exception – by statute, Maryland criminalizes negligent homicide by vehicle or vessel, which includes cars, streetcars, trains, and watercraft. Md. Code, Criminal Law (“CL”) §§ 2-209, 2-210.

B. Self-Defense

1. Many jurisdictions allow individuals faced with threats to “stand their ground” in public places.
2. Maryland common law preserves the duty to retreat from threats in public places before resorting to deadly force if the means and opportunity to do so are known and it is safe to do so. *Porter v. State*, 455 Md. 220 (2017); *State v. Wiegmann*, 350 Md. 585 (1998).
 - a. Maryland preserves the “castle doctrine,” which excuses individuals in their homes from any duty to retreat before using deadly force in self-defense.
 - i. Maryland’s castle doctrine does not extend to the use of deadly force against invited guests if the defendant/resident initiates the confrontation.
 - ii. Maryland’s castle doctrine covers the home itself and probably extends to the curtilage immediately surrounding the home.
 - b. Maryland common law recognizes a broad right for lawful occupants of residential dwellings to use deadly force to prevent unlawful intrusions. This defense of habitation doctrine is an extension of the right to self-defense and does not ground a general right to use deadly force in defense of property.

C. Right to Resist Illegal Arrest

1. Many jurisdictions do not preserve a right to resist illegal warrantless arrests or excessive use of force by law enforcement officers.
2. Maryland common law preserves the right of individuals to resist unlawful warrantless arrests and unlawful or excessive use of force by law enforcement officers.

III. Search & Seizure

A. Exclusion of Illegally Seized Evidence

1. The Fourth Amendment to the United States Constitution governs searches and seizures conducted by all government agents.
2. Article 26 of the Maryland Declaration of Rights governs searches and seizures conducted by state agents in Maryland. In general, the Maryland Court of Appeals interprets Article 26 in a manner that is consistent with the Fourth Amendment.
3. There is a limited exclusionary remedy for evidence seized in violation of the Fourth Amendment under federal law.
4. The Maryland Court of Appeals has not recognized a general exclusionary rule under Maryland constitutional law. In general, defendants seeking exclusion of evidence based on illegal searches and seizures in Maryland courts must appeal to the federal constitution.
 - a. But, in Parker v. State, 402 Md. 372 (2007), the Maryland Court of Appeals allowed for the possibility of an exclusionary rule based on Maryland non-constitutional law, including Maryland common law.
 - i. The specific question in Parker was whether the Supreme Court's decision in Hudson v. Michigan, 547 U.S. 586 (2006), dictated that exclusion was not available under Maryland law when officers violated Maryland's knock and announce rule. On the particular facts and procedural posture of that case, the Court of Appeals declined to hold that there was no exclusionary remedy under Maryland non-constitutional law for knock and announce violations.
 - ii. But, in Ford v. State, 184 Md. App. 535 (2009), the Maryland Court of Special Appeals noted that the Court of Appeals had not yet capitalized on its common law authority to enforce exclusion as a matter of Maryland non-constitutional law.
 - b. There is also no general right to exclude evidence seized in violation of Maryland statutory law, although some statutes may provide for exclusion as a remedy.

B. Warrantless Arrests

1. The Fourth Amendment allows police officers to effect a full custodial arrest whenever there is probable cause to believe the arrestee has committed a crime without regard to the nature or seriousness of the offense. Atwater v. City of Lago Vista, 532 U.S. 318 (2001).
2. In contrast – by rule, Maryland law only allows for warrantless arrests in cases where officers have probable cause to believe the arrestee has committed a felony, where the officer has observed the arrestee’s commission or attempted commission of a misdemeanor, or where there is probable cause to believe that the arrestee has committed a crime listed under CP §§ 2-203, 2-204, or 2-205, which include:
 - a. Manslaughter by vehicle;
 - b. Malicious Burning;
 - c. Malicious Mischief;
 - d. Giving False Alarm;
 - e. Indecent Exposure;
 - f. Narcotics Offenses;
 - g. Illegal Possession of a Handgun;
 - h. Prostitution;
 - i. Violations of Conditional Release;
 - j. Domestic Battery; and
 - k. Stalking.

IV. Interrogations

A. Voluntariness

1. The due process clauses of the Fifth and Fourteenth Amendment prohibit the use of certain interrogation tactics and the exploitation of suspect weaknesses that generate “involuntary” confessions.
 - a. To determine whether a confession is “voluntary” for purposes of federal due process, courts examine the “totality of the circumstances,” taking into consideration factors such as the suspect’s age, fluency in English, experience with law enforcement, length of the interrogation, whether the suspect ate, drank, or slept, the use of force, and threats to use force.
 - b. In general, assessments of voluntariness in the federal system are made by judges at a suppression hearing rather than by triers of fact at trial.

2. Maryland non-constitutional common law also prohibits the use of interrogation tactics and the exploitation of suspect weaknesses that generate “involuntary” confessions.
 - a. Under Maryland common law, prosecutors must show that confessions are “free of any coercive barnacles.” Winder v. State, 362 Md. 275 (2001).
 - i. These common law protections impose more restrictions on law enforcement officers conducting interrogations and provide more protections for defendants than does federal due process.
 - ii. To determine whether a confession is free of “coercive barnacles,” Maryland courts look to the “elements of the interrogation, including the manner in which it was conducted, the number of officers present, and the age, education, and experience of the defendant.” Williams v. State, 375 Md. 404 (2003).
 - iii. Unlike the test under federal due process, Maryland common law treats some factors as “transcendent and decisive,” including improper threats or promises of advantage such as “promises by the interrogating officers either to exercise their discretion or to convince the prosecutor to exercise discretion to provide some special advantage to the suspect.” Knight v. State, 381 Md. 517 (2004).
 - b. When challenged, prosecutors have the burden of proving voluntariness under Maryland common law both in a suppression hearing and at trial. Thus, the question whether a confession was given voluntarily can go to the jury at trial even if the same confession was previously determined to be voluntary at a suppression hearing.
 - i. At a suppression hearing, prosecutors must prove voluntariness of a confession on a preponderance of the evidence.
 - ii. At trial, prosecutors must prove the voluntariness of a confession beyond a reasonable doubt.

V. Pretrial Proceedings

A. Probable Cause Hearings

1. The Fourth Amendment commands that persons arrested without an arrest warrant are entitled to a “prompt” hearing to determine whether the arrest was supported by probable cause. Gerstein v. Pugh, 420 U.S. 103 (1975). In general, that hearing should happen within 48 hours. County of Riverside v. McLaughlin, 500 U.S. 44 (1991).
2. Pursuant to Maryland Rule 4-212(f)(1), “When a defendant is arrested without a warrant, the defendant shall be taken before a judicial officer of the District Court without unnecessary delay and in no event later than 24 hours after arrest.”

B. Bail

1. The Eighth Amendment prohibition on excessive bail has not been explicitly incorporated, and therefore does not necessarily bind the states (in both Schilb v. Kuebel, 404 U.S. 357 (1971), and Murphy v. Hunt, 455 U.S. 478 (1982), the United States Supreme Court indicated in dicta that the Eighth Amendment prohibition on excessive bail meets the requirements for incorporation. Md. Const., Decl. of Rights, Art. 25 prohibits excessive bail.)
2. Pursuant to Maryland Rules 4-216 and 4-216.1, criminal defendants in Maryland not only have a right to reasonable bail, but courts are required to give priority to non-monetary terms of pretrial release.
3. Criminal defendants in Maryland have a right under Article 21 of the Maryland Declaration of Rights to representation at bail hearings. DeWolfe v. Richmond, 434 Md. 444 (2013).

VI. Disposition Other than Trial

A. Probation Before Judgment

1. Many jurisdictions provide for the adjournment of prosecutions in contemplation of dismissal after a particular period or after the fulfillment of specified conditions.
2. Maryland Code, Criminal Procedure Article § 6-220 provides for the disposition of criminal charges through a process called probation before judgment. Under this procedure, a defendant pleads guilty or *nolo contendere* to a charge, but judgment is stayed pending completion of probationary terms set by the court. Upon successful completion of those terms, the defendant is discharged without entry of a judgment of conviction. Consequently, the defendant is never convicted of a crime, does not have a record of criminal conviction, and is not subject to the collateral consequences of conviction. A defendant that receives a Probation Before Judgment (PBJ) is eligible for expungement.
3. Prosecutors in Maryland also have the discretion to officially place cases in a “stet” or inactive docket. Cases in this stet status can be opened at the prosecutor’s or defendant’s discretion within one year. Cases in the stet status for more than one year can only be reopened for good cause. Cases in the stet status for more than three years are eligible for expungement.
4. Prosecutors in Maryland have the option to close an active prosecution by entering a *nolle prosequi* or state’s dismissal. Cases closed by entry of *nolle prosequi* are immediately eligible for expungement.

VII. Trial

A. Voir Dire

1. Many jurisdictions afford attorneys broad latitude during voir dire to ask questions to assist in jury selection.
2. In Maryland, attorneys may only submit or ask questions on voir dire that are likely to reveal grounds for striking a juror for cause. There is no right to ask questions solely to inform the use of peremptory challenges. Pearson v. State, 437 Md. 350, 357 (2014); Curtin v. State, 393 Md. 593 (2006).

B. Inconsistent Jury Verdicts

1. There is no prohibition under the common law against entering judgment on jury verdicts that are factually or legally inconsistent.
2. In Price v. State, 405 Md. 10 (2008), the Court of Appeals held that courts in Maryland may not, as a matter of Maryland common law, enter judgments based on legally inconsistent jury verdicts when a defendant objects.

C. Accomplice Testimony

1. Jurisdictions vary on whether a defendant can be convicted entirely based on the testimony of an accomplice or coconspirator without independent, corroborating evidence.
2. In Maryland, a defendant cannot be convicted based solely on the testimony of an accomplice or coconspirator absent independent, corroborating evidence. In re Anthony W., 388 Md. 251 (2005).

D. Confessions

1. Jurisdictions vary on whether a defendant can be convicted entirely based on a confession without independent, corroborating evidence.
2. In Maryland, a defendant cannot be convicted based solely on a confession absent independent, corroborating evidence. Riggins v. State, 155 Md. App. 181 (2004).

E. Polling and Harkening

1. Few jurisdictions require polling jurors or hearkening a jury at the end of trial.
2. Maryland common law requires that jurors be polled (asked individually whether they concur in the verdict) or the jury hearkened (asked in open court whether they concur collectively in the verdict) at the end of trial. Md. Rule 4-327(e).
3. Defendants may waive polling or hearkening but not both. State v. Santiago, 412 Md. 28 (2009).

VIII. Sentencing

A. Revisory Power of Court

1. In most jurisdictions, petitions for reconsideration of sentencing come before the sentencing judge.
2. In Maryland, convicts may seek reconsideration of sentence with the trial court but can also pursue modification of a criminal sentence from a three-judge panel. Md. Rules 4-345, 4-344.
3. The defendant's motion to modify a sentence must be filed within 90 days of the imposition of the sentence, and the court retains jurisdiction to modify the sentence for 5 years after the date the sentence was originally imposed. Md. Rule 4-345(e).

IX. Post-Conviction

A. Writs of Actual Innocence

1. In the federal system, claims of actual innocence on collateral review are habeas proceedings, which are subject to a host of limitations and constraints.
2. Writs of actual innocence in Maryland are governed by Md. Rule 4-332.
 - a. Defendants who have pleaded guilty or *nolo contendere* can file petitions based on newly discovered evidence.
 - b. When reviewing writs based on newly discovered evidence, judges may consider evidence from both the defendant and the prosecution.

B. Collateral review of criminal convictions that have become final after the exhaustion of all direct appeals can be initiated by filing a writ of error *coram nobis* in the court where the original conviction was entered.

C. Post-Conviction DNA Testing

1. Jurisdictions have a variety of approaches to post-conviction DNA testing ranging from liberal to limited.
2. Md. Rule 4-704 sets forth procedures governing petitions for post-conviction DNA testing. Petitioners must demonstrate that "a reasonable probability exists that the requested DNA testing has the scientific potential to produce exculpatory or mitigating evidence relevant to a claim of wrongful conviction or sentencing." There is no bar on successive petitions for testing. Jackson v. State, 448 Md. 387 (2016).

X. Maryland Statutory Child Sex Offenses

- A. Fourth Degree Sex Offense - This law prohibits anyone from having intercourse or engaging in a sexual act with a 14 or 15-year old if the person is at least 4 years older than the victim. It is also prohibited for a person 21-years or older to engage in consensual sexual contact with a minor if the adult is in a position of authority at a school where the victim was enrolled. This crime is a misdemeanor that carries a 1-

year maximum jail sentence and the possibility of having to register as a sex offender for 15 years upon conviction. CL § 3-308.

- B. Third Degree Sex Offense - This law prohibits anyone from engaging in sexual contact with a minor under the age of 14 if the person is at least 4 years older than the victim. This offense also prohibits a person 21 or older from engaging in a sexual act or vaginal intercourse with a minor that is 14 or 15. This offense also prohibits a person from engaging in sexual contact with a “substantially cognitively impaired individual, a mentally incapacitated individual, or a physically helpless individual, and the person performing the act knows or reasonably should know the victim is a substantially cognitively impaired individual, a mentally incapacitated individual, or a physically helpless individual.” The maximum punishment for this crime is 10 years in prison, and the possibility of having to register as a sex offender for 25 years. CL § 3-307.
- C. Second Degree Rape - This law prohibits a person 18 or older from engaging in a sexual act with a minor under the age of 13. A violation of this law could result in a maximum punishment of life in prison, and upon conviction a mandatory minimum jail sentence of 15 years without parole. The law also prohibits anyone from engaging in a sexual act with a minor under the age of 14 if the person is at least 4 years older than the victim. This provision has a maximum penalty of 20 years and does not carry a mandatory minimum jail sentence. A conviction of either provision of this statute will result in a lifetime sex offender registry requirement. CL § 3-304.

XI. Maryland Wiretap Statute

- A. Intercepting a private communication or disclosing or using intercepted private communications without the consent of both parties to the communication, unless in connection with approved law enforcement activities or as otherwise allowed by law, is a felony punishable by imprisonment for not more than five years and a fine of not more than \$10,000. CJP § 10-402(b).
- B. While other jurisdictions, including federal law, only require one party consent for recorded communications, Maryland law, for public policy reasons, requires two party consent, or consent by all parties, for recorded communications. Holmes v. State, 236 Md. App. 636, 650 (2018); Seal v. State, 447 Md. 64, 73-74 (2015).
- C. Maryland’s wiretap statute only requires two-party/all-party consent for audio recording of oral and wire communications; video-only recording does not require consent of all the parties to the recording. Ricks v. State, 70 Md. App. 287(1987).

ESTATES AND TRUSTS

I. WILLS AND TRUSTS

A. Wills

1. Except as otherwise provided in Md. Code, Estates and Trusts (“ET”) §§ 4-103 and 4-104, a will shall be in writing and signed by the testator or by some other person for her, in her presence and by her express direction, and attested to and signed by two or more credible witnesses in the presence of the testator. ET § 4-102.
 - a. An attestation clause in the will provides prima facie evidence that the formalities of the will execution were met. Van Meter v. Van Meter, 183 Md. 614 (1944).
2. A will may be a valid holographic will if written in the testator’s hand and signed by the testator while the testator is serving in the U.S. armed services and serving outside of the U.S. or a U.S. territory, even if there are no attesting witnesses. ET § 4-103.
3. A will executed outside of Maryland may be probated in Maryland if it is in writing, signed by the testator, and executed either: a) with the required Maryland formalities (ET § 4-102); b) with the formalities of the law where it was executed; or c) with the formalities of the law of the domicile of the testator. ET § 4-104.
4. Void Provisions. A will provision distributing property to a trust that was not in existence at the time of the execution of the will is void. ET § 4-411.

B. Trusts

1. Creation of a Trust.
 - a. A trust can be created by (i) an owner transferring property to a trustee during the owner’s lifetime, or by will or other disposition at death; (ii) by a declaration by the owner that the owner holds identifiable property as trustee; or (iii) by the exercise of a power of appointment in favor of a trustee. ET § 14.5-401(b). The capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will. ET § 14.5-601.

II. ESTATE ADMINISTRATION

A. Register of Wills and the Orphans’ Courts

1. The Register of Wills is the administrative agency tasked with supervising the administration of decedent’s estates, collecting inheritance tax and probate fees, and serves as the clerk of the Orphans’ Courts. Each county and Baltimore City has a Register of Wills elected every four years. Md. Const., Art. IV § 41.

2. Maryland's probate court is called the Orphans' Court and presides over the administration of estates, particularly where judicial proceedings and court orders are required. Orphans' Court judges are responsible for approving administration accounts, making sure that only appropriate payments are made from estate assets and that distributions are made to the proper beneficiaries or heirs. Generally, payment of attorney's fees or personal representative's commissions made from estate assets must be approved by the Orphans' Court. Each county (except Harford and Montgomery Counties) and Baltimore City has an Orphans' Court. Judges may be appointed and are subject to general election every four years. The Orphans' Court judges in Baltimore City, Baltimore County, and Prince George's County must be attorneys barred in Maryland. In other counties, an Orphan's Court Judge need not be a lawyer. Md. Const. Art. IV § 40.

B. Property subject to administration before the Register of Wills

1. Property subject to estate administration includes:
 - a. "Property" includes both real and personal property, and any right or interest therein. "Property" refers to (1) all real and personal property of a decedent; and (2) any right or interest therein which does not pass, at the time of the decedent's death, to another person by the terms of the instrument under which it is held, or by operation of law. ET § 1-101(r).
 - b. All property of a decedent passes directly to the personal representative who holds title for administration and distribution. ET § 1-301.
2. Property that is not subject to estate administration includes, but is not limited to, IRA's, life estates, and transfer on death ("TOD") accounts.

C. Jurisdiction of the Orphans' Court

1. Orphans' Court conducts judicial probate and can direct the conduct of the personal representative and pass orders needed for estate administration.
2. Orphans' Court can determine title of personal property with a value not exceeding \$50,000. ET § 1-301(b).

D. Intestate Distribution

1. Maryland's intestate distribution share for a surviving spouse is one-half of the residue if there is surviving minor issue; or the first \$40,000 plus one-half of the residue if there is surviving issue (but no minor issue). This is a significantly lower spousal share than other jurisdictions. ET § 3-102.
2. Maryland provides that a descendant or ancestor (or the descendant of an ancestor) must survive an intestate decedent by 30 full days to be considered to have survived the decedent. A spouse, however, is considered to have survived a decedent if s/he survives by even an instant. ET § 3-110.

3. Maryland intestate distribution method is by representation per stirpes. ET § 1-210.
 - a. Issue of the decedent: the property due to issue shall be divided in as many shares as there are children of the decedent who survive the decedent and children of the decedent who did not survive the decedent but of whom issue did survive the decedent. ET § 1-210(b).
 - b. Issue of parent, grandparent, or great-grandparent of decedent: Division for distribution is made at the level of the nearest degree of lineal descendants who survived the decedent and the issue of each lineal descendant of that degree who left issue surviving shall receive one share apportioned as described in ET § 1-210(b). ET § 1-210(c).
4. Family Allowances for Spouse and Children.
 - a. Surviving spouse is entitled to receive an allowance of \$10,000 for personal use. ET § 3-201 (a).
 - b. Unmarried children of the decedent, under the age of 18 at the time of the death of the decedent, are entitled to an allowance of \$5,000 and shall be paid by the personal representative. ET § 3-201 (b).

E. Testate Distribution

1. Spousal Protection
 - a. Maryland's spousal elective share is limited to net probate assets, providing a formula different than that of other jurisdictions. ET § 3-203.
 - b. Maryland spousal elective share is one-third of the net probate estate if there is surviving issue or one-half of the net probate estate if there is no surviving issue. ET § 3-203.

F. Bond – ET § 6-102

1. Every personal representative must be bonded for the benefit of all interested persons and creditors unless expressly excused by a will or written waiver of all interested persons.
2. Even if the bond is waived, a personal representative must be bonded for the benefit of the creditors and the Register of Wills' interest in inheritance taxes payable by the personal representative.

III. TAXES

A. **Estate Tax – Md. Const. Decl. of Rights. Art. 15.**

1. Md. Code, Tax General Article (“TG”) § 7-309(b)(3): Maryland has an estate tax of 16% of the gross taxable estate exceeding the estate tax exemption amount.
2. The Maryland estate tax exemption amount for decedents dying on or after January 1, 2019, is \$5,000,000. TG § 7-309(b)(3)(i)(6).
3. The Maryland estate tax shall be determined by excluding from the value of the gross estate up to \$5,000,000 of the value of certain agricultural property that passes from the decedent to or for the use of certain recipients. TG § 7-309(c)(2).
4. Maryland allows for a state-only spousal qualified terminable interest property trust to defer until the death of the second spouse the estate taxes on the portion of the estate subject to the Maryland estate tax but within the federal exemption amount. TG § 7-309(b)(5).

B. **Inheritance Tax**

1. The Maryland inheritance tax is due from a recipient of property passing on the death of a decedent by will, under the laws of intestacy, by operation of law, or by deed. TG § 7-201.
2. The inheritance tax does not apply to the receipt of property by close relatives, the receipt of life insurance directly payable to a beneficiary, and/or to the receipt of property distributed from a small estate administered under ET § 5-601. TG § 7-203.
 - a. Exempt from inheritance tax are transfers to a child (the definition of child includes stepchild or former stepchild), a grandparent, a parent, a lineal descendant of a child, a spouse of a child or a spouse of a lineal descendant of a child who was married to the child or lineal descendant of a child at the child’s or lineal descendant’s death, a brother or sister of the decedent, and a corporation or partnership if all its stockholders, partners or members consist of the close relatives specified here.

C. **Gift Tax**

1. Maryland has no gift tax on inter vivos transfers.

IV. PROFESSIONAL RESPONSIBILITY and ESTATES and TRUSTS

A. Md. Rule 19-301.8 Conflict of Interest; Current Client; Specific Rules

1. An attorney cannot ask for a substantial gift or prepare on behalf of a client an instrument giving the attorney or a person related to the attorney a substantial gift unless the attorney is closely related to the client.

B. Attorney's Duty to Non-Client Beneficiaries

1. Noble v. Bruce, 349 Md. 730 (1998): the rule of strict privity applies in Maryland and estate beneficiaries do not have standing to sue the estate planning attorney for legal malpractice.

C. Attorney's Duty to Estate Beneficiaries

1. Ferguson v. Cramer, 349 Md. 760 (1998): the third-party beneficiary exception to the strict privity rule does not apply where no attorney-client relationship exists between the estate beneficiaries and the attorney engaged by and advising the personal representative.

V. ESTATES & TRUSTS DISCOVERY CASES

A. Attorney-Client Privilege - Testamentary Exception

1. Benzinger v. Hemler, 134 Md. 581 (1919): testimony of drafting attorney and estate planning files are not attorney-client privileged in probate.

B. Dead Man's Statute

1. A party to a proceeding by or against a personal representative, heir, devisee, distributee, or legatee as such, in which a judgment or decree may be rendered for or against them, or by or against an incompetent person, may not testify concerning any transaction with or statement made by the dead or incompetent person, personally or through an agent since dead, unless called to testify by the opposite party, or unless the testimony of the dead or incompetent person has been given already in evidence in the same proceeding concerning the same transaction or statement. Courts and Judicial Proceedings Article of the Maryland Code ("CJP") § 9-116.
 - a. Griffith v. Benzinger, 144 Md. 575 (1924): the Dead Man's Statute does not apply in will challenges.

EVIDENCE

I. **Preservation of the Reservation of the Record: Stating the Ground for Objection, or Not**

Under the Maryland Rules, if counsel states a specific ground for objection, counsel may argue only that ground on appeal. Counsel is required to be specific when objecting to jury instructions or when moving for a directed verdict.

But counsel need not state specific grounds for objection to the admission of evidence unless the court requests counsel to specify the grounds. Md. Rule 5-103. Because there is also some Maryland case law that counsel must specifically raise constitutional grounds at trial, the better practice is to do so. When neither of these conditions is met, Maryland law is clear that a general objection (such as, "Objection!") will preserve all possible grounds for appeal.

II. **Character Evidence**

A. **Burden of Proof Regarding an Accused's Other Bad Acts**

When the State offers evidence under Md. Rule 5-404(b) of other acts of the accused, not a part of the charged crime, but because it has "special relevance" for a permissible substantive purpose other than mere propensity of the accused, admissibility is conditioned on a showing that the other acts are proven by *clear and convincing evidence*. Page v. State, 222 Md. App. 648 (2015).

B. **Other Sexual Assaults by the Accused**

Under an exception to the general rule against admitting proof of other acts to show propensity, Maryland permits, without advance notice, evidence of the accused's other sexual acts with the *same victim*. Vogel v. State, 315 Md. 458, 466 (1989).

Without the necessity of a request by the defense, Md. Rule 4-263(d)(4) requires the State to provide "all evidence of other crimes, wrongs, or acts committed by the defendant that the State's Attorney intends to offer at a hearing or at trial pursuant to Rule 5-404(b)." But a statute effective July 1, 2018, Md. Code, Courts & Judicial Proceedings § 10-923, provides for the admissibility, in a prosecution for certain sexual offenses, of evidence of sexual assaults by the accused against *victims other than the alleged victim of the charged crime*, if:

1. The State notifies the defense at least 90 days before trial (or later, if authorized by the court for good cause); and
2. The court finds in a hearing outside the presence of the jury and states on the record that:
 - a. The evidence is offered to:
 - i. prove lack of consent; or
 - ii. rebut an express or implied allegation that a minor victim fabricated the sexual offense;

- b. The defendant had an opportunity to confront or cross-examine the witness or witnesses testifying to the other sexually assaultive behavior;
- c. The sexually assaultive behavior was proven by clear and convincing evidence; and
- d. The probative value of the evidence is not substantially outweighed by the danger of unfair prejudice.

C. No Door Opened by Defense's Attack on Victim's Character

The Maryland Rules have no corollary to the federal provision that provides that if the accused offers unfavorable reputation or opinion evidence regarding a character trait of the victim (such as peacefulness or violence), the prosecution may then offer unfavorable evidence regarding the accused as to the same character trait.

D. The "Rape Shield" Law

Maryland's rape shield law, which limits inquiry into the character for chastity or abstinence of an alleged victim of sexual assault, differs from the corollary Federal Rule in a number of details. Most notably, unlike the Federal Rule, Maryland's statute does not extend to civil cases. CL § 3-319; Md. Rule 5-412.

III. Mediation and Compromise Negotiations

The Maryland Rules protect conduct or statements made in mediation (as well as those made in compromise negotiations) from being admitted to prove the validity, invalidity, or amount of a civil claim in dispute, or to impeach as a prior inconsistent statement. If an act gives rise to *both* civil and criminal liability, evidence that would be inadmissible in a civil action is also inadmissible in a criminal action based on that act. Md. Rule 5-408.

Maryland law contains no corollary to the Federal Rule that permits, in a criminal case, evidence of conduct or statements made in the accused's civil settlement negotiations regarding a claim made by a government agency in the exercise of its regulatory, investigative, or enforcement authority.

IV. Payment of Medical Expenses

Offering to pay, or payment of, an injured person's medical or similar expenses is inadmissible to prove either the offeror/payor's *civil or criminal liability* for the injury. Md. Rule 5-409.

V. Dead Man's Statute

Maryland's "dead man's statute" makes parties (not any other witnesses) to certain types of proceedings incompetent to testify concerning any transaction with or statement by a dead or incompetent person (or by such a person's agent, when the agent, too, is unavailable to testify, because the agent has died before testifying at trial). CJP § 9-116.

The proceeding must be one in which, in effect, the incompetent person or the estate of a deceased is a "real party in interest," so that the incompetent person's assets or the estate will either increase or decrease in value if the suit is successful.

The statute is inapplicable to suits in which heirs of the deceased are suing or being sued in their individual capacity (and not "standing in the shoes" of the deceased), such as wrongful death actions. Reddy v. Mody, 39 Md. App. 675 (1978).

VI. Sanctity of Verdicts

Unlike the Federal Rules of Evidence, the Maryland Rules provide no exceptions to the rule that neither jurors' statements nor their testimony may be used to impeach their verdicts.

But the United States Supreme Court, in Pena-Rodriguez v. Colorado, 137 S. Ct. 855, 869 (2017), held that such a no-impeachment rule must give way when it is shown that "one or more jurors made statements exhibiting overt racial bias that cast serious doubt on the fairness and impartiality of the jury's deliberations and resulting verdict."

VII. Impeachment by Prior Conviction

The Maryland Rules provide a general, bright-line rule of exclusion, for purposes of impeachment, of a witness's convictions dating over 15 years from the time of the witness's testimony. The one exception is a conviction for perjury, for which no time limit applies. Md. Rule 5-609(b).

To be admissible to impeach, a prior conviction must have been either of (1) an infamous crime (treason, murder, manslaughter, robbery, rape, burglary, larceny, arson, sodomy, and mayhem, which are those crimes that were common law felonies prior to 1864; and crimes of falsehood, fraud, or the obstruction of justice); or (2) another crime relevant to credibility (e.g., distribution of cocaine). Md. Rule 5-609(a).

Finally, the probative value of the prior conviction as to the witness's truthfulness under oath must outweigh the danger of unfair prejudice from admission of the conviction for the limited purpose of impeachment. Md. Rule 5-609(a).

VIII. Wide-Open Cross Examination of an Accused at Trial

For all witnesses other than a criminal accused, the scope of cross-examination is limited to the scope of direct, although the court has discretion to permit non-leading questions going beyond the scope of direct. Md. Rule 5-611(b)(1). But because the State cannot call a criminal accused as its own witness to pursue matters beyond the scope of direct, the Maryland Rules provide that criminal defendants who testify on non-preliminary matters are subject to wide-open cross. Md. Rule 5-611(b)(2).

An accused does not open himself or herself up to wide-open cross examination by testifying only to a preliminary matter of admissibility, such as the legality of a search or the voluntariness of a confession, at a suppression hearing. Md. Rule 5-104(d). But under Maryland law, even if the motions judge finds the confession to be voluntary, the accused may choose to testify again, at trial, that the confession was involuntary. If the accused chooses to take this "second

bite at the apple," the prosecution may conduct wide-open cross-examination. The question of voluntariness is then no longer deemed "preliminary."

IX. Items Used to Refresh a Witness's Testimony

Unlike under the Federal Rules, the Maryland Rules provide an opposing party with the opportunity to inspect and introduce into evidence relevant parts of a writing or other item used to refresh a witness's testimony only if the refreshing took place during the witness's testimony, not before. Md. Rule 5-612.

X. Questioning Witnesses About Their Prior Inconsistent Statements; Extrinsic Evidence of Those Statements

A. Timing of Disclosure to Impeached Witness; Extrinsic Evidence of the Statement

Just as under the Federal Rule, the corollary Maryland Rule does not require counsel to disclose the witness's prior statement to the witness before examining the witness about it. Unlike the Federal Rule, the Maryland Rule does require counsel to disclose the prior statement and give the witness an opportunity to explain or deny it before the end of counsel's examination of the witness. Md. Rule 5-613(a).

Extrinsic evidence of the statement will be permitted only if the witness then has failed to admit having made the statement, and the statement concerns a non-collateral matter. Md. Rule 5-613(b).

B. Impeachment by a Statement Made in Court, as Part of the Taking of a Plea

Under Maryland law, a statement made in court as part of taking a plea is admissible for impeachment purposes in a later civil proceeding, if the person who made the statement has testified inconsistently with it. Md. Rule 5-410(b)(2).

Such a statement made as part of entering a guilty plea in district court will also be admissible to impeach a defendant who takes a de novo appeal to circuit court and there testifies inconsistently with the statement. Md. Rule 5-410(c). Oku v. State, 433 Md. 582 (2013).

C. Hearsay Exception: Substantive Evidence

Maryland recognizes a hearsay exception for a trial witness's inconsistent statement that was either (1) reduced to writing and signed by the declarant, (2) recorded in substantially verbatim fashion by stenographic or electronic means contemporaneously with the making of the statement, or (3) as under the narrower, corollary Federal Rule, the statement was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition. Md. Rule 5-802.1(a).

XI. Sequestration of Witnesses: Support Person for a Child Witness

The Maryland Rules permit the court, in its discretion, to permit a support person to remain in the courtroom during a child's testimony, despite an order to sequester witnesses. Md. Rule 5-615(c).

XII. Novel Scientific Evidence

Maryland case law continues to follow the standard first set forth in Frye v. United States, 293 F. 1013 (D.C. Cir. 1923), requiring "general acceptance" in the relevant scientific community, before scientific evidence not endorsed by statute will be admissible. Md. Rule 5-702; *See also*, Reed v. State, 283 Md. 374 (1978).

XIII. Expert Opinion as to Sanity of a Criminal Accused

The Maryland Rules permit expert opinion on the ultimate issue of criminal responsibility of an accused, i.e., sanity or insanity. Md. Rule 5-704(b).

The Rules preclude, however, an expert opinion as to whether an accused had a mental state or condition constituting an element of the crime charged (such as intent). Md. Rule 5-704(b).

XIV. Prompt Complaint of Sexual Assault: Civil and Criminal Cases

The Maryland Rules include a hearsay exception, applicable in both civil and criminal cases, for the declarant's prompt complaint of sexual assault, as long as the declarant testifies at trial and is subject to cross-examination concerning the statement. Md. Rule 5-802.1(d).

Unlike the hearsay exception for a witness-declarant's prior statements consistent with his or her trial testimony, this hearsay exception for prompt complaints does not require that the declarant have been impeached or that the statement precede any alleged improper influence or motive. Md. Rule 5-802.1(b).

XV. Nolo Pleas

Pleas of *nolo contendere* are inadmissible as statements of a party-opponent, Md. Rule 5-410(a)(2), but convictions resulting from such pleas are convictions for purposes of impeachment by prior conviction. Md. Rule 5-609(d).

XVI. Hearsay Exception for Statements of Intent

The Maryland Rules reject in part the holding of Hillmon v. United States, 145 U.S. 285 (1892). Maryland permits the admission of a declarant's "forward-looking" statement of intent only to help to prove the declarant's subsequent conduct, not the subsequent conduct of another person. Md. Rule 5-803(b)(3).

XVII. Hearsay Exception for Purposes of Medical Diagnosis or Treatment

Maryland recognizes a hearsay exception for statements made by a declarant who is seeking medical treatment or medical diagnosis in contemplation of treatment. But it does not recognize this hearsay exception when a statement is made for purposes of diagnosis alone

(such as to a non-treating physician, consulted only for purposes of giving expert testimony at trial). Md. Rule 5-803(b)(4).

XVIII. Authentication of and Hearsay Exception for “Ancient Documents”

Under the Maryland Rules, the minimum age for "ancient documents" is 20 years. Md. Rule 5-803(b)(16).

XIX. No General Hearsay Exception for a Judgment of Previous Conviction, Offered to Prove a Fact Essential to that Conviction; Only a Few Narrow Hearsay Exceptions, Including in “Slayer’s Rule” Cases

Unlike the Federal Rules, Maryland has not adopted a general rule under which judgments of conviction for crimes punishable by death or more than a year are admissible to prove any fact essential to the judgment. Thus, convictions are generally admissible only for purposes of impeachment of a witness's character for truthfulness, or as substantive evidence of "other bad acts."

Several narrow hearsay exceptions for prior judgments of conviction are recognized, however:

(1) In "slayer's rule" civil cases, a claimant against the deceased's estate or life insurance may be conclusively proved to have feloniously and intentionally murdered the deceased, by proof of the claimant's conviction for that crime. Diep v. Rivas, 357 Md. 668 (2000); Fister ex rel. Estate of Fister v. Allstate Ins. Co., 366 Md. 201 (2001).

(2) In attorney disciplinary proceedings, an attorney's criminal conviction is conclusive proof of guilt. Maryland State Bar Ass’n, Inc. v. Agnew, 271 Md. 543 (1974).

(3) If a person is charged, in either a civil or criminal case, with having committed a crime or act that cannot have been committed both by that person and another, the defendant may show that another person has been convicted of the crime or act. State v. Joynes, 314 Md. 113 (1988).

(4) A final judgment or decree rendered in an antitrust action (either civil or criminal) brought by the Maryland Attorney General is admissible in a private civil action for damages and is prima facie evidence of a violation. Cities Service Oil Co. v. Burch, 29 Md. App. 430 (1975).

XX. Hearsay Exception and Procedure Specific to Child Abuse

A. "Tender Years" Hearsay Exception

Statements made by alleged victims of physical, mental, or sexual abuse, who are under 13 years of age, to certain professionals, including educators, social workers, nurses, physicians, counselors, and therapists, may be admitted upon a pretrial ruling after an evaluation of numerous factors relevant to trustworthiness. Md. Code, Criminal Procedure (“CP”) § 11-304.

B. Testimony Over Closed Circuit Television

A young alleged child abuse victim may testify over closed-circuit television, if the court finds that the child's testifying in the presence of the defendant will cause the child such serious emotional distress that the child victim cannot reasonably communicate. CP § 11-303.

XXI. Dying Declarations

Maryland's hearsay exception for "dying declarations" applies not only in civil cases and prosecutions for homicide, but also in prosecutions for attempted homicide or assault with intent to commit a homicide, where the declarant is unavailable to testify. Md. Rule 5-804(b)(2).

XXII. Forfeiture-by-Wrongdoing Hearsay Exception (Witness Unavailable Because of Party's Wrongdoing).

Maryland's forfeiture-by-wrongdoing hearsay exception, witness unavailable because of party's wrongdoing, applies only to statements that were either (1) given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding or in a deposition, (2) reduced to writing and signed by the declarant, or (3) recorded in substantially verbatim fashion by stenographic or electronic means contemporaneously with the making of the statement. Md. Rule 5-804(b)(5).

XXIII. Privilege for Accountant-Client Communications

Maryland law recognizes a privilege precluding an accountant from disclosing a client's communications to the accountant, although it does not "affect" either the criminal laws of Maryland or the bankruptcy laws. The privilege would apply, for example, in divorce proceedings. CJP § 9-110.

XXIV. Need for Permission of Both Parties before Warrantless Recording of a Conversation; Inadmissibility of Such Recordings, Absent Mutual Consent

Maryland law makes it a crime for a private party to a conversation to record the conversation without the other party's consent, and a recording so illegally made is inadmissible in evidence in state court. Md. Code, Courts & Judicial Proceedings § 10-402(a).

However, in Agnew v. State, the Court of Appeals held that an illegally intercepted communication is admissible against a party to the communication who consents to or participates in the interception of that communication. Agnew v. State, 461 Md. 672 (2018).

Maryland's wiretap statute only requires two-party/all-party consent for audio recording of oral and wire communications; video-only recording does not require consent of the parties to the recording. Ricks v. State, 70 Md. App. 287(1987). As such, the wiretap statute does not impact the admissibility of video recordings without audio.

XXV. Clergy Person Privilege

A clergyman, such as a priest of an established church of any denomination, cannot be compelled to testify on a matter relating to any confession or communication made to him

or her in confidence by a person seeking spiritual advice or consolation. CJP § 9-111. Importantly, the cleric, not the penitent or confessor, holds the privilege.

FAMILY LAW

I. Marriage

A. Valid Marriage

1. Must have a license and must be performed by authorized official. Md. Code, Family Law Article (“FL”) §§ 2-401(a), 2-406.
2. Any two people (no longer just man and woman). FL § 2-401.
3. Prohibition on marriage of a minor.
 - a. A person 15 years old may not marry unless:
 - i. The person has the consent of a parent/guardian, and
 - ii. Either party presents to the clerk a certificate from a licensed physician that the woman to be married is pregnant or has given birth. FL § 2-301(b)-(c).
 - b. A person 16-17 years old may not marry unless:
 - i. The person has the consent of a parent/guardian, who swears the person is at least 16, or
 - ii. Either party presents to the clerk a certificate from a licensed physician that the woman to be married is pregnant or has given birth. FL § 2-301(a).
4. Maryland does not recognize common law marriages, but Maryland does recognize valid common law marriages from other states. Henderson v. Henderson, 199 Md. 449 (1952).

B. Annulments

1. An annulment can be obtained on the bases of a void or voidable marriage. The parties are entitled to the same relief—such as alimony, monetary award, award of use and possession of the marital home, disposition of marital property, etc.—as if they were divorcing. FL § 1-203.
2. Grounds for annulment.
 - a. Void marriage
 - i. Bigamous. Ledvinka v. Ledvinka, 154 Md. App. 420 (2003); Conaway v. Deane, 401 Md. 219 (2007); Port v. Cowan, 426 Md. 435 (2012); Bradley v. Bradley, 208 Md. App. 249 (2012).
 - ii. Incestuous. Harrison v. Harrison, 22 Md. 468 (1864); Feehley v. Feehley, 129 Md. 565 (1916).

- b. Voidable marriage – a marriage that is capable of being ratified.
 - i. Fraud. Bradley v. Bradley, 208 Md. App. 249 (2012).
 - ii. Duress. Owings v. Owings, 141 Md. 416 (1922).
 - iii. Party is incompetent. Elfont v. Elfont, 161 Md. 458 (1932); Conaway v. Deane, 401 Md. 219 (2007).
 - iv. No intent to marry.

II. Divorce

- A. Divorce is a creature of statute and only the grounds enumerated in the statute will support a divorce decree. Emerson v. Emerson, 120 Md. 584 (1913).
- B. Maryland courts will enforce marriages from foreign jurisdictions as long as the marriages are valid where performed, even if the marriages could not be valid if performed in Maryland, unless the marriage is generally prohibited or repugnant to general public policy. Tshiani v. Tshiani, 436 Md. 255 (2013).
- C. Types of Divorce –
 - 1. Limited Divorce
 - a. Grants spouse right to live separate and apart from spouse. Ricketts v. Ricketts, 393 Md. 479 (2006).
 - b. This does not sever the marital relationship – the parties are still married.
 - c. Grounds – FL § 7-102
 - i. Cruelty of Treatment of Party or Minor Child. FL § 7-102(a)(1).
 - ii. Excessively Vicious Conduct to Party or Minor Child. FL § 7-102(a)(2).
 - iii. Desertion. FL § 7-102(a)(3).
 - iv. Separation of any time period. FL § 7-102(a)(4).
 - 2. Absolute Divorce
 - a. Complete severance of the marital relationship. Ricketts v. Ricketts, 393 Md. 479 (2006).
 - b. Both parties are entitled to remarry.
 - c. Grounds – FL § 7-103
 - i. Adultery. FL § 7-103(a)(1)

- a) Maryland has historically required vaginal intercourse as an element of adultery. Pohzel v. Pohzel, 205 Md. 395 (1954); CL § 10-501.
- ii. Conviction of crime. FL § 7-103(a)(3).
 - a) Sentenced to at least three years of prison, and
 - b) Served at least one year.
- iii. Cruelty of Treatment, without hope of reconciliation. FL § 7-103(a)(6).
- iv. Excessively Vicious Conduct. FL § 7-103(a)(7).
- v. Desertion. FL § 7-103(a)(2).
 - a) Desertion lasted for one year without interruption
 - b) Desertion was deliberate and final, and
 - c) No hope of reconciliation.
- vi. Insanity. FL § 7-103(a)(5).
 - a) Confined to mental institution for at least three years
 - b) Two physicians find the insanity is incurable, and
 - c) One party has been a resident of Maryland for two years before filing.
- vii. Separation for 12 months or more. FL § 7-103(a)(4).
- viii. Mutual Consent – Must have resolved all issues and have a written agreement. FL § 7-103(a)(8).

III. Custody

- A. UCCJEA (Uniform Child Custody Jurisdiction and Enforcement Act) – addresses the question of which state has jurisdiction when there is more than one state that is involved in the lives of the children.
 - 1. Maryland has jurisdiction to make initial custody decision if:
 - a. Maryland previously issued a custody decision;
 - b. Maryland is the home state of the child at the start of proceedings;
 - c. Maryland was the home state within 6 months before commencement of the proceedings;
 - d. Another state does not have jurisdiction as the home state of the child; or

- e. Any other court having jurisdiction has declined to exercise jurisdiction on the ground that Maryland is the more appropriate forum to determine the custody of the child.

FL § 9.5-201.

- 2. A custody determination made in another state in conformity with the UCCJEA must be recognized and enforced. FL § 9.5-202.

B. Legal Custody – the right to make long term decisions regarding a child’s education, religious training, discipline, medical care, and other major decisions in the child’s life. Taylor v. Taylor, 306 Md. 290 (1986); McCarty v. McCarty, 147 Md. App. 268 (2002).

- 1. When the parents of a minor child live apart, FL §5-203 gives a court the authority to award custody of the minor child to either parent or joint custody to both parents.

- a. FL § 5-203 specifies no factors to be considered by the Court, but states that there are no presumptions for either parent regarding legal custody (for or against joint custody, for or against a specific gender). FL § 5-203(d)(2).

- 2. Courts cannot make a specific decision regarding a major issue in a child’s life, they can only select the parent who can make the decision. Giffin v. Crane, 351 Md. 133 (1998).

- 3. Court has the discretion to order tie-breaking authority where joint legal custody is attempted, but one parent is given the ability to make a final decision if after good faith efforts the parties cannot agree. Santo v. Santo, 448 Md. 620 (2016).

4. Taylor Factors – Factors a court should consider when deciding legal custody:

- a. Capacity of the parents to communicate and reach shared decisions affecting the child’s welfare, this being the most important factor;
- b. Acceptability of joint legal custody to the parents;
- c. Fitness of the parents;
- d. Relationship between the child and each parent;
- e. Preference of the child, if of suitable age and discretion;
- f. Potential disruption of the child’s social and school life;
- g. Proximity of the parental homes;
- h. Demands of parental employment;
- i. Age and number of children;

- j. Sincerity of the parents' request;
- k. Financial status of the parents;
- l. Impact on state or federal assistance; and
- m. Benefit to the parents.

Taylor v. Taylor, 306 Md. 290 (1986).

- 5. Parties' inability to communicate effectively is not an automatic bar on joint legal custody. Court must consider the impact and the best interest of the child. Santo v. Santo, 448 Md. 620 (2016).

C. Physical Custody

- 1. The right and obligation to provide a home for the child and make day-to-day decisions. McCarty v. McCarty, 147 Md. App. 268 (2002).
- 2. No presumptions for or against shared physical custody. FL § 5-203(d).

D. Best Interest of the Child – the overwhelming and basic determination that a court is charged with is to make a custody award that is in the best interest of the children.

- 1. Some factors that have been considered in case law are (this is not an exclusive list as the court must determine each case on its facts):
 - a. Fitness of each parent, which is a primary consideration;
 - b. Character and reputation of each parent;
 - c. Desire of parents and any agreement between them;
 - d. Maintaining natural family relations;
 - e. Preference of the child, if old enough to make a rational choice;
 - f. Material opportunities affecting the child's future life;
 - g. Age, sex, and health of the child;
 - h. Residences of the parents and opportunity for visitation;
 - i. Impending relocation of a parent;
 - j. Environment and surroundings in which the child will be reared;
 - k. Influences likely to be exerted on the child;
 - l. Physical, spiritual, and moral well-being of the child; and
 - m. Contact and bonding between child and parents.

Boswell v. Boswell, 352 Md. 204 (1998); Viamonte v. Viamonte, 131 Md. App. 151 (2000); Domingues v. Johnson, 323 Md. 486 (1991); Montgomery Co. v. Sanders, 38 Md. App. 406 (1977).

E. Custody Mediation

1. In all custody matters, the court must determine if mediation would be appropriate and beneficial to the parties. Maryland Rule 9-205.
2. If a party in good faith states that there is a general issue of abuse, the court may not order mediation. Md. Rule 9-205(b)(2).

F. Evidence of Abuse

1. If the court has reasonable grounds to believe any child has been abused or neglected by a party, the court must determine and make a finding as to whether abuse or neglect is likely to happen if custody or visitation is granted to that party.
2. Court must determine by a preponderance of the evidence whether reasonable grounds exist.
3. Court must find no likelihood of future abuse to award custody or visitation.
 - a. If court finds likelihood of abuse or neglect, it may order supervised visitation. FL § 9-101.1(c).

G. “De facto” parent is a third party who has been acting as a parent for the child for all practical purposes.

1. Required factors for finding “de facto” parent:
 - a. Biological/Adoptive parent consented to and fostered the third-party petitioner’s formation and establishment of a parent-like relationship with the child.
 - b. Petitioner and child lived together in the same household.
 - c. Petitioner assumed obligations of parenthood by taking significant responsibility for the child’s care, education, and development, including contributing towards support of child.
 - d. Petitioner has been in a parental role for length of time sufficient to establish a dependent parental relationship with the child.

Conover v. Conover, 450 Md. 51 (2016).

2. If found to be a de facto parent, the petitioner does not have to show parental unfitness or exceptional circumstances. Conover v. Conover, 450 Md. 51 (2016).

H. Third Party Custody – addresses when someone other than the biological or de facto parents wants custody of the child.

1. Rebuttable presumption that it is in the best interest of the minor children to be in the care and custody of the biological parents. In re: Rashawn and Tyrese H., 402 Md. 477 (2007); McDermott v. Dougherty, 385 Md. 320 (2005).
 2. Presumption can be rebutted if:
 - a. The biological parent is unfit to have custody, or
 - b. Exceptional circumstances exist which would make continued custody with the biological parent detrimental to the child's best interest.
 - i. If the child is separated from parent and in the care of a third party:
 - a) The length of time the child has been separated from the parent;
 - b) The child's age when care was assumed by the third party;
 - c) The possible emotional effect on the child of a change in custody; and
 - d) The period of time that elapsed before the parent sought to reclaim the child;
 - ii. The nature and strength of the ties between the child and the third party;
 - iii. The intensity and genuineness of the parent's desire to have the child;
 - iv. The stability and certainty of the child's future in the custody of the parent;
 - v. The stability of the child's current home environment – whether there is an ongoing family unit; and
 - vi. The child's physical, mental, and emotional needs.

Janice M. v. Margaret K., 404 Md. 661 (2008); B.G. v. M.R., 165 Md. App. 532 (2005).
 3. If neither parental unfitness nor exceptional circumstances is proven, the biological parents must be awarded custody. In re: Rashawn and Tyrese H., 402 Md. 477 (2007); McDermott v. Dougherty, 385 Md. 320 (2005).
 4. Grandparents may petition the court for visitation with grandchildren, FL § 9-102, but are required to make a threshold showing of either parental unfitness or exceptional circumstances indicating that the lack of grandparental visitation has a significant deleterious effect upon the children who are the subject of the petition. Koshko v. Haining, 398 Md. 404 (2007).
- I. Modification of Custody – Except as otherwise provided in FL § 9.5-202(a), the court has continuing jurisdiction to modify a custody order.

1. Party seeking modification must show there has been a material change in circumstances since entry of last order. Change must affect the wellbeing of the children, not the parents. Wagner v. Wagner, 109 Md. App. 1 (1999); Gillespie v. Gillespie, 206 Md. App. 146 (2012).
2. The modified custody arrangement must be in the best interest of the children. Wagner v. Wagner, 109 Md. App. 1 (1999); Gillespie v. Gillespie, 206 Md. App. 146 (2012).
3. Petition by Child – a child who is 16 or older may file a petition to modify a custody order to be placed with the parent of their choosing. FL § 9-103.

J. Appointment of Counsel for Child.

1. Best Interest Attorney.
 - a. Makes independent assessment of what is in the child’s best interest without being bound by child’s directives.
 - b. Should let the Court know the child’s position, even if different than attorney’s position.

Maryland Rules, Title 9 Appendix, Guidelines for Practice for Court-Appointed Lawyers Representing Children Involving Child Custody or Access.

2. Child’s Advocate Attorney.
 - a. Appointed as an independent voice for the child.
 - b. Advocates for the child’s preference.
 - c. Appointed in cases where:
 - i. there are allegations of abuse;
 - ii. the child may be relocated;
 - iii. the child is sufficiently mature and sees his or her interests as separate from the interests of his or her parents.

Md. Rules, Title 9 Appendix, Guidelines for Practice for Court-Appointed Lawyers Representing Children Involving Child Custody or Access.

3. Child’s Privilege Attorney.
 - a. Appointed to assert or waive a statutory privilege possessed by a child.
 - b. Can be combined with an attorney’s role as best interest attorney or advocate attorney.

Md. Rules, Title 9 Appendix, Guidelines for Practice for Court-Appointed Lawyers Representing Children Involving Child Custody or Access; Nagle v. Hooks, 296 Md. 123 (1983).

4. Factors that the court should consider in appointing counsel for a child:
 - a. Request of one or both parties;
 - b. High level of conflict;
 - c. Inappropriate adult influence or manipulation;
 - d. Past or current child abuse or neglect;
 - e. Past or current mental health problems of the child or party;
 - f. Special physical, educational, or mental health needs of the child that require investigation or advocacy;
 - g. Actual or threatened family violence;
 - h. Alcohol or other substance abuse;
 - i. Consideration of terminating or suspending parenting time or awarding custody or visitation to a non-parent;
 - j. Relocation that substantially reduces the child's time with a parent, sibling, or both; or
 - k. Any other factor that the court considers relevant.

Md. Rule 9-205.1(b).

IV. Child Support

- A. Child support is the right of the child and cannot be waived by the parties.
- B. Child support is owed until a child turns 18, dies, marries, is emancipated, or if still in high school, graduates or becomes 19, whichever is first. Corry v. O'Neill, 105 Md. App. 112 (1995).
- C. Child support can be awarded retroactive to the date of filing. FL § 12-101.
- D. Child Support Guidelines.
 1. Use of the guidelines is mandatory if the family income is less than \$15,000 per month. FL § 12-202.
 2. Income is defined by statute. FL § 12-201(b).
 3. Income can be imputed if the parent is found to be voluntarily impoverished. FL § 12-204(b); Wills v. Jones, 340 Md. 480 (1995).

- E. Above the Guidelines – when the family income is over \$15,000 per month, the amount of child support is left to the discretion of the judge. FL § 12-204(d).
 - 1. Judges may extrapolate from the guidelines in these cases but are not required to do so. Voishan v. Palma, 327 Md. 318 (1992).
 - 2. Factors the court should consider when determining an above guidelines child support obligation:
 - a. Parties' financial circumstances;
 - b. The reasonable expenses of the child;
 - c. The parties' station in life;
 - d. The parties' age and physical condition; [and/or]
 - e. Expenses in educating the child. Walker v. Grow, 170 Md. App. 255 (2006).
- F. Earnings Withholding Order.
 - 1. Child support can be taken directly from obligor's paycheck. FL §§ 10-120 to 10-144.
 - 2. Must serve obligor's employer with Earnings Withholding Order. FL § 10-123(d).

V. Use and Possession

Court has discretion to allow a custodial parent (must have custody of at least one child, not a stepchild) to have the exclusive use and possession of the family home and family use personal property for up to three (3) years after the divorce/annulment decision. FL § 8-210(a); John O. v. Jane O., 90 Md. App. 406 (1992).

- A. Definitions:
 - 1. "Family Home" means property in Maryland that:
 - a. Was used as the principal residence of the parties when they lived together;
 - b. Is owned or leased by one or both of the parties at the time of the annulment, limited or absolute divorce; and
 - c. Is used as the principal residence of one or both of the parties AND a child of the parties who is;
 - d. Under the age of 18 or 18 years of age or older and dependent on the parent due to mental or physical impairment.

FL § 8-201(c); Bledsoe v. Bledsoe, 294 Md. 183 (1982).

2. Jointly owned residence may be “family home” if intended to be such, even if:
 - a. Parties never lived there;
 - b. Home has not been occupied by either party for period of time.

Maness v. Sawyer, 180 Md. App. 295 (2008); Court v. Court, 67 Md. App. 676 (1986).

3. “Family home” does not include:
 - a. property acquired before the marriage – meaning entirely paid for and property that is acquired, even in part, during the marriage (i.e., mortgage payments made from marital funds) is not excluded from being marital property or a family home. Harper v. Harper, 294 Md. 54 (1982); Kline v. Kline, 93 Md. App. 696 (1992); Hughes v. Hughes, 80 Md. App. 216 (1989);
 - b. property acquired by inheritance or gift; or
 - c. property excluded by valid agreement.

FL § 8-201(c)

4. “Family use personal property” means tangible personal property:
 - a. acquired during the marriage;
 - b. owned by one or both of the parties; and
 - c. used primarily for family purposes.
 - d. Does not include property:
 - i. acquired by inheritance or gift;
 - ii. Excluded by valid agreement; or

FL § 8-201(d).

B. Determination

1. In a proceeding for an annulment, limited or absolute divorce, the court may determine which property is the family home and family use personal property:
 - a. on a pendente lite basis before the court grants an annulment, limited or absolute divorce, or
 - b. When the court grants an annulment, limited or absolute divorce.

FL § 8-207(a).

- C. Modification: A pendente lite determination is subject to modification during the pendency of the proceeding, FL § 8-207(b), and any other determination is modifiable upon a change in circumstances. FL § 8-209.
- D. Award of Possession and Use
1. When the court grants an annulment, limited or absolute divorce, regardless of how the family home or family use personal property is titled, owned, or leased, the court may:
 - a. Decide that one of the parties shall have the sole possession and use of that property, or
 - b. Divide the possession and use of the property between the parties.FL § 8-208(a).
- E. Required Considerations
1. In awarding the possession and use of the family home and family use personal property, the court shall consider each of the following factors:
 - a. Best interest of the child;
 - b. Interest of each party in continuing
 - i. to use the property or home as a dwelling;
 - ii. to use the property or home for the production of income;
 - c. Any hardship imposed on the party whose interest in the family home or family use personal property is infringed on by an order issued under FL §§ 8-207 through 8-213 (relating to an award of use and possession).FL § 8-208(b).
- F. Allocation of financial responsibilities
1. The court may order or decree that either or both of the parties pay all or any part of:
 - a. Any mortgage payments or rent;
 - b. Any indebtedness that is related to the property;
 - c. The cost of maintenance, insurance, assessments, and taxes;
 - d. Any similar expenses in connection with the property.FL § 8-208(c).
- G. Termination - Order terminates when the qualifying, non-infirm child:

1. Turns 18; or
2. When the child dies, marries, is emancipated, or if still in high school, graduates or turns 19 years old, whichever occurs first.

Kelly v. Kelly, 153 Md. App. 260 (2003).

VI. Alimony

- A. Construct – The premise for an award of alimony is to provide income for a period of time to allow the economically dependent spouse to rehabilitate themselves, obtain education and work experience to be able to be self-supporting. In some cases, even after the economically dependent spouse makes good faith efforts to become self-supporting, the difference in the standard of living of the parties will be “unconscionably disparate.” In this case, the court may award alimony for an indefinite period of time. Blaine v. Blaine, 336 Md. 49 (1994); FL § 11-106.
- B. An alimony determination is based on the court’s analysis of 12 statutory factors. Additionally, the statute prefaces that the court should consider all factors necessary for a fair and equitable award.
 1. Factors are in FL § 11-106. No one factor should be weighed heavier than any other factor. Whittington v. Whittington, 172 Md. App. 317 (2007).
 - a. The ability to be wholly or partly self-supporting; FL § 11-106(b)(1)
 - b. The time necessary to gain sufficient education or training to find suitable employment; FL § 11-106(b)(2)
 - c. The parties' standard of living during the marriage; FL § 11-106(b)(3)
 - d. The duration of the marriage; FL § 11-106(b)(4)
 - e. Each party's contributions, monetary and non-monetary, to the well-being of the family; FL § 11-106(b)(5)
 - f. The circumstances that contributed to the parties' estrangement; FL § 11-106(b)(6)
 - g. Each party's age; FL § 11-106(b)(7)
 - h. Each party's physical and mental condition; FL § 11-106(b)(8)
 - i. The ability of the party from who alimony is sought to meet that party's needs while meeting the needs of the party seeking alimony; FL § 11-106(b)(9)
 - j. Any agreement between the parties; FL § 11-106(b)(10)
 - k. The financial needs and resources of each party; and FL §11-106(b)(11)

1. Whether the award would cause a spouse who is a resident of a related institution as defined in § 19-301 of the Health-General Article and from whom alimony is sought to become eligible for medical assistance earlier than would otherwise occur. FL § 11-106(b)(12)
2. Financial Statements – The Court of Appeals has issued a form Financial Statement that must be filed for both payor and payee in any proceeding requesting alimony. Md. Rule 9-202(e). Court must analyze this information to determine payee’s need and payor’s ability to pay. Maryland Rule 9-203(a).
3. Alimony Pendente Lite - The court has the ability to establish a payment of alimony pending the final litigation which is known as alimony pendente lite or temporary alimony. The court does not conduct an analysis of the factors but evaluates the payee’s need to provide for the status quo and the payor’s ability to pay. Maynard v. Maynard, 42 Md. App. 47 (1979); FL § 11-102.
4. Compound alimony – The court has the discretion to award alimony of differing amounts, such as \$2000 for five years, and then \$1,000 indefinitely. This is known as compound alimony and is based on the court’s prediction of the payee’s needs over the course of time after they have made efforts to rehabilitate themselves. Coviello v. Coviello, 91 Md. App. 638 (1992).
5. Extension of alimony – The payee has the right to request an extension of an order of rehabilitative alimony. This must be done during the term of the rehabilitative alimony and the payee must show that even though they have made good faith efforts to rehabilitate themselves and become self-supporting, they need alimony to continue for a period of time, or that the lifestyles of the parties are unconscionably disparate. FL § 11-107. Blaine v. Blaine, 336 Md. 49 (1994).
6. Modifiable vs. Non-modifiable alimony - court may only order alimony which is modifiable in the event of a change of circumstances for the payor or payee. However, the parties may agree to an amount of alimony which is non-modifiable which means that the court cannot under any circumstances modify the alimony even if it results in unfair situations. FL § 11-107; Pickett v. Haislip, 73 Md. App. 89 (1987).
7. Reservation of alimony – Under very specific circumstances the court may reserve on awarding alimony. Normally at the conclusion of a divorce if alimony is not awarded, the parties are barred from coming back to court to ask for alimony. If the court finds that there are specific reasons to believe that one party may be in need of alimony in the foreseeable future, it may reserve on the decision regarding alimony. Turrisi v. Sanzaro, 308 Md. 515 (1987).
8. Effect of reconciliation – if the parties reconcile and resume living together, alimony is not collectible. Thomas v. Thomas, 48 Md. App. 255 (1981).

VII. Division/Disposition of Property

- A. Marital Property Definition: the property, however titled, acquired by one or both parties during the marriage. FL § 8-201(e).
1. Examples of marital property:
 - a. Unvested stock options. Otley v. Otley, 147 Md. App. 540 (2002).
 - b. Personal Injury claim – portion representing pain and suffering is non-marital; portion representing loss wages is marital. Unkle v. Unkle, 305 Md. 587 (1986).
 - c. Business – “goodwill” value of business is broken down to “personal” good will and “institutional” portion. Personal goodwill is non-marital and not subject to distribution because it is a personal asset that cannot be separated from the reputation of the person and is not a saleable asset. FL § 8-203; Skrabak v. Skrabak, 108 Md. App. 633 (1996). 342 Md. 584 (1996).
 - d. Lottery winnings. Alston v. Alston, 331 Md. 496 (1993); Ware v. Ware, 131 Md. App. 207 (2000).
 - e. Household goods and furnishings purchased prior to the marriage but in contemplation of marriage are deemed a gift to the marital unit and marital property. Bender v. Bender, 282 Md. 525 (1978); Pleasant v. Pleasant, 97 Md. App. 711 (1993).
 - f. Marital home titled as tenants by the entirety is marital property regardless of the source of the funds to purchase the home. The court may consider the source of the funds as a factor in determining a monetary award. FL § 8-201(e)(2).
 - g. Commingled assets- if a spouse mixes marital and non-marital funds they become co-mingled and are marital unless non-marital character can be directly traceable. Melrod v. Melrod, 83 Md. App. 180 (1990).
 - h. Appreciation of non-marital assets – passive appreciation of non-marital assets is non-marital property unless either spouse uses marital efforts to contribute to appreciation (business) or the asset is commingled. Brodak v. Brodak, 294 Md. 10 (1982).
 2. Marital property does not include:
 - a. Property acquired before the marriage;
 - b. Property acquired by inheritance or gift from a third party;
 - c. Property excluded by a valid agreement;
 - d. Property directly traceable to any of these sources;
 - e. Professional Degree. Archer v. Archer, 303 Md. 347 (1985).

FL § 8-201(e)(3).

B. Determination of property ownership

1. In an annulment, limited or absolute divorce proceeding the court may:
 - a. Resolve any dispute between the parties with respect to the ownership of real or personal property;
 - b. In the judgment, state what the ownership interest of each party is; and
 - c. As to any property owned by both of the parties, order a partition or a sale instead of partition and a division of the proceeds.
 - d. Except as specifically provided by statute (retirement accounts, personal property, and marital home), the court may not transfer ownership of the property from one party to another.

FL § 8-203.

C. Three Step Analysis FL § 8-205; Alston v. Alston, 331 Md. 496 (1993). The three-step process for making a monetary award in a divorce action, in order to correct any inequity created by the way in which property acquired during the marriage happened to be titled, requires the trial court, first, to determine which of the parties' property is marital property, second, to determine the value of all marital property, and third, to consider statutory factors for determining the amount and the method of payment or terms of such an award. Brewer v. Brewer, 156 Md. App. 77 (2004).

1. Is the property marital or non-marital?
 - a. The Court must make a determination regarding the parties' marital property within 90 days of granting a divorce. FL § 8-203(a)(2).
 - b. Party claiming property is marital has burden of proof. Malin v. Mininberg, 153 Md. App. 358 (2003).
 - c. If party claims property obtained during the marriage is non-marital, the burden shifts to the party claiming such. Innerbichler v. Innerbichler, 132 Md. App. 207 (2000).
 - d. Property can be part marital and part non-marital. Innerbichler v. Innerbichler, 132 Md. App. 207 (2000).
2. What is the value of the marital property?
 - a. Value is the fair market value of the item less any debt.
 - b. If asset is worth less than the debt owed, the value of that asset is zero – no property may have a negative value.

- c. Marital property is to be valued as of the time a monetary award is awarded or denied.

Zandford v. Wiens, 314 Md. 102 (1988).

- 3. Is a monetary award necessary to adjust the equities and rights of the parties? FL § 8-205.
 - a. A monetary award is a grant of money to adjust the inequities of property distribution.
 - b. Court must determine the amount of the award, the method of payment, or terms of transfer of interest in property.
 - c. Monetary award has to be granted from the proceeds of the marital property and cannot exceed the value of marital property but may be up to 100% of the value of marital property.
 - d. The Court must consider these factors:
 - i. The contributions, monetary and nonmonetary, of each party to the well-being of the family.
 - ii. The value of all property interests of each party.
 - iii. The economic circumstances of each party at the time the award is made.
 - iv. The circumstances that contributed to the estrangement of the marriage.
 - v. The duration of the marriage.
 - vi. The age of each party.
 - vii. The physical and mental condition of each party.
 - viii. How and when specific marital property was acquired, including the effort expended by each party in accumulating the marital property.
 - ix. The contribution by either party of property to the acquisition of real property held by the parties as tenants by the entirety.
 - x. Any award of alimony and any award or other provision the court has made with family use personal property or family home.
 - xi. Any other factor that the Court considers necessary to consider a fair and equitable monetary award.

FL § 8-205(b).

- e. A monetary award can be reduced to a judgment if any part of the award is due and owing. FL § 8-205(c).
- f. Court can transfer ownership of an interest in retirement assets, jointly owned real property subject to the terms of any lien, family use personal property subject to the consent of any lien holders, and jointly owned real property used as the principal residence of the parties. FL § 8-205(a)(2).

D. Potential Issues

1. Marital Debt

- a. Debt that is directly traceable to the acquisition of marital property which reduces the value of the marital property. Green v. Green, 64 Md. App. 122 (1985).
- b. Just creating a lien on marital property does not make the debt marital if the proceeds of the debt were not used to acquire the property. Schweizer v. Schweizer, 55 Md. App. 373 (1983).
- c. General credit card debt not associated with any specific asset is not considered marital debt. This debt cannot be transferred from one party to the other.

2. Dissipation of Marital Property

- a. When one party uses marital property for his or her own benefit for a purpose unrelated to the marriage at the time where the marriage is undergoing an irreconcilable breakdown.
- b. Party claiming dissipation has the burden of proof to establish that the property existed, and the other party used it for his/her own purposes.
- c. Once dissipation has been determined, the burden shifts to the other party to present evidence that the expenditures were appropriate.
- d. Dissipated funds can be included as part of the parties' marital property and subject to a monetary award.

Simonds v. Simonds, 165 Md. App. 591 (2005); Solomon v. Solomon, 383 Md. 176 (2004); Turner v. Turner, 147 Md. App. 350 (2002).

3. Tax Consequences

- a. Tax consequences do not alter the value of an asset for determining its value. Rosenberg v. Rosenberg, 64 Md. App. 487 (1985).
- b. Taxes can be considered when fashioning a monetary award if they are "immediate and specific or not speculative." Innerbichler v. Innerbichler, 132 Md. App. 207 (2000).

4. Retirement Assets

VIII. Adoption

- A. The Court must consider the best interest of the adoptee before granting any adoption. FL § 5-3B-20 (Authority to Grant Adoption).
- B. Court may only enter adoption if:
 - 1. Each of the prospective adoptee's parents consents:
 - a. In writing, or
 - b. By failure to timely file notice of objection
 - c. A party may revoke their consent within 30 days of signing.
 - 2. The prospective adoptee consents, or
 - 3. The factors are met for nonconsensual adoption.
FL § 5-3B-20.
- C. Nonconsensual Adoption
 - 1. Court can allow adoption by party that has exercised physical care or custody over the prospective adoptee for at least 180 days, if the Court finds by clear and convincing evidence:
 - a. Parent has not had custody of prospective adoptee for a least one year;
 - b. Prospective adoptee has significant emotional ties to and feelings for the petitioning party; and
 - c. The biological parent:
 - i. has not maintained meaningful contact with the prospective adoptee while in care of petitioning party;
 - ii. has failed to contribute to the prospective adoptee's physical care and support, notwithstanding the ability to do so;
 - iii. has subjected the prospective adoptee to:
 - a) chronic abuse;
 - b) chronic and life-threatening neglect;
 - c) sexual abuse; or
 - d) torture
 - iv. has been convicted of abuse of any offspring;

- v. has been convicted of
 - a) a crime of violence against
 - 1) a minor offspring;
 - 2) the adoptee;
 - 3) another parent of the child;
 - 4) aiding or abetting, conspiring or soliciting to commit a crime described above;
- vi. has, other than by consent, lost parental rights to a sibling of the adoptee.

FL § 5-3B-22 (Nonconsensual Adoption).

- 2. If court finds an act listed above, the court shall make a specific finding of whether placing the child back in the custody of the biological parent poses an unacceptable risk to the adoptee's safety.

FL § 5-3B-22.

- 3. In determining whether it is in the best interest of the adoptee to terminate parental rights, a court shall:
 - a. give primary consideration to the health and safety of the prospective adoptee; and
 - b. any report ordered by an appropriate agency.

FL § 5-3B-22; *See also*, FL § 5-3B-16 (Investigation).

TORTS

I. Negligence

A. Prima Facie Case

1. Duty and Standard of Care

a. Generally

When a defendant is acting affirmatively, in most jurisdictions, the only factor considered in whether to impose a duty of care is the foreseeability of harm to someone. In Maryland, the court considers six or seven factors outlined in Kiriakos v. Phillips, 448 Md. 440 (2016), including the foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered the injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise reasonable care with resulting liability for breach, and the availability, cost and prevalence of insurance for the risk involved. Although foreseeability is perhaps “most important” among these factors, it alone does not justify the imposition of a duty.

b. Standards of Care

i. Landowners

For owners & occupiers of land, Maryland applies the traditional common law premises liability system categorizing persons on the land as invitees, licensees, and trespassers. A trespasser enters the land without consent and is owed only a duty to avoid intentional, wanton or willful injury, though with a duty to warn in the face of known danger; an invitee is on the premises for the financial benefit of the owner and is owed a duty of reasonable care. A licensee has legal authority to be on the land. Maryland divides licensees into two types: licensees by invitation and bare licensees. *See Baltimore Gas & Elec. Co. v. Flippo*, 348 Md. 680, 688 (1998) (citing BG & E v. Lane, 338 Md. 34, 44 (1995)). Licensee by invitation are social guests and owners owe them “a duty to exercise reasonable care to warn [them] of dangerous conditions that are known to the possessor but not easily discoverable.” *Id.* at 689 (quoting BG & E v. Lane, 338 Md. at 44). Bare licensees, by contrast, are not on the property with the owner's permission, but for their own social purposes. *Id.* (quoting Wagner v. Doehring, 315 Md. 97, 102 (1989)). Owners owe bare licensees “no duty except to refrain from willfully or wantonly injuring the licensee and from creating ‘new and undisclosed sources of danger without warning the licensee.’” *Id.*

Under the “firefighters rule,” police officers and firefighters in the course of their duties may not recover tort damages from a property owner whose ordinary negligence caused them to enter the land in the first place. White v. State, 419 Md. 265 (2011).

In Maryland, there is no duty to protect from or warn about obvious dangers. *See, e.g.,* Casper v. Charles F. Smith & Son, Inc., 316 Md. 573 (1989).

Maryland is one of only two states that has accepted neither the attractive nuisance doctrine nor its Restatement (Second) of Torts equivalent that provides that a land owner owes child trespassers a standard of reasonable care in most circumstances. *See, e.g.,* Baltimore Gas & Elec. Co. v. Lane, 338 Md. 34 (1995).

ii. Medical Professionals

Maryland has adopted a standard of care in medical malpractice cases that imposes liability only where the care given “is not in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities at the time of the alleged act giving rise to the cause of action.” CJP § 3-2A-02(c)(1).

Under CJP § 3-2A-01, a plaintiff seeking to file a medical malpractice claim in Maryland must first file with claim with the Health Care Alternative Dispute Resolution Office, which shall appoint an arbitration panel to determine the issue of liability, unless arbitration is waived by either party under CJP § 3-2A-06A or B. An arbitral award may be rejected by either party and submitted to judicial review.

Good Samaritan Statute. A person who is licensed to provide medical care, or a member of a fire department, ambulance and rescue squad or a law enforcement agency, or an emergency medical technician, or one who has completed a Red Cross course in advanced first aid is not civilly liable for any act or omission in giving assistance or medical care if it is not gross negligence and the assistance or care is provided at the scene of an emergency, in transit to a medical facility, or through communications with personnel providing emergency assistance. Other individuals will not be liable for any act or omission in providing assistance or medical aid to a victim at the scene of an emergency if it is provided in a reasonably prudent manner, without fee or compensation, and the individual relinquishes care of the victim when someone licensed to provide medical care becomes available to take responsibility. CJP § 5-603.

iii. Standard Set by Statute, Ordinance, or Regulation

In Maryland, violation of a statute or ordinance may be evidence of negligence, but is NOT negligence *per se*. Under Maryland's unique "Statute and Ordinance Rule," in order to make out a prima facie case in a negligence action, the plaintiff must show: (1) the violation of a statute or ordinance designed to protect a specific class of persons (not the public at large), which includes the plaintiff; and (2) that the violation proximately caused the injury complained of. Proximate cause is established by determining whether the plaintiff is within the class of persons sought to be protected, and the harm suffered is of a kind which the drafters intended the statute to protect. Brooks v. Lewin Realty III, Inc., 378 Md. 70 (2003); Blackburn Ltd. P'ship v. Paul, 438 Md. 100 (2014); Sugarman v. Liles, 460 Md. 396 (2018). Also, the Statute and Ordinance Rule, unlike negligence *per se* in most jurisdictions, establishes that a duty exists in the first place. For example, it overrides the common-law rule that child trespassers otherwise would not be owed a duty of reasonable care.

iv. Tavern Owners, Social Hosts

Maryland does NOT have a state Dram Shop law, so tavern owners are not liable for accidents caused by persons to whom they served alcoholic drinks. Warr v. JMGM Group, 433 Md. 170 (2013). Similarly, social hosts may not be held liable for torts committed by adult guests who have been served alcohol. *See* Kiriakos v. Phillips, 448 Md. 440 (2016). However, a social host who serves alcohol to underage children may be liable. *See id.*

2. Breach

Res Ipsa Loquitur. Maryland uses the traditional three requirements: (1) the harm that occurred does not ordinarily occur in the absence of negligence; (2) the instrumentality of the harm was exclusively controlled by the defendant; and (3) the plaintiff did not cause or contribute to the harm. If those conditions are met, a jury may infer that the defendant acted negligently. Maryland courts have held that, where expert testimony is required to show that the harm would not ordinarily occur in the absence of negligence, the case is not one of true *res ipsa loquitur*, but rather expert testimony in support of a direct negligence claim. *See* Dover Elevator Co. v. Swann, 334 Md. 231 (1994). Thus, it is frequently stated that *res ipsa loquitur* cannot be used in medical malpractice cases where expert testimony is required. Where expert testimony is not needed, however, as where the surgeon amputated the wrong leg, the plaintiff can use *res ipsa loquitur*. *See, e.g.,* Brown v. Meda, 74 Md. App. 331 (1987).

3. Cause in Fact

4. Proximate Cause/Duty

- a. Maryland follows Judge Cardozo's majority decision in Palsgraf v. Long Island RR, 248 N.Y. 339 (1928) i.e., the victim must be of the class of people who are foreseeable victims of the defendant's negligence. *See, e.g., Dobbins v. Washington Suburban Sanitary Comm'n*, 338 Md. 341, 351 n.4 (1995); Owens v. Simon, 245 Md. 404, 410 (1967).
- b. Maryland follows Wagon Mound I (Overseas Tankship (UK) Ltd. v. Morts Dock & Engineering Co. Ltd., [1961] AC 388), rather than the majority approach outlined in In re Polemis, 3 K.B. 560 (1921) i.e., the type of risk must be foreseeable to the defendant. *See, e.g., Eagle-Picher Indus., Inc. v. Balbos*, 326 Md. 179, 196 (1992).

5. Injury

B. Defenses

1. Contributory Negligence

- a. In Maryland, the courts continue to recognize contributory negligence as a total bar to recovery, even though only four other states follow this approach. Coleman v. Soccer Ass'n of Maryland, 432 Md. 679 (2013).
- b. It also follows that Maryland is one of a minority of states that continues to recognize the last clear chance doctrine. The doctrine of last clear chance permits a contributorily negligent plaintiff to recover damages from a negligent defendant if each of the following elements is satisfied: (i) the defendant is negligent; (ii) the plaintiff is contributorily negligent; and (iii) the plaintiff makes "a showing of something new or sequential, which affords the defendant a fresh opportunity (of which he fails to avail himself) to avert the consequences of his original negligence." Burdette v. Rockville Crane Rental, Inc., 130 Md. App. 193 (2000). Violation of a statute does not preclude the defense of contributory negligence or assumption of risk.
- c. Children's alleged negligence is evaluated under the "same age, capacity & experience" standard – but not for children under five years old. Specifically: "This Court held in State for Use of Taylor v. Barlly, 216 Md. 94, 102, 140 A. 2d 173 (1958), 'that a child, 5 years of age or over, may be guilty of contributory negligence,' although 'bound only to use that degree of care which ordinarily prudent children of the same age, experience and intelligence are accustomed to use under the same circumstances, and they assume the risk only of dangers, the existence of which they know, or which, in the exercise of this degree of care, they should have known.'" Taylor v. Armiger, 277 Md. 638 (1976).

2. Assumption of Risk

- a. Maryland is among the approximately one-half of all jurisdictions that continues to recognize assumption of risk as a total bar to recovery.
 - b. On disclaimers of liability, Maryland courts continue to follow the traditional view. *See Seigneur v. National Fitness Institute, Inc.*, 132 Md. App. 271 (2000). Disclaimers are invalid if: (a) the tortious harm is intentional or wanton, reckless, or gross negligence; (b) there is a gross disparity of bargaining power between the parties; or (3) the transaction involves the public interest.
3. Limitations

The Maryland statute of limitations is 3 years for most civil actions, CJP § 5-101, but only one year for assault, libel and slander, CJP § 5-105. For medical malpractice, the limitations period is five years from the actionable conduct or three years from discovery of the injury. CJP § 5-109. Maryland has rejected the theory that suppressed memory of childhood sexual abuse tolls the limitations period, *Doe v. Maskell*, 342 Md. 684 (1995), but CJP § 5-117, provides that such a claim may be brought within 20 years after the date that the victim reaches the age of majority or three years after the date that the defendant is convicted of the related crime.

4. Immunities

Maryland has abrogated interpersonal immunity for negligence and “outrageous” intentional torts. *Boblitz v. Boblitz*, 296 Md. 242 (1983); *Lusby v. Lusby*, 283 Md. 334 (1978).

Maryland has abrogated parental immunity for automobile accidents up to the minimum liability insurance coverage required by law. CJP § 5-806.

A charity is immune from tort liability if it can establish that: (1) “the predominate activities of the organization” are “charitable in nature,” *Abramson v. Reiss*, 334 Md. 193, 205 (1994); (2) the organization’s funds are “held in trust, either expressly or by implication, for the furtherance of the charitable purpose,” *James v. Prince George’s Cty.*, 288 Md. 315, 336 (1980); (3) the organization has “no liability insurance covering the complained-of act,” *Abramson*, 334 Md. at 197. Charitable immunity is an affirmative defense. Md. Rule 2–323(g)(20). A charity asserting charitable immunity must establish the existence of a trust, expressly or by implication, by clear and convincing evidence. *Meyer v. Meyer*, 193 Md. App. 640, 657 (2010) (citing *From the Heart Church Ministries v. African Methodist Episcopal Zion Church*, 370 Md. 152, 183 (2002); then citing *Levin v. Levin*, 43 Md. App. 380, 387 (1979)). If a charity has liability insurance that covers the alleged act or injury, it cannot assert charitable immunity as a defense. Md. Code Insurance Article § 19-103.

Hospitals and related institutions that are also charitable institutions are not immune from tort liability unless they carry liability insurance of at least \$100,000, in which case their liability is capped at the limits of that insurance. CJP § 5-632.

II. Strict Liability

- A. **Products Liability.** Maryland has NOT adopted the Restatement (Third) of Products Liability, but rather continues to use the Restatement (Second) of Torts § 402A in products liability cases. Maryland does NOT accept “contributory negligence” as a defense in product liability cases. May v. Air & Liquid Sys. Corp., 446 Md. 1 (2015). However, Maryland does accept assumption of risk as a defense in products cases. Phipps v. General Motors Corp., 278 Md. 337 (1976). What the Restatement (Second) of Torts § 402A, comment n, refers to as “contributory negligence” for products purposes is identical to the “assumption of risk” recognized by Maryland as a defense.
- B. **Abnormally Dangerous Activities.** Maryland continues to follow Restatement (Second). In Yommer v. McKenzie, 255 Md. 220 (1969), court held that the inappropriateness of the location where the activity is being carried on is the most important factor. In stark contrast, the Restatement (Third) of Torts: Liability for Physical and Emotional Harm, eliminates entirely consideration of this factor.
- C. **Liability of Possessors of Animals.** An owner or possessor of a domesticated animal will be held strictly liable if he or she is aware of the animal’s vicious propensities. A comment to the Restatement (Third) of Torts suggests that this holds strictly liable possessors of animals that belong to a particularly subspecies or variety that is particularly dangerous such as pit bulls. *See* Restatement (Third) of Torts: Phys. & Emot. Harm § 23 (2010, Oct. 2018 update). The Court of Appeals held this to be the case, but the decision was reversed by statute. CJP § 3-1901.

III. Damages

- A. **Joint and several liability and contribution among tortfeasors**
 - 1. Maryland is in a minority (12 or so) states that continue to recognize joint and several liability when concurrent tortfeasors contribute to an indivisible harm. Carter v. Wallace & Gale Asbestos Settlement Trust, 439 Md. 333 (2014).
 - 2. Maryland is in a very small minority of states that continues to follow the 1955 version of the Uniform Contribution Among Tortfeasors Acts that allocates responsibility for damages among joint tortfeasors on a pro rata as opposed to a proportionate basis. Franklin v. Morrison, 350 Md. 144 (1998).
- B. **Recovery of economic damages in products liability cases**
 - 1. For a defective product, there normally is no recovery for losses that are only economic, or only for losses to property, unless there also is a personal injury. However, Maryland has joined those jurisdictions that recognize an exception to

the rule which bars economic loss in tort. “As we have seen, the reasoning behind the exception is that the likelihood is so great that severe bodily harm or death will result from the product defect, that we substitute actual present injury or product malfunction with the cost to repair the problem. Assuming that plaintiffs can adequately prove the substantive elements of their claims and objectively quantify the measure of their damages, Maryland has determined that the exception to the economic loss rule advances the practical goal of providing a remedy *before* the significant loss of life or limb.” Lloyd v. GMC, 397 Md. 108 (2007).

C. Negligent infliction of emotional distress

1. General-Maryland follows traditional rule.
2. Emotional Distress for Fear of Contracting Latent Disease. Exxon Mobil Corp. v. Albright, 433 Md. 303 (2013), holds that damages are recoverable when
 - a. The plaintiff is exposed to toxic substance due to the defendant’s tortious conduct,
 - b. Which led the plaintiff to fear objectively and reasonably that he would contract a disease, and
 - c. As a result of the objective and reasonable fear, he manifested an injury capable of objective determination.
3. Maryland also allows recovery for medical monitoring. *Id.*

D. Caps on Damages

1. Maryland has a negligence non-economic damages cap for injuries and wrongful death cases, which increases slightly each year. CJP §11-108. As of 2019 they are \$860,000 for one person, and \$1,290,000 in, for example, a wrongful death cases with 2 or more beneficiaries for a single cause of action. There is currently an \$860,000 non-economic damages cap on survival actions. As of 2018, Maryland’s damages cap no longer applies to intentional torts, though it does still apply to punitive damages. Rodriguez v. Cooper, 458 Md. 425 (2018).
2. Maryland has a separate medical malpractice cap for non-economic damages. CJP §3-2A-09. In 2019, it is \$815,000 for non-economic damages for one person, and \$1,018,750 if there are 2 or more beneficiaries, such as could happen in a wrongful death case. The caps increase slightly each year.

E. Punitive Damages

The Maryland standard for punitive damages: “malice” is required, and this is defined to include such things as an “evil motive” or an “intent to injure.” In the past “gross negligence” was enough, but this was changed in Owens-Illinois, Inc. v. Zenobia, 325 Md. 420 (1992). Actual malice must be proven by “clear and convincing evidence.”

IV. Evidence

Although a matter of evidence law and not substantive tort law, Maryland continues to follow the Frye standard and not the Daubert standard for admission of expert testimony—a critical issue in many torts cases. See Savage v. State, 455 Md. 138 (2017).

V. Misrepresentation

A. **Damages.** Maryland is among a handful of states that follow the Restatement (Second) rule:

1. If the defrauded party is content with the recovery of only the amount that he actually lost, his damages will be measured under that rule;
2. If the fraudulent representation also amounted to a warranty, party may recover expectancy (benefit of the bargain) damages;
3. But where proof of benefit of the bargain damages is vague, the court will award damages equal only to the loss sustained.

B. **Negligent misrepresentation.** Maryland follows the most restrictive rule, a minority approach, as to which parties are able to recover for negligent misrepresentation. The plaintiff must prove that:

1. The defendants were aware that the financial reports they prepared were to be used for a particular purpose or purposes,
2. In the furtherance of which a known party or parties were intended to rely, and
3. There must have been some conduct on the part of the accountants linking to that party or parties, which evinces the accountants' understanding of that party or parties' reliance. See Walpert, Smullian & Blumenthal, P.A. v. Katz, 361 Md. 645 (2000).

VI. Interference Torts

A. **Generally.** Maryland is unusual in that a plaintiff is required to prove the same four elements in order to recover for either interference with contract or interference with business relations: (1) intentional and willful acts; (2) calculated to cause damage to the plaintiffs in their lawful business; (3) done with the unlawful purpose to cause such damage and loss, without right or justifiable cause on the part of the defendants (which constitutes malice); and (4) actual damage and loss resulting. Blondell v. Littlepage, 413 Md. 96, 97 (2010) (quoting Kaser v. Financial Protection Marketing, Inc., 376 Md. 621, 628–29 (2003)). “A broader right to interfere with economic relations exists where no contract or a contract terminable at will is involved.” Nat. Design, Inc. v. Rouse Co., 302 Md. 47, 69–70 (1984). To recover punitive damages on an interference tort claim, “the wrongful interference with contract or economic relations must be accompanied by ‘actual malice,’ *i.e.*, conduct by the defendant characterized by evil

motive, intent to injure, ill will, or fraud.” Alexander & Alexander Inc. v. B. Dixon Evander & Assocs., Inc., 336 Md. 635, 652 (1994).

- B. Interference with a contract.** Under Maryland law, the elements of tortious interference with a contract are: “(1) existence of a contract between plaintiff and a third party; (2) defendant’s knowledge of that contract; (3) defendant’s intentional interference with that contract; (4) breach of that contract by the third party; and (5) resulting damages to the plaintiff.” Fowler v. Printers II, Inc., 89 Md. App. 448, 466 (1991) (collecting cases). If a defendant can establish that his conduct was justified, he may avoid liability for tortious interference with a contract. *Id.* at 467 (citing Sharrow v. State Farm Mutual, 306 Md. 754, 764–65 (1986)). If a contract is terminable at will, “a competitor who induces breach of it to serve his own competitive purpose does not interfere improperly unless the competitor employs wrongful means or creates a restraint of trade.” *Id.*; *see also* Nat. Design, 302 Md. at 73 (quoting Restatement (Second) of Torts § 768 (1977)).
- C. Tortious interference with economic relations.** Under Maryland law, the elements of tortious interference with economic relations are: “(1) intentional and willful acts; (2) calculated to cause damage to the plaintiffs in their lawful business; (3) done with the unlawful purpose to cause such damage and loss, without right or justifiable cause on the part of the defendants (which constitutes malice); and (4) actual damage and loss resulting.” Alexander & Alexander Inc., 336 Md. at 652. The interfering conduct must be “independently wrongful or unlawful.” *Id.* at 657. Wrongful or unlawful acts include “common law torts” and “violence or intimidation, defamation, injurious falsehood or other fraud, violation of criminal law, and the institution or threat of groundless civil suits or criminal prosecutions in bad faith.” *Id.* (quoting K & K Management v. Lee, 316 Md. 137, 166 (1989)). “[T]ortious or deliberate intent to harm a plaintiff’s business relationship is not alone sufficient to support an intentional interference claim.” Volcjak v. Washington Cty. Hosp. Ass’n, 124 Md. App. 481, 512 (1999) (quoting Lyon v. Campbell, 120 Md. App. 412, 431 (1998)). The plaintiff must also present evidence that “the defendant’s interference was accomplished through improper means.” *Id.* If, however, “actual malice, in the sense of ill will, hatred or spite,” is the defendant’s primary motivation, it “may be sufficient to make an act of interference wrongful.” Alexander & Alexander Inc., 336 Md. at 657.

VII. Defamation

- A. Private individuals.** Maryland applies the negligence standard for cases of purely private defamation, that is, a plaintiff who is a private individual, neither a public official nor a public figure. Seley-Radtke v. Hosmane, 450 Md. 468, 472 (2016) (citing Jacron Sales Co. v. Sindorf, 276 Md. 580, 596 (1976)). If a private individual brings a defamation suit based on the negligence standard, the claim need only be proven by a preponderance of the evidence, not clear and convincing evidence, Seley-Radtke, 450 Md. at 472, and the plaintiff must prove actual damages, Gen. Motors Corp. v. Piskor, 277 Md. 165, 172 (1976)). In general, neither presumed damages nor punitive damages

are permitted. Jacron, 276 Md. at 590. If, however, a private plaintiff establishes his defamation claim under the constitutional malice standard, then he may recover presumed and punitive damages. (need citation). The plaintiff bears the burden of proving falsity. *Id.* at 597. The defendant need not assert truth as an affirmative defense. *Id.*

- B. **Common law conditional privileges.** If the defendant in a purely private defamation action establishes a common law conditional privilege, the plaintiff bears the burden of overcoming the privilege—demonstrating that the defendant acted with “malice”—by a preponderance of the evidence. Seley-Radtke, 450 Md. at 472–73, 507.

VIII. Invasion of Privacy

- A. **One cause of action – four separate torts.** In Maryland, invasion of privacy comprises four separate torts: (1) intrusion upon seclusion; (2) appropriation of name or likeness; (3) unreasonable publicity given to private life; and (4) false light. Household Finance Corp. v. Bridge, 252 Md. 531 (1969) (quoting Restatement (Second) of Torts § 652A).

IX. Tort Claims Against the State and Municipalities

- A. **Maryland Tort Claims Act.** To bring suit against the State or its units, officials, or employees for injury to the person or property, a person must submit a written claim to the Treasurer (or a “designee of the Treasurer”) within one-year after the injury occurred; the Treasurer or designee must deny the claim; and the suit must be filed within the general three-year statute of limitations. Md. Code State Government Article (“SG”) § 12-106 (b)(1)–(3). A court may, however, waive these requirements for good cause shown unless the State can demonstrate that its defense has been prejudiced by the failure to submit the claim. SG § 12-106(c)(1). A person need not file a claim with the Treasurer within one year after the injury if the State has actual or constructive notice of the injury and “the defect or circumstances” giving rise to the injury. SG § 12-106(c)(2)(i)–(ii).
- B. **Local Government Tort Claims Act.** To bring suit against a local government or its employees for unliquidated damages, a person must file notice of the claim within one year after the injury. CJP § 5-304(b)(1). The notice of a claim must be in writing and state the “time, place, and cause of the injury.” CJP § 5-304(b)(2). The claimant must send the notice of a claim via certified mail, return receipt requested through the United States Postal Service. CJP § 5-304(c)(1). If the defendant is a county, the claimant must send the notice to the county commissioners or county council. CJP § 5-304(c)(2). If the defendant is Baltimore City, the claimant must send the notice to the City Solicitor. CJP § 5-304(c)(3)(i). If the defendant is Howard County or Montgomery County, the claimant must send the notice to the County Executive. CJP § 5-304(c)(3)(ii). If the defendant is Anne Arundel County, Baltimore County, Frederick County, Harford County, or Prince George’s County, the claimant must send the notice to the county solicitor or county attorney. CJP § 5-304(c)(3)(iii). For all other local governments,

the claimant must send the notice to the corporate authorities of the defendant local government. CJP § 5-304(c)(4). A court may, however, waive these requirements upon motion and for good cause shown unless the defendant can demonstrate that its defense was prejudiced by the failure to file the required notice. A person need not file notice of a claim within one year after the injury if the defendant has actual or constructive notice of the injury and “the defect or circumstances” giving rise to the injury. CJP § 5-304(e)(1)–(2).

PROFESSIONAL RESPONSIBILITY

The ABA Model Rules of Professional Conduct and the Maryland Attorneys' Rules of Professional Conduct ("MRPC") are substantially similar, but *not identical*. There are differences and this Memorandum will highlight those with which new members of our Bar should be familiar.

Every applicant should review every section of the MRPC in addition to studying this outline. The purpose of this section is to highlight and assist you in understanding the differences between the Model Rules and the MRPC, but it is not a comprehensive review of or substitute for a thorough study of the MRPC.

I. Maryland Rule 19-300.1 Preamble

The Preamble in both is substantively the same. Maryland uses the word "attorney;" the Model Rule uses the term "lawyer."

The Court of Appeals has indicated that the MRPC are the public policy of the State of Maryland. This has serious implications for contracts which may be drawn in contravention of such rules.

II. Maryland Rule 19-301.0 Terminology

Subsection (c) of this Rule defines "consult" or "consultation" which denotes communication or information reasonably sufficient to permit the client to appreciate the significance of the matter in question. There is no Model Rule equivalent that defines these terms.

III. Maryland Rule 19-301.2 Scope of Representation and Allocation of Authority Between the Client and Attorney

Rule 1.2(c) of the Model Rule states: "a lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent."

MRPC 19-301.2 (c) requires that the limited scope must be set forth in writing and further states: an attorney may limit the scope of the representation in accordance with applicable MRPCs 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.

Additionally, the MRPC contains Comments [8] and [9] which relate to specific tasks or objectives that can be addressed in Maryland by a limitation of the representation. Comment [8] specifies "clearly defined specific or objectives" that attorneys can perform "without entering an appearance," including "filing papers, or otherwise participating on the client's behalf in any judicial or administrative proceedings." Comment [9] states that representation of a client in a collaborative law process is a permissible limited representation. The representation requires a Collaborative Law Participation Agreement that complies with the requirements of the Court's and Judicial Proceedings Article and Rule 17-503(b), signed by all parties after informed consent. Comment [1] to the MRPC, which deals with the scope of representation, describes the division of authority between attorney and client in connection with the representation of the client. "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.”

It should be observed that Maryland allows Limited Scope Engagement and those rules should be consulted. *See also*, Md. Rules 2-131, 3-131.

IV. Maryland Rule 19-301.3 (Comment 5) Diligence

There is no mandatory succession rule in Maryland but there is a conservatorship rule and the comment points to that within this comment.

V. Maryland Rule 19-301.5 Fees

MRPC 19-301.5(d) prohibits an attorney from charging a contingency fee for any domestic relations matter, including divorce matters and custody of a child, or for representing a defendant in a criminal case.

Perhaps more importantly, subsection (e) which relates to the division of a fee between attorneys who are not in the same firm, does **not** require that the client agree to the share each lawyer is to receive so long as the division is in proportion to the services performed or each attorney assumes joint responsibility for the representation. Practically speaking this means that if a lawyer wants to take advantage of MRPC 19-301.5 the client needs to sign an agreement in which all of the lawyers assume joint responsibility. It also means the referring lawyer is going to have joint and several exposure if there is an error by the lawyer to whom the matter was referred.

VI. Maryland Rule 19-301.6 Confidentiality

The MRPC explicitly recognizes that confidential information can be disclosed to defend a “disciplinary complaint.” The MRPC explicitly recognizes that disclosure can be made to comply with “these Rules,” which is omitted in the Model Rules. *See* MRPC 19-301.6 (b)(6). Maryland case law does limit disclosure to the extent necessary (and nothing beyond) to defend a disciplinary or malpractice claim.

Model Rule 1.6(b)(7) states that disclosure is permitted “to detect and resolve conflicts of interest arising from the lawyer’s change of employment or from changes in the composition or ownership of the firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.” While the MRPC does not have this language, the MRPC does permit disclosure in order to comply with “these Rules,” and thus likely covers the disclosure contemplated in the Model Rules.

Essentially, Maryland recognizes the need to safeguard information in a competent and effective manner but disclosures that are made in the face of such safeguards will not be the basis for discipline. *See* MRPC 19-301.6 Comments 19 and 20.

VII. Maryland Rule 19-301.7 Conflict of Interest – General Rule

There is little substantive difference between the Rules. The Model Rules refer to “current clients” and calls the conflict of interest within that Rule a “concurrent conflict of interest.” The MRPC omits the word “concurrent.”

There is a difference between the MRPC and the Model Rule regarding sexual relationships with clients. Maryland has not adopted Model Rule 1.8 (j), which forbids sexual relationships with clients “unless a consensual sexual relationship existed between them when the client lawyer relationship commenced.” Maryland does not have this bright line rule. Rather, comment 12 of Rule 19-301.7 sets forth essentially a conflict of interest analysis in order to assess limitations on sexual contact with a client. Maryland thus provides that a sexual relationship with a client is impermissible if (1) the representation of the client would be materially limited by the sexual relationship and (2) it is unreasonable for the attorney to believe the attorney can provide competent and diligent representation. Informed consent under those circumstances is ineffective.

VIII. Maryland Rule 19-301.8 Conflict of Interest; Current Clients; Specific Rules

Model Rule 1.8 (a), like its Maryland counterpart, prohibits entering into a business transaction prohibited by the MRPC. The exceptions are the same. The Model Rule, however, also prohibits the knowing acquisition of an “ownership, possessory, security or other pecuniary interest adverse to a client.” There does not seem to be a substantive difference in the effect of the Model Rule from that of its Maryland counterpart.

IX. Maryland Rule 19-301.10 Imputation of Conflict of Interest – General Rule

In Maryland, the consent of the client to the conflict of interest covered by the Rule must be with the client’s informed consent, confirmed in writing, pursuant to MRPC 19-301.7. The relevant comments track these differences. The Maryland and Model Rules are substantially similar, and both provide for screening conflicts of interest. However, the MRPC does not contain the notification and certification requirements regarding screening contained in the Model Rule. *See* Model Rule 1.10(a)(2)(ii) and (iii).

X. Maryland Rule 19-301.13 Organization as Client

The Model Rule and the MRPC are essentially the same with respect to Subsections (a) and (b). There are differences in subsequent subsections between the two Rules but, essentially, both Rules promote the best interest of the organization.

The MRPC specifically states that revealing information otherwise protected by Rule 19-301.6 (Confidentiality) may be made only if the attorney reasonably believes that: (1) the highest authority in the organization has acted to further the personal or financial interests of members of the authority which are in conflict with the interests of the organization; and (2) revealing the information is necessary in the best interest of the organization. The complicated direction of the Model Rule reads: “except as provided in paragraph (d) [not pertinent], if, (1) despite the lawyer’s efforts in accordance with paragraph (b), the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner and action, or a

refusal to act, that is clearly a violation of law, and (2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.” Since the Model Rule contains many “mays” and “reasonable beliefs”, the differences between the Rules are difficult to assess and there are few Maryland cases, if any, that would illuminate such differences.

It should be noted that the Model Rule contains a subparagraph providing that the directives set forth immediately above shall not apply to information relating to a lawyer’s representation of an organization to investigate or defend a claim arising out of an alleged violation of law. That would appear to be fairly obvious with respect to an attorney’s representation of an organization. There is also a subsection in the Model Rules that is not duplicated in the MRPC that addresses when a lawyer reasonably believes that he or she has been discharged because of actions taken to protect the organization pursuant to the Rule. The Rule states that the lawyer should proceed as he or she reasonably believes necessary to assure that the organization’s highest authority is informed of the lawyer’s discharge or withdrawal.

Subsections (f) and (g) of the Model Rules, which address clarifying who a lawyer represents and potential conflicts of interest when representing an organization and an organizational constituent, are substantially duplicative of the MRPC 19-301.13 (d) and (e). The Comments to the Rules are helpful with respect to the duties that are required in both instances.

XI. Maryland Rule 19-301.14 Client with Diminished Capacity

There are no substantive differences between the Model and MRPC on the issue of clients with diminished capacity. There are several Comments that are different. Maryland recognizes the special relationship of the attorney to children and sets forth the need to refer to guidelines developed by the Maryland Judicial Conference Committee on Family Law.

XII. Maryland Rule 19-301.15 Safekeeping Property

The Rules are similar and subsections (d) and (e) are essentially the same. Subsection (a) of MRPC 19-301.15 refers to funds that must be maintained in an account pursuant to MRPC 19-400, et seq. (Attorney Trust Accounts) and how records must be created and maintained in accordance with the Rules in that chapter. The Model Rule states only that the funds shall be kept in a separate account maintained in the state where the lawyer’s office is situated, or elsewhere with the consent of the client or third-person. That language is not replicated in the MRPC.

The MRPC through Subsection (a) makes record keeping subject to disciplinary authority. MRPC 19-400, et seq. sets forth the obligations of an attorney with respect to the funds she receives from third-parties and clients. If the records are not maintained appropriately pursuant to those Rules, the safe-keeping property Rule, Rule 19-301.15, is thereby violated and can subject the attorney to discipline. The “complete records” of both Rules is, in effect, particularized in Maryland through the incorporation of Title 19, Chapter 400. The Model Rule calls for preservation of the records of the account funds and other property for a period of five years after the termination of

the representation whereas the MRPC requires the period of five years to commence after the date the record was created.

Both Rules permit the deposit of attorney funds into the client trust account but only, in the case of the Model Rule, for the sole purpose of paying bank service charges and only in an amount necessary for that purpose whereas the MRPC contemplates such deposits only as permitted by MRPC 19-408 (b) (Commingling of Funds).

Another difference is contained in Subsection (c). Unlike the Model Rule, the MRPC does permit the deposit of unearned legal fees and expenses (i.e., paid in advance) to an account other than the client trust account, if the client gives informed consent, confirmed in writing “to a different arrangement.” This is a significant departure from the default rule (which is required by the Model Rule) that requires an attorney to deposit unearned fees and expenses into a trust account. It can be a source of confusion as it is difficult to set forth the required “informed consent” because such informed consent may vary on the basis of an attorney’s circumstances. There have been one or more Maryland cases that have addressed the absence of informed consent with respect to unearned fees deposited in other than a trust account, but none give a recital of the “authorized” language necessary for compliance. **In short, unearned fees need to be held in escrow.** Maryland Courts seek to protect the disposition of “other people’s money.”

XIII. Maryland Rule 19-301.16 Declining or Terminating Representation

The Maryland and Model Rules are substantially similar. The MRPC does add the word “inaction” to the language of (b)(4): an attorney may withdraw when a “client insists upon action or inaction that the attorney considers repugnant or with which the attorney has fundamental disagreement.” Comments to the MRPC take this additional word into account.

XIV. Maryland Rule 19-301.17 Sale of Law Practice

The Rules relating to the sale of a law practice have substantive differences. In Maryland, a law practice may be sold but only if it is the “entire practice” that is the subject of the sale, and the practice has been in existence at least five years prior to the date of the sale. The practice thus must be sold as an entirety to another attorney or law firm. No such restrictions appear in the Model Rule. That Rule permits “an area of law practice” to be sold and also requires the seller to cease engaging in the private practice of law or in the area of the practice that has been sold and gives the jurisdiction the choice of the “geographic area” or the “jurisdiction” in which the practice has been conducted. That restriction does not appear in the MRPC.

Both Rules require written notice to the clients regarding the proposed sale, the client’s right to retain other counsel and to take possession of the file. The MRPC requires that the written notice be mailed to the last known address of the seller’s current clients, whereas the Model Rule merely states that the seller give “written notice.” The MRPC permits a change in the fee arrangement and requires the notification of “the terms of any proposed change in the fee arrangement.” The Model Rule requires that the fees charged clients not be increased by reason of the sale. Model Rule 1.17 (d). The MRPC requires the written notice of the client’s right to retain other counsel, to take possession of the file, and to obtain any funds or other property to which the client is

entitled. The consent to new representation is presumed if the client takes no action within sixty days of the mailing of the notice in Maryland, which is in contrast to ninety days of the receipt of notice in the Model Rules. Both Rules state that if a client cannot be given notice (and in Maryland if the notice is returned and the client cannot be located), the transfer to the purchaser may only be made by a court order authorizing the transfer. Both Rules permit disclosure to the Court, in camera, information relating to the representation, but only to the extent necessary to obtain the Order authorizing the transfer.

It should be noted that the requirement in Maryland that all of the private practice be sold is satisfied if the seller in good faith makes the entire practice available for sale to the purchaser. Comment 2 states that “the fact that a number of the seller’s clients decide not to be represented by the purchaser but take their matters elsewhere does not therefore result in a violation.” Although Maryland does not take the position, as the Model Rule does, that the seller must cease the practice of law in the jurisdiction or geographic area, Maryland recognizes that the purchase agreement for the sale of the practice may allow for restrictions on the scope and time of the seller’s reentry into the practice.

The Model Rule, Comment [10], states that “the sale may not be financed by increases in fees charged the clients of the practice. Existing arrangements between the seller and the client as to fees and the scope of the work must be honored by the purchaser.” The MRPC has no such comment.

XV. Maryland Rule 19-301.18 Duties to Prospective Client

The Maryland and Model Rules are substantially similar, but they diverge when the lawyer has received disqualifying information with respect to the permissibility of continued representation. The Model Rule requires (1) both the affected client and the prospective client give informed consent confirmed in writing, or (2) the lawyer who received the information take reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client. Additionally, the disqualified lawyer must be timely screened from any participation in the matter, be apportioned no part of the fee therefrom, and written notice must be promptly given to the prospective client. In contrast, in Maryland representation is permissible if both the affected and prospective clients have given informed consent confirmed in writing or the disqualified attorney is timely screened from any participation in the matter and is apportioned no part of the fee. Written notice need not be given to the prospective client when the disqualified lawyer is screened.

XVI. Maryland Rule 19-303.1 Meritorious Claims and Contentions

Maryland states that despite the obligation to present non-frivolous arguments, “an attorney may nevertheless so defend the proceeding as to require that every element of the moving party’s case be established.” The Model Rule states that “a lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.” It would appear; therefore, that the prohibitions of the Model Rule are greater than those in the MRPC as the Model Rule confines its “exception” to criminal or incarcerable matters. The MRPC appears to

encompass all matters with respect to the defense of a proceeding. The Comments to the Rules are virtually the same.

XVII. Maryland Rule 19-303.3 Candor to the Tribunal

The MRPC requires the attorney to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client. The disclosure of such material fact appears to already be required by the Rule because the criminal or fraudulent act must be one associated with the client's appearance in the tribunal. Otherwise, the attorney's duty of confidentiality would be without effect. An example would be the absence of any requirement to correct false evidence not presented by the attorney that assists her client in prevailing in a criminal case. I do not believe that that is what is meant by Rule 19-303.3 (a)(2).

Both Rules place the obligation to the tribunal above that to the client because the duties of candor within the Rule apply even if compliance requires disclosure of information otherwise protected by Rule 19-301.6 (Confidentiality). Note the definition of tribunal and consider whether one can settle or resolve a case, knowing there to be an issue without prior disclosure to one's adversary.

XVIII. Maryland Rule 19-303.4 Fairness to Opposing Party and Attorney

The Rules are substantially the same but Maryland, in Comment [3] indicates explicitly that it is permissible to pay a witness' expenses "*including lost earnings.*"

XIX. Maryland Rule 19-303.5 Impartiality and Decorum of the Tribunal

The Maryland and Model Rules are somewhat different. The Model Rule's prohibitions are fairly general whereas the MRPC has a great deal of specificity and has added at least one additional prohibition. The MRPC specifically prohibits an attorney from conducting a vexatious or harassing investigation of any prospective, qualified or sworn juror; specifically prohibits *ex parte* communication with a judge or other official before whom the proceeding is pending, except as permitted by law; and specifically prohibits the lawyer from seeking to influence the jury member's actions in future jury service after the discharge of a jury from consideration of the case with which the attorney is connected (although it appears that absent a Court Order to the contrary, an attorney may question a discharged juror as long as the questions or comments are not calculated to harass or embarrass that individual). The *ex parte* communication with a Judge, prohibited by the MRPC, is not included in the Model Rule although the Model Rule prohibits an attorney from seeking to influence a Judge by means prohibited by law which would appear to be sufficient. Finally, Maryland prohibits the discussion with a Judge of potential employment if the attorney or her firm has a matter pending before that Judge. This prohibition is not set forth in the Model Rule.

XX. Maryland Rule 19-303.8 Special Responsibilities of a Prosecutor

A. MRPC 19.303.8 requires that the prosecutor in a criminal case shall:

1. refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;
2. make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, an attorney and has been given reasonable opportunity to obtain an attorney;
3. not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;
4. make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal; and
5. except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent an employee or other person under the control of the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 19-303.6 (3.6) or this Rule.

Subsection (e) of the Model Rule has not been adopted in Maryland. That subsection states that a prosecutor in a criminal case shall not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client unless the prosecutor reasonably believes: the information is not protected from disclosure by any applicable privilege; the evidence sought is essential to the successful completion of an ongoing investigation or prosecution; and there is no other feasible alternative to obtain the information.

The Model Rules also delineate requirements when a prosecutor knows of “new, credible and material evidence creating a reasonably likelihood that a convicted defendant did not commit an offense of which the defendant was convicted.” Those requirements have not been adopted in Maryland.

Model Rule 3.8 (h) also requires that a prosecutor seek to remedy a conviction when she knows of clear and convincing evidence that a defendant in that prosecutor’s jurisdiction was convicted of an offense that the defendant did not commit. Those requirements have not been adopted in Maryland. In all other respects, the Rules are substantially the same.

XXI. Maryland Rule 19-304.1 Truthfulness in Statements to Others

The Maryland and Model Rules are substantially different. The Model Rule states that a lawyer, when representing a client, shall not knowingly make a false statement of material fact or law to a third person or fail to disclose a material fact when such disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, *unless disclosure is prohibited by Model Rule 1.6 (Confidentiality of Information)*.

The MRPC takes the opposite view. There is no prohibition on disclosure based upon Rule 1.6. The MRPC affirmatively states that the duties stated in the Rule apply even if compliance requires disclosure of information otherwise protected by MRPC 19-301.6 (Confidentiality). The Comment to the Rule in Maryland notes that although the Rule may require an attorney to disclose information that otherwise is confidential to correct or withdraw a statement, the constitutional rights of defendants in criminal cases may limit the extent to which an attorney for a defendant may correct a misrepresentation that is based on information provided by the client.

XXII. Maryland Rule 19-304.2 Communication with Person Represented by Counsel

The Model Rule is substantively the same as MRPC 19-304.2 (a). Maryland, however, has two additional subsections within its Rule. Subsection (b) sets forth the prohibitions that extend to constituents of organizations; Subsection (c) concerns communication with a government official if the government official has the authority to address the grievances of an attorney's client and the attorney first makes disclosures specified in the prior section. The Model Rule covers the represented organization in its Comment [7]. The prohibition contained in the MRPC is much more explicit and detailed. Note the 'bright line' contained in this rule.

XXIII. Maryland Rule 19-304.3 Dealing with Unrepresented Person

The MRPC omits the following language contained in the Model Rule: "The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows a reasonably or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client." There appear to be no other substantive differences.

XXIV. Maryland Rule 19-305.3 Responsibilities Regarding Non-Attorney Assistants

The Maryland and Model Rules are substantially the same with respect to Subsections (a), (b), and (c). MRPC 19-305.3 (d) relates to the requirements associated with attorneys who employ or retain the services of a non-attorney who was formerly admitted to the practice of law in any jurisdiction and has been and remains disbarred, suspended, or placed on the in-active status because of incapacity. The Rule sets forth a number of requirements concerning the employment of such persons including, the responsibility to ensure that the formally admitted attorney does not represent himself or herself to be an attorney, that any law-related activity not be performed for a law firm or attorney with whom the formerly admitted attorney was associated when the acts that resulted in the sanction occurred nor may such an attorney perform any law-related activity to that person's former client. There are other requirements concerning notification to Bar Counsel with respect to such employment.

XXV. Maryland Rule 19-305.4 Professional Independence of an Attorney

The Model Rule and MRPC are substantially the same except that the MRPC contains the following provision: “An attorney or law firm shall not share legal fees with a non-attorney, except that: (3) An attorney who undertakes to complete unfinished legal business of a deceased, retired, disabled, or suspended attorney may pay to that attorney or that attorney’s estate the proportion of the total compensation fairly allocable to the services rendered by the former attorney.” The purpose of the Rule would appear unaffected by this subsection.

XXVI. Maryland Rule 19-305.5 Unauthorized Practice of Law; Multi-Jurisdictional Practice of Law

The Maryland and Model Rules are substantially the same except that the Model Rule contains provision for legal services provided by foreign lawyers. The foreign lawyer “must be a member in good standing of a recognized legal profession in a foreign jurisdiction and is subject to effective regulation and discipline or is otherwise lawfully practicing as an in-house counsel under the laws of a foreign jurisdiction. If so, she must be authorized to practice law under this Rule by the highest court of the American jurisdiction in the exercise of its discretion.”

XXVII. Maryland Rule 19-305.7 Responsibilities Regarding Law-Related Services

While the Rules appear to be the same, there is a difference in one of the Comments. The Model Rule states that when a client-lawyer relationship exists with a person who is referred by a lawyer to a separate law-related service entity controlled by the lawyer, individually or with others, the lawyer must comply with Rule 1.8 (a). Maryland Comment [5], however, states that the attorney is not required to comply with Rule 19-301.8 (a) when referring a person to a separate law-related entity for the purpose of providing services to the person. It goes on to say that if the attorney also is providing legal services to the person, the attorney must exercise independent professional judgment in making the referral and must explain the matter to the person to the extent necessary for the person to make an informed decision to accept the attorney’s recommendation.

XXVIII. Maryland Rule 19-306.1 Pro Bono Service

The Pro Bono Rules are not substantially different. Both rules indicate that the lawyer should aspire to render at least fifty hours of pro bono service annually and denominate those persons or agencies that should benefit from such service. The Rules both use the term “should” rather than “shall. The MRPC explicitly states that non-compliance shall not be a ground for discipline. Note that Maryland cross-references MRPC 19-503 – reporting requirements of pro bono legal services.

Another difference relates to which pro bono services should constitute a “substantial” portion of the fifty hours as opposed to other activities which are considered “additional” services. The MRPC states that the provision of services to “individuals, groups, or organizations seeking to secure or protect civil liberties or public rights” and to “charitable, religious, community, governmental, or educational organizations” can be considered part of the “substantial” amount of the fifty hours of pro bono work attorneys should perform. In contrast, the Model Rule lists these services as “additional” activities. While reflecting a different policy emphasis, there is little practical difference because pro bono services are not mandatory.

XXIX. Maryland Rule 19-307.1 Communications Concerning and Attorney's Services

While subsection (a) of the MRPC substantially tracks the language of the Model Rule, Maryland's Rule adds two subsections that address misrepresentations made by attorneys. First, a communication is false or misleading if it likely creates an unjustified expectation of the results the attorney can achieve, or states or implies that the attorney can achieve results by means that violate the ethics rules. Second, the attorney may not compare her services with those of others, unless the comparison can be factually substantiated.

XXX. Maryland Rule 19-307.2 Advertising

Maryland's Rule adopts much of the Model Rule but adds a number of requirements. The Model Rule refers to electronic communication, whereas the MRPC has language that would certainly cover electronic media, but it is not explicitly mentioned. The MRPC requires that a copy of the recording, advertising or "such other" communication be maintained for a period of three years after its last dissemination and such copy must also have a record of when and where it was used. The MRPC alone also requires that an advertisement that indicates that no fee will be charged in the absence of a recovery shall also disclose whether the client will be liable for any expenses. In all other respects, the Rules are substantively the same.

XXXI. Maryland Rule 19-307.3 Direct Contact with Prospective Clients

These Rules are essentially the same except that Maryland prohibits the solicitation of prospective clients if the attorney knows or reasonably should know that the physical, emotional or mental state of the prospective client is such that the prospective client could not exercise reasonable judgment in employing an attorney. Rule 19-307.3 (b) (1). This subsection is not included in the Model Rule.

XXXII. Maryland Rule 19-307.4 Communication of Fields of Practice

The MRPC is substantially the same as the Model Rule, subsection (a) and (b), although the MRPC adds that communications of fields of practice (or the absence of same) must be consistent with Rule 19-307.1. The Model Rule permits an attorney engaged in Admiralty practice to use the term "Admiralty" or "Proctor in Admiralty" or similar designations. The Model Rule has another subsection that deals with the certification of specialties and the designation of an attorney as a specialist. Maryland does not yet have a similar provision, but attorneys would be well advised to be guided by the dictates of Rule 19-307.1.

XXXIII. Maryland Rule 19-307.5 Firm Names and Letterheads

While the Rules are substantively the same, the Maryland Comments are much more comprehensive, detailing the acceptability, *vel non*, of various types of trade names.

- A. Attorneys in private practice are required to avoid trade names that might give the impression of affiliation with government entities and educational institutions.
- B. The comments to the rule specifically caution against trade names including terms such as “Maryland State,” “Baltimore County,” “Legal Clinic,” “Neighborhood,” and “Public.”

XXXIV. Model Rule 7.6 Political Contributions to Obtain Government Legal Engagements for Appointments by Judges

Model Rule 7.6 has not been adopted in Maryland. It prohibits contributions or the solicitation of contributions for the purpose of obtaining or being considered for legal engagement or appointment. This rule would appear to be superfluous.

XXXV. Maryland Rule 19-401 et seq. Attorney Trust Accounts

Every attorney who accepts client funds is required to have and maintain an IOLTA account. MRPC 19-401; *See also*, Md. Code, Business Occupations and Professions Article § 10-301 et seq. An IOLTA account is a client trust account. One of the most frequent reasons that attorneys are disbarred or disciplined in Maryland is for mishandling client funds. Failure to complete one’s IOLTA report will eventually lead to an attorney losing their license to practice in Maryland.

XXXVI. Maryland Rule 19-503 Reporting Pro Bono Legal Service

While Maryland does not require attorneys to complete pro bono service, it does have a pro bono *reporting* requirement. An attorney’s Maryland license to practice law is based upon their annual reporting requirements. Failure to report will result in one’s license being suspended.

XXXVII. Maryland Rule 19-601, et seq. Client Protection Fund

The Client Protection Fund is designed to compensate clients if their attorney takes client funds or defrauds his client. MRPC 19-605. Every attorney is required to pay an annual fee to the Client Protection Fund and keep their address updated. MRPC 19-605. An attorney who has failed to meet their obligation concerning the Client Protection Fund will be sent a Notice of Default. Failure to comply with the requirements of MRPC 19-602 et seq. may lead to temporary suspension. MRPC 19-605.

XXXVIII. Maryland Rule 19-802. Attorney Information System.

Each attorney who is admitted to the Maryland bar or otherwise permitted to practice law in Maryland is required to register with the Attorney Information System (AIS). Exceptions exist for certain inactive, suspended, and retired attorneys and judges; for pro hac vice attorneys, and for certain specially authorized legal services attorneys. New attorneys must register within 30 days

of becoming admitted to the Maryland bar. Transactions related to pro bono and IOLTA reporting and payment of CPF assessments are conducted through AIS.