

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

AGENDA FOR
RULES COMMITTEE MEETING

January 5, 2018
(Friday)

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

- Item 1. Consideration of proposed amendments to: Judge Wilner
Rule 2-541 (Magistrates)
Rule 2-542 (Examiners)
Rule 2-543 (Auditors)
Rule 9-208 (Referral of Matters to
Magistrates)
- Item 2. Consideration of proposed amendments to Judge Wilner
Rule 16-306 (Special Inactive Pretrial
Docket for Asbestos Actions) and proposed
new Rule 16-306.1 (Special Inactive
Bankruptcy Docket for Asbestos Actions)
- Item 3. Consideration of proposed amendments to Judge Wilner
Rule 20-106 (When Electronic Filing
Required; Exceptions)
- Item 4. Consideration of proposed amendments to: Mr. Frederick
Rule 19-105 (Confidentiality)
Rule 19-212 (Eligibility of Out-of-State
Attorneys for Admission by Attorney
Examination)

Rule 17-206 (Qualifications of Court-
Designated ADR Practitioners Other than
Mediators)

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| Item 5. | Consideration of proposed amendments to
Rule 19-726 (Discovery) | Mr. Frederick |
| Item 6. | Reconsideration of proposed amendments to
Rule 19-304.4 (Respect for Rights of
Third Persons) | Mr. Frederick |

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

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

Rule 2-541. MAGISTRATES

(a) Appointment - Compensation

(1) Standing Magistrate

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

(2) Special Magistrate

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

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

(3) Officer of the Court

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

. . .

(i) Costs

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

. . .

REPORTER'S NOTE

Two amendments to Rule 2-541 are proposed.

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

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

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

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

Rule 2-542. EXAMINERS

(a) Appointment - Compensation

(1) Standing Examiner

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

(2) Special Examiner

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

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

(3) Officer of the Court

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

(b) Referral by Order

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

. . .

(i) Costs

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

. . .

REPORTER'S NOTE

Three amendments to Rule 2-542 are proposed.

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

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

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

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

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

Rule 2-543. AUDITORS

(a) Appointment - Compensation

(1) Standing Auditor

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

(2) Special Auditor

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

(3) Officer of the Court

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

. . .

(i) Costs

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

. . .

REPORTER'S NOTE

Two amendments to Rule 2-543 are proposed.

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

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

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

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

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

Rule 9-208. REFERRAL OF MATTERS TO MAGISTRATES

(a) Referral

(1) As of Course

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

(A) uncontested divorce, annulment, or alimony;

(B) alimony pendente lite;

(C) child support pendente lite;

(D) support of dependents;

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

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

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

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

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

(J) stay of an earnings withholding order; and

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

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

(2) By Order on Agreement of the Parties

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

. . .

(j) Costs

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

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

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

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

REPORTER'S NOTE

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

MARYLAND RULES OF PROCEDURE
TITLE 16 - COURT ADMINISTRATION
CHAPTER 300 - CIRCUIT COURTS - ADMINISTRATION AND
CASE MANAGEMENT

AMEND Rule 16-306 by renaming the special docket for asbestos cases to the special inactive pretrial docket for asbestos actions ("SIPD"); by substituting the word "action" for the word "case" throughout, including plurals; by revising in subsection (c)(3) the process for re-transferring an action to the court in which it was originally filed after the action's removal from the SIPD; and by making a stylistic change in the Committee note following section (e), as follows:

Rule 16-306. SPECIAL INACTIVE PRETRIAL DOCKET FOR ASBESTOS
~~CASES~~ ACTIONS

(a) Definition

In this Rule, 7:

(1) Asbestos Action

"Asbestos ~~case~~ action" means an action seeking money damages for personal injury or death allegedly caused by exposure to asbestos or products containing asbestos. It does not include an action seeking principally equitable relief or seeking principally damages for injury to property or for

removal of asbestos or products containing asbestos from property.

(2) SIPD

"SIPD" means the special inactive pretrial docket established pursuant to this Rule.

(b) Special Inactive Pretrial Docket

The Administrative Judge of the Circuit Court for Baltimore City may establish and maintain a special inactive pretrial docket (SIPD) for asbestos ~~eases~~ actions filed in or transferred to that court. The order:

(1) shall specify the criteria and procedures for placement of an asbestos ~~ease~~ action on the ~~inactive docket~~ SIPD and for removal of a ~~case~~ such an action from ~~the~~ that docket;

(2) may permit an asbestos ~~ease~~ action meeting the criteria for placement on the SIPD ~~inactive docket~~ to be placed on that docket at any time prior to trial; and

(3) with respect to any ~~ease~~ action placed on the SIPD ~~inactive docket~~, may stay the time for filing responses to the complaint, discovery, and other proceedings until the ~~ease~~ action is removed from the docket.

(c) Transfer of Cases Actions from Other Counties

(1) The Circuit Administrative Judge for any other judicial circuit, by order, may:

(A) adopt the criteria established in an order entered by the Administrative Judge of the Circuit Court for Baltimore City

pursuant to section (b) of this Rule for placement of an asbestos ~~ease~~ action on the ~~inactive docket~~ SIPD for asbestos ~~eases~~ actions;

(B) provide for the transfer to the Circuit Court for Baltimore City, for placement on the ~~inactive docket~~ SIPD, of any asbestos ~~ease~~ action filed in a circuit court in that other circuit for which venue would lie in Baltimore City; and

(C) establish procedures for the prompt disposition in the circuit court where the action was filed of any dispute as to whether venue would lie in Baltimore City.

(2) If an action is transferred pursuant to this Rule, the clerk of the circuit court where the action was filed shall transmit the record to the clerk of the Circuit Court for Baltimore City, and, except as provided in subsection (c)(3) of this Rule, the action shall thereafter proceed as if initially filed in the Circuit Court for Baltimore City.

(3) ~~Unless otherwise ordered by the Circuit Court, any action transferred pursuant to section (c) of this Rule, upon removal from the inactive docket, shall be re-transferred~~ Upon removal of an action from the SIPD, the Administrative Judge of the Circuit Court for Baltimore City, with the concurrence of the County Administrative Judge of the circuit court in which the action originally was filed, may re-transfer the action to the circuit court in which it was originally filed and all further proceedings shall take place in that court.

(d) Exemption from Rule 2-507

Any action placed on the SIPD ~~an inactive docket~~ pursuant to this Rule shall not be subject to Rule 2-507 until the action is removed from that docket.

(e) Effect on Rule 2-327 (d)

To the extent of any inconsistency with Rule 2-327 (d), this Rule shall prevail.

Committee note: Section (e) of this Rule does not preclude a transfer under Rule 2-327 upon ~~re-transfer~~ re-transfer of an action under subsection (c)(3) of this Rule.

(f) Applicability of Rule

This Rule shall apply only to actions filed on or after December 8, 1992.

Source: This Rule is derived from former Rule 16-203 (2016).

REPORTER'S NOTE

Amendments to Rule 16-306 and proposed Rule 16-306.1 were requested by the Circuit Court for Baltimore City, which oversees the majority of asbestos actions in the State, including some actions originally filed in other circuit courts. Rule 16-306 and new Rule 16-306.1 recognize the unique nature of asbestos actions, including a plaintiff's need to file an action to preserve a claim before active litigation is ripe, as well as the fluid status of defendants that are in bankruptcy or leaving bankruptcy.

Proposed amendments to Rule 16-306 (a) and (b) rename the docket established by this Rule to the special inactive pretrial docket for asbestos actions ("SIPD"). This change is necessary for clarification, in light of the new docket proposed by Rule 16-306.1.

The word "action" is substituted for the word "case" throughout the Rule, including plural forms. Action is a broader term encompassing "all the steps by which a party seeks to enforce any right in a court." See Rule 1-202.

Subsection (c)(3) revises the process for re-transferring an action to the circuit court in which it was originally filed once it has been removed from the SIPD. The amendment provides that the Administrative Judge of the Circuit Court for Baltimore City may re-transfer an action to its original venue, with the concurrence of the County Administrative Judge of the circuit court in which it was originally filed, after the action is removed from the SIPD.

A stylistic change is made to the Committee note following section (e).

MARYLAND RULES OF PROCEDURE
TITLE 16 - COURT ADMINISTRATION
CHAPTER 300 - CIRCUIT COURTS - ADMINISTRATION AND
CASE MANAGEMENT

ADD new Rule 16-306.1, as follows:

Rule 16-306.1. SPECIAL INACTIVE BANKRUPTCY DOCKET FOR ASBESTOS
ACTIONS

(a) Definitions

In this Rule, the following definitions apply except as expressly otherwise provided or as necessary implication requires:

(1) Asbestos Action

"Asbestos action" has the meaning set forth in Rule 16-306 (a);

(2) Bankrupt Defendant

"Bankrupt defendant" means a defendant in an asbestos action who is in bankruptcy and, as a result, is subject to the protection of a stay of proceedings under 11 U.S.C. §362 or by order of the Bankruptcy Court.

(3) SIBD

"SIBD" means the special inactive bankruptcy docket created pursuant to this Rule.

(b) Applicability

This Rule applies only to asbestos actions in which (1) all claims by all plaintiffs against all non-bankrupt defendants and all claims by non-bankrupt defendants against other non-bankrupt defendants have been fully resolved or abandoned and, (2) but for open claims by or against a bankrupt defendant, final judgment could be entered with respect to the plaintiffs' claims against the non-bankrupt defendants and claims by non-bankrupt defendants against other non-bankrupt defendants.

(c) Notice of Resolution

(1) Any party to an asbestos action who has reason to believe that the action falls within the ambit of this Rule may file a Notice of Resolution.

(2) To the extent feasible, the Notice shall

(A) include an affirmation by counsel that all claims by all plaintiffs against all non-bankrupt defendants and all claims by non-bankrupt defendants against other non-bankrupt defendants have been, or pursuant to section (e) of this Rule, will be, fully resolved, and

(B) identify all bankrupt defendants by or against whom claims are still pending but cannot be adjudicated because proceedings against those defendants are stayed under Federal bankruptcy law.

(3) The Notice shall be served on all other parties, other than a bankrupt defendant, in accordance with the procedures for service applicable to asbestos actions.

(4) Upon the filing of a Notice of Resolution, the Administrative Judge may cancel or postpone any pending events in the action that may be unnecessary in light of the Notice.

(d) Objection

Any party may contest the Notice of Resolution by filing and serving on all other parties, other than a bankrupt defendant, an objection within 15 days after service of the Notice. If an objection is filed, the court, after an opportunity for a hearing if one is requested, shall determine whether the Notice is valid and further proceedings under section (e) of this Rule should occur.

(e) Ruling; Severance; Transfer

(1) If the court concludes that an objection has merit and that the action does not fall within the ambit of this Rule, the court shall reject the Notice and state the basis for the rejection.

(2) If no objection to the Notice is timely filed or if, upon the filing of an objection, the court determines that the objection is without merit, the court may (A) cancel pending events in the action, (B) sever all claims by or against the bankrupt defendants and transfer those claims to the SIBD created pursuant to section (f) of this Rule, and (C) enter appropriate judgments with respect to all existing claims (i) by all plaintiffs against all non-bankrupt defendants and (ii) by

all non-bankrupt defendants against other non-bankrupt defendants [or against any of the plaintiffs].

(f) Creation of Special Inactive Bankruptcy Docket (SIBD)

(1) By administrative order, the Administrative Judge of the Circuit Court for Baltimore City shall establish a Special Inactive Bankruptcy Docket for Asbestos Actions (SIBD) in accordance with this Rule. The docket shall consist of all claims severed and transferred to it pursuant to section (e) of this Rule.

(2) The severance and transfer of claims to the SIBD shall not affect the substantive status or validity of any claim by or against the bankrupt defendant or any defense to such a claim, whether existing at the time of severance and transfer or filed or raised upon termination of the bankruptcy stay. The purpose of the severance and transfer is solely to permit judgments to be entered on resolved claims against the non-bankrupt defendants.

(3) The plaintiffs are responsible for monitoring periodically the status of the bankruptcy actions and notifying the court upon (A) any lifting of a stay that would permit the action to proceed against the bankrupt defendant or successor that emerges from the bankruptcy, or (B) a discharge or other resolution in the bankruptcy proceeding that would permanently preclude any relief in the circuit court against that defendant or successor. Upon the lifting of a stay or upon a permanent

preclusion of relief in the circuit court against all bankrupt defendants and their successors, the action shall be removed from the SIBD in accordance with an appropriate order of the Administrative Judge or a designee of that judge.

(4) Because no proceedings are permissible with respect to any claims by or against a bankrupt defendant while the bankruptcy stay is in effect, actions on the SIBD shall not be subject to Rule 2-507 and shall be deemed to be administratively closed for statistical purposes, including any otherwise applicable time standards, subject to being reopened upon removal from that docket.

Source: This Rule is new.

REPORTER'S NOTE

Amendments to Rule 16-306 and proposed Rule 16-306.1 were requested by the Circuit Court for Baltimore City, which oversees the majority of asbestos actions in the State, including some actions originally filed in other circuit courts. Rule 16-306 and new Rule 16-306.1 recognize the unique nature of asbestos actions, including a plaintiff's need to file an action to preserve a claim before active litigation is ripe, as well as the fluid status of defendants that are in bankruptcy or leaving bankruptcy.

Statistically, thousands of open asbestos actions in the Circuit Court for Baltimore City, as well as other circuit courts, have some claims, but not all, litigated to finality. Those actions, however, cannot be closed because of other claims that are stayed against defendants in bankruptcy—itsself a lengthy process that may take years. The proposed Rules changes seek to address the need to close claims that are fully litigated, while preserving the ability of a plaintiff to proceed in the future on other claims against defendants currently in bankruptcy.

Proposed Rule 16-306.1 establishes a special inactive bankruptcy docket for asbestos actions ("SIBD"). This docket permits a court to sever claims in an action, closing those that have been litigated to finality and placing those stayed under federal bankruptcy law on a special inactive docket that is not subject to Rule 2-507.

Section (a) defines terms used in the Rule.

Section (b) specifies the actions to which the Rule applies. Those actions must have all claims by all plaintiffs against all non-bankrupt defendants, and all claims by non-bankrupt defendants against other non-bankrupt defendants, fully resolved or abandoned, with the only open claims being those by or against a bankrupt defendant.

Section (c) permits any party to an asbestos action who believes that this Rule applies to the action to file a Notice of Resolution. The Notice must include, to the extent feasible, an affirmation by counsel of the fully resolved status of all claims by or against all parties that are not in bankruptcy and an identification of the bankrupt defendants by or against whom claims cannot be adjudicated. The Notice must be served on all other parties, other than a bankrupt defendant. Once the Notice is filed, the Administrative Judge may cancel or postpone pending events in the action that are unnecessary in light of the Notice.

Section (d) permits any party who wishes to contest the Notice of Resolution to do so by filing an objection and serving it on all other parties, except bankrupt defendants. After an opportunity for a hearing, if one is requested, the court determines whether the Notice is valid.

If the court determines that an objection under section (d) has merit and an action does not fall within the ambit of Rule 16-306.1, the court must reject, under section (e), the Notice of Resolution and state its basis for doing so. If there is no objection to a Notice, or the court determines that any objection is without merit, the court may proceed with the cancellation of any pending events in the action, sever all claims by or against bankrupt defendants and transfer those claims to the SIBD, and enter appropriate judgments in the fully litigated claims.

Subsection (f)(1) requires the Administrative Judge of the Circuit Court for Baltimore City to establish the SIBD by administrative order. Subsection (f)(2) states that the severance and transfer of claims to the SIBD does not affect the

substantive status or validity of any claim by or against a bankrupt defendant. Under subsection (f)(3), plaintiffs are responsible for monitoring the status of bankruptcy actions and updating the court if a relevant stay is lifted or a discharge or other final resolution occurs in a defendant's bankruptcy proceeding. Upon the lifting of a stay or permanent preclusion of relief in the circuit court against all bankrupt defendants and their successors, the action shall be removed from the SIBD by order of the Administrative Judge or a designee. Finally, subsection (f)(4) affirms that actions on the SIBD are not subject to Rule 2-507 because no proceedings are permissible with respect to any claims by or against a bankrupt defendant while a bankruptcy stay is in effect.

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 20-106 by adding a Committee note following subsection (a)(1)(A), by providing an alternative method of handling of a paper document offered in open court by a registered user for inclusion in the record but not as an exhibit, and by making stylistic changes, as follows:

Rule 20-106. WHEN ELECTRONIC FILING REQUIRED; EXCEPTIONS

. . .

(e) Exhibits and Other Documents Offered in Open Court

(1) Generally Exhibits

(A) Generally

Unless otherwise approved by the court, a document offered into evidence ~~or otherwise for inclusion in the record~~ in open court shall be offered in paper form. ~~If the document is offered as an exhibit, it~~ The document shall be appropriately marked.

Committee note: In a document-laden action, if practicable, the court and the parties are encouraged to agree to electronically prefiling documents to be offered into evidence, instead of offering them in paper form.

~~(2)~~ (B) Scanning and Return of Document

As soon as practicable, the clerk shall scan the document into the MDEC system and return the document to the

party who offered it at the conclusion of the proceeding, unless the court orders otherwise. If immediate scanning is not feasible, the clerk shall scan the document as soon as practicable and notify the person who offered it when and where the document may be retrieved.

(2) Documents Other than Exhibits

(A) Generally

Except as otherwise provided in subsection (e)(2)(B) of this Rule, if a document in paper form is offered in open court for inclusion in the record, but not as an exhibit, the court shall accept the document, and the clerk shall follow the procedure set forth in subsection (e)(1)(B) of this Rule.

(B) If Offered by Registered User

If a registered user offers a document in open court for inclusion in the record, but not as an exhibit, the court may accept the document conditionally subject to it being electronically filed by the registered user before the end of the day. If the registered user fails to file by the end of the day, the court may strike the document.

Committee note: Examples of documents other than exhibits offered for inclusion in the record are written motions made in open court, proposed voir dire questions, proposed jury instructions, communications from a jury, and special verdict sheets.

Source: This Rule is new.

REPORTER'S NOTE

Under current Rule 20-106 (e), all documents in paper form offered in open court for inclusion in the record are scanned into the MDEC system by the clerk. Scanning backlogs can develop, especially when large, nonevidentiary documents are submitted. Additionally, the current practice is problematic when a fee is attendant to the filing or when service on a party not present in court is required.

To address these concerns, proposed amendments to the Rule give the court an alternative method of handling a paper document offered by a registered user in open court for inclusion in the record, but not as an exhibit. In that situation, the court may either follow the current procedure, or conditionally accept the document and require that the registered user electronically file it before the end of the day.

A Committee note is added following subsection (e)(1)(A), encouraging the parties and the court to agree to the electronic prefiling of documents to be offered into evidence.

Additionally, stylistic changes are made.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

STATE BOARD OF LAW EXAMINERS AND CHARACTER COMMITTEES

AMEND Rule 19-105 to change the term "Law School Admission Council number" to "NCBE number," as follows:

Rule 19-105. CONFIDENTIALITY

. . .

(c) When Disclosure Authorized

The Board may disclose:

. . .

(9) to the National Conference of Bar Examiners, the following information regarding individuals who have filed applications for admission pursuant to Rule 19-202 or petitions to take the attorney's examination pursuant to Rule 19-213: the applicant's name and any aliases, applicant number, birthdate, ~~Law School Admission Council number~~ NCBE number, law school, date that a juris doctor or equivalent degree was conferred, bar examination results and pass/fail status, and the number of bar examination attempts;

. . .

REPORTER'S NOTE

The Attorneys and Judges Subcommittee is advised that the term "Law School Admission Council Number" is obsolete. A proposed amendment to Rule 19-105 replaces the obsolete term with the current term, "NCBE number."

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 200 - ADMISSION TO THE BAR

AMEND Rule 19-212 by replacing the word "accredited" with the word "approved" in subsection (a)(1) and section (b), as follows:

Rule 19-212. ELIGIBILITY OF OUT-OF-STATE ATTORNEYS FOR ADMISSION BY ATTORNEY EXAMINATION

(a) Generally

An individual is eligible for admission to the Bar of this State under this Rule if the individual:

- (1) is a member in good standing of the Bar of a state;
- (2) has passed a written bar examination in a state or is admitted to a state bar by diploma privilege after graduating from a law school ~~accredited~~ approved by the American Bar Association;
- (3) has the professional experience required by this Rule;
- (4) successfully completes the attorney examination prescribed by Rule 19-213; and
- (5) possesses the good moral character and fitness necessary for the practice of law.

(b) Required Professional Experience

The professional experience required for admission under this Rule shall be on a full time basis as (1) a practitioner of law as provided in section (c) of this Rule; (2) a teacher of law at a law school ~~accredited~~ approved by the American Bar Association; (3) a judge of a court of record in a state; or (4) a combination thereof.

. . .

REPORTER'S NOTE

The Attorneys and Judges Subcommittee is advised that the American Bar Association no longer "accredits" law schools; rather, it currently "approves" them. Proposed amendments to Rule 19-212 (a)(2) and (b) conform the Rule to the current terminology.

MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 200 - PROCEEDINGS IN CIRCUIT COURT

AMEND Rule 17-206 by replacing the word "accredited" with the word "approved" in subsection (a)(4), as follows:

Rule 17-206. QUALIFICATIONS OF COURT-DESIGNATED ADR PRACTITIONERS OTHER THAN MEDIATORS

(a) Generally

Except as provided in section (b) of this Rule, an ADR practitioner designated by the court to conduct ADR other than mediation shall, unless the parties agree otherwise:

(1) abide by any applicable standards adopted by the Court of Appeals;

(2) submit to periodic monitoring of court-ordered ADR proceedings by a qualified person designated by the county administrative judge;

(3) comply with procedures and requirements prescribed in the court's case management plan filed under Rule 16-302 (b) relating to diligence, quality assurance, and a willingness, upon request by the court, to accept a reasonable number of referrals at a reduced-fee or pro bono;

(4) either (A) be a member in good standing of the Maryland bar and have at least five years experience as (i) a judge, (ii)

a practitioner in the active practice of law, (iii) a full-time teacher of law at a law school ~~accredited~~ approved by the American Bar Association, or (iv) a Federal or Maryland administrative law judge, or (B) have equivalent or specialized knowledge and experience in dealing with the issues in dispute; and

(5) have completed any training program required by the court.

. . .

REPORTER'S NOTE

The Attorneys and Judges Subcommittee is advised that the American Bar Association no longer "accredits" law schools; rather, it currently "approves" them. A proposed amendment to Rule 17-206 (a)(4) conforms the Rule to the current terminology.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

AMEND Rule 19-726 by designating the existing Rule language as section (a) and by adding a new section (b) to provide that the Attorney Grievance Commission is not subject to an organizational designee deposition in an attorney disciplinary matter, as follows:

Rule 19-726. DISCOVERY

(a) Except as provided in section (b) of this Rule, After after a Petition for Disciplinary or Remedial Action has been filed, discovery is governed by Title 2, Chapter 400, subject to any scheduling order entered pursuant to Rule 19-722.

(b) The Attorney Grievance Commission shall not be subject to an organizational designee deposition, pursuant to Rule 2-412 (d), in an attorney disciplinary matter.

Source: This Rule is in part derived from former Rule 16-756 (2016) and in part new.

REPORTER'S NOTE

The Attorneys and Judges Subcommittee was advised that the Attorney Grievance Commission ("AGC") has been the subject of organizational designee deposition subpoenas issued pursuant to Rule 2-412 (d). Bar Counsel and the Office of the Attorney General have moved to quash such subpoenas and sought protective orders from the circuit courts for privileged and confidential

materials of the AGC, including attorney-client communications and attorney work product.

The AGC requested a Rule change in response to its receipt of organizational designee deposition subpoenas, citing the negative impact the subpoenas have had on the AGC's resources, the accelerated schedule of attorney disciplinary cases, and the absence of relevant, case-specific knowledge of non-privileged information on the part of the organizational designee. In opposition to the AGC's request, some attorneys expressed the view that a fact-based motions practice, with a case-by-case determination, is preferable to a blanket prohibition.

In considering the AGC's request and the opposition to it, the Attorneys and Judges Subcommittee noted that nothing in the proposed amendment prevents an individual from being deposed, as a witness or a non-party witness, as appropriate. The Subcommittee, therefore, recommends an amendment to Rule 19-726 stating that the Attorney Grievance Commission is not subject to the organizational designee deposition provision contained in Rule 2-412 (d).

194th Report - proposed amendments (deferred)
(with additional proposed cross reference
in boldface type)

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-304.4 by adding a new section (c) pertaining to obtaining information from third parties, by adding a Committee note **and a cross reference** following section (c), and by adding a new Comment [4], as follows:

Rule 19-304.4. RESPECT FOR RIGHTS OF THIRD PERSONS (4.4)

(a) In representing a client, an attorney shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that the attorney knows violate the legal rights of such a person.

(b) An attorney who receives a document, electronically stored information, or other property relating to the representation of the attorney's client and knows or reasonably should know that the document, electronically stored information, or other property was inadvertently sent shall promptly notify the sender.

(c) In communicating with third persons, an attorney

representing a client in a matter shall not seek information relating to the matter that the attorney knows or reasonably should know is protected from disclosure by statute or by an established evidentiary privilege, unless the protection has been waived. An attorney who receives information that is protected from disclosure shall (1) terminate the communication immediately and (2) give notice of the disclosure to any tribunal in which the matter is pending and to the person entitled to enforce the protection against disclosure.

Committee note: If the person entitled to enforce the protection against disclosure is represented by an attorney, the notice required by this Rule shall be given to the person's attorney. See Rules 1-331 and 19-304.2 (4.2).

Cross reference: To compare generally the duties of a party who receives inadvertently sent materials during discovery in a civil action in a circuit court, see Rule 2-402. See also Rules 2-510 and 2-510.1 to compare the duties of a party who receives inadvertently sent materials in answer to a subpoena.

COMMENT

[1] Responsibility to a client requires an attorney to subordinate the interests of others to those of the client, but that responsibility does not imply that an attorney may disregard the rights of third persons. It is impractical to catalogue all such rights, but they include legal restrictions on methods of obtaining evidence from third persons and unwarranted intrusions into privileged relationships, such as the client-attorney relationship.

[2] Section (b) recognizes that attorneys sometimes receive a document, electronically stored information, or other property that was inadvertently sent or produced by opposing parties or their attorneys. A document, electronically stored information, or other property is inadvertently sent when it is accidentally

transmitted, such as when an email or letter is misaddressed or a document, electronically stored information, or other property is accidentally included with information that was intentionally transmitted. If an attorney knows or reasonably should know that such a document, electronically stored information, or other property was sent inadvertently, this Rule requires the attorney promptly to notify the sender in order to permit that person to take protective measures. Whether the attorney is required to take additional steps, such as returning the document, electronically stored information, or other property, is a matter of law beyond the scope of these Rules, as is the question of whether the privileged status of a document, electronically stored information, or other property has been waived. Similarly, this Rule does not address the legal duties of an attorney who receives a document, electronically stored information, or other property that the attorney knows or reasonably should know may have been inappropriately obtained by the sending person. For purposes of this Rule, "document, electronically stored information, or other property" includes, in addition to paper documents, email and other forms of electronically stored information, including embedded data (commonly referred to as "metadata"), that is subject to being read or put into readable form. Metadata in electronic documents creates an obligation under this Rule only if the receiving attorney knows or reasonably should know that the metadata was inadvertently sent to the receiving attorney.

[3] Some attorneys may choose to return a document or delete electronically stored information unread, for example, when the attorney learns before receiving it that it was inadvertently sent. Where an attorney is not required by applicable law to do so, the decision to voluntarily return such a document or delete electronically stored information is a matter of professional judgment ordinarily reserved to the attorney. See Rules 19-301.2 and 19-301.4.

[4] Third persons may possess information that is confidential to another person under an evidentiary privilege or under a law providing specific confidentiality protection, such as trademark, copyright, or patent law. For example, present or former organizational employees or agents may have information that is protected as a privileged attorney-client communication or as work product. An attorney may not knowingly seek to obtain confidential information from a person who has no authority to waive the privilege. Regarding current employees of a represented organization, see also Rule 19-304.2 (4.2).

Model Rules Comparison. - Sections (a) and (b) of Rule 19-304.4 ~~is~~ are substantially similar to the language of Model Rule 4.4 of the Ethics 2000 amendments to the ABA Model Rules of Professional Conduct. Section (c) substantially restores to the Rule Maryland language as it existed prior to a 2017 amendment.

REPORTER'S NOTE

Amendments to Rule 19-304.4, effective April 1, 2017, conformed it to Model Rule 4.4 of the Ethics 2000 amendments to the ABA Model Rules of Professional Conduct. The amendments deleted language from former section (b) that addressed certain responsibilities of an attorney when obtaining information from third persons, without adding comparable language elsewhere.

Proposed amendments to Rule 19-304.4 substantially restore the deleted language by adding a new section (c), a Committee note following section (c), and Comment [4].

Additionally, a cross reference to Rules 2-402, 2-510, and 2-510.1 is added following the new Committee note.

A conforming amendment to Rule 19-304.2 also is proposed.