

IN THE COURT OF APPEALS OF MARYLAND

R U L E S O R D E R

This Court's Standing Committee on Rules of Practice and Procedure having submitted its Two Hundred and Tenth Report to the Court, recommending adoption, on an expedited basis, of proposed amendments to current Rules 19-726 and 2-412;

This Court having considered the proposed Rules changes, together with comments received, at an open meeting, notice of which was posted as prescribed by law, making on its own motion certain amendments to the proposed changes, and finding that exigent circumstances exist with respect to the effective date of the proposed changes, it is this 11th day of May, 2022,

ORDERED, by the Court of Appeals of Maryland, that amendments to Rules 19-726 and 2-412 be, and they are hereby, adopted in the form attached to this Order; and it is further

ORDERED that the Rules changes hereby adopted by this Court shall govern the courts of this State and all parties and their attorneys in all actions and proceedings, and shall take effect and apply to all actions commenced on or after May 11, 2022 and,

insofar as practicable, to all actions then pending; and it is further

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

/s/ Matthew J. Fader
Matthew J. Fader

/s/ Shirley M. Watts
Shirley M. Watts

/s/ Michele D. Hotten
Michele D. Hotten

/s/ Brynja M. Booth
Brynja M. Booth

/s/ Jonathan Biran
Jonathan Biran

/s/ Steven B. Gould
Steven B. Gould

/s/ Angela M. Eaves
Angela M. Eaves

Filed: May 11, 2022

/s/ Suzanne C. Johnson
Clerk

Court of Appeals of Maryland

Pursuant to Maryland Uniform Electronic Legal
Materials Act
(§§ 10-1601 et seq. of the State Government Article) this document is authentic.



Suzanne C. Johnson, Clerk

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 3 - PROCEEDINGS ON PETITION FOR

DISCIPLINARY OR REMEDIAL ACTION

AMEND Rule 19-726 by lettering the preamble before current section (a) as new section (a); by deleting certain language from new subsection (a)(1) and replacing it with a provision pertaining to the applicability of the Rules in Title 2, Chapter 400 to disciplinary and remedial actions; by adding new subsection (a)(2), which identifies the parties for the purposes of this Rule; by adding new subsection (a)(3) pertaining to the obligation of the parties to respond to each other's discovery requests; by adding new subsection (a)(4) pertaining to the continuing obligation of the parties to supplement information disclosed under this Rule; by adding new subsection (a)(5) pertaining to consequences for a party's failure to disclose under this Rule; by re-lettering current section (a) as section (b) and revising the tagline; by replacing the word "inspection" in section (b) with the word "disclosure"; by re-lettering current section (b) as section (c); by changing the reference to section (a) in section (c) to section (b); by re-lettering current subsection (c)(1) as section (d) and revising the timing of disclosure of witnesses by Bar Counsel and the attorney; by

deleting current subsection (c) (2); by deleting current subsection (d) (1); by re-lettering current subsection (d) (2) as subsection (e) (1); by adding new subsection (e) (2) pertaining to medical or psychological examinations; by deleting current subsection (e) (1); by re-lettering current subsection (e) (2) as section (f) and revising the tagline; by replacing the words "may not be" with "is not" and adding the words "or remedial" in new section (f); by adding a Committee note following section (f) pertaining to depositions of Bar Counsel, individual members of the Office of Bar Counsel, individual members of the Attorney Grievance Commission, and other persons; by deleting current section (f); and by adding a provision to section (g) pertaining to the authority of the presiding circuit court judge appointed pursuant to Rule 19-722, as follows:

Rule 19-726. DISCOVERY

(a) Generally

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

~~(a) Discovery from Bar Counsel~~

(2) For purposes of this Rule, the parties are Bar Counsel and the attorney against whom charges have been filed.

(3) Bar Counsel and the attorney have the obligation to respond to the other's discovery requests addressed to them.

(4) Bar Counsel and the attorney have a continuing duty to supplement information required to be disclosed under this Rule.

(5) The judge appointed pursuant to Rule 19-722 shall preclude a party from calling a witness, other than a rebuttal witness, or otherwise presenting evidence upon a finding, after the opportunity for a hearing if one is requested, that (A) the witness or evidence was subject to disclosure under this Rule, (B) the party, without substantial justification, failed to disclose the witness or evidence in a timely manner, and (C) the failure was prejudicial to the other party.

(b) Disclosure by Bar Counsel upon Written Request

After an Answer has been filed pursuant to Rule 19-724 and within 30 days after a written request from the attorney, Bar Counsel shall (1) provide the attorney with a copy of all material and information accumulated during the investigation and statements as defined in Rule 2-402 (f), (2) provide summaries or reports of all oral statements for which contemporaneously recorded substantially verbatim recitals do not exist, and (3) certify to the attorney in writing that, except for material that constitutes attorney work product or

that is subject to a lawful privilege or protective order issued by the circuit court, the material disclosed constitutes the complete record of Bar Counsel as of the date of ~~inspection~~ disclosure.

~~(b)~~ (c) Exculpatory Information

Whether as part of the disclosure pursuant to section ~~(a)~~ (b) of this Rule or otherwise, no later than 30 days following the filing of an Answer, Bar Counsel shall disclose to the attorney all statements and other evidence of which Bar Counsel is aware that (1) directly negate any allegation in the Petition, (2) would be admissible to impeach a witness intended to be called by Bar Counsel, or (3) would be admissible to mitigate any sanction.

~~(e)~~ (d) Witnesses

~~(1)~~ Fact Witnesses

No later than ~~15 days after the filing of an Answer~~ 45 days prior to the scheduled hearing, Bar Counsel shall provide to the attorney the names and addresses of all persons, other than a rebuttal witness, Bar Counsel intends to call at the hearing. No later than ~~35 days after the filing of an Answer~~ 30 days prior to the scheduled hearing, the attorney shall provide to Bar Counsel the names and addresses of all persons, other than a rebuttal witness, the attorney intends to call at the hearing.

~~(2) Expert Witnesses~~

~~—The designation of expert witnesses is governed by Title 5, Chapter 700.~~

~~(d) Other Discovery from the Attorney~~

~~(1) Bar Counsel may serve interrogatories, requests for production of documents, electronically stored information and property, requests for admission of facts and genuineness of documents, and request for mental or physical evaluations of the attorney pursuant to Title 2, Chapter 400.~~

~~(2) (e) Waiver of Medical Privilege; Medical or Psychological Examination~~

(1) The assertion by an attorney of the existence of a mental or physical condition or an addiction, as a defense to or in mitigation of a charge of misconduct, or the non-existence of a mental or physical condition or an addiction, as a defense to a charge against the attorney constitutes a waiver of the attorney's medical privilege and permits Bar Counsel to obtain, by subpoena or other legitimate means, medical and psychological records of the attorney relevant to issues presented in the case.

(2) Medical or psychological examination of the attorney is governed by Rule 2-423.

~~(e) Depositions~~

~~(1) Except as provided in subsection (e) (2) of this Rule, depositions are governed by the Rules in Title 2, Chapter 400.~~

~~(2) (f) Depositions of the Attorney Grievance Commission~~

The Attorney Grievance Commission ~~may not be~~ is not subject to an organizational designee deposition, pursuant to Rule 2-412 (d), in an attorney disciplinary or remedial matter.

Committee note: Section (f) of this Rule does not preclude the deposition of other persons, including Bar Counsel, or individual members of the Office of Bar Counsel, or individual members of the Commission, in accordance with the Rules in Title 2, Chapter 400, subject to the substantive law applicable to taking a deposition of the person.

~~(f) Continuing Duty to Disclose~~

~~Bar Counsel and the attorney have a continuing duty to supplement promptly the information required to be disclosed under this Rule.~~

(g) Motions

All discovery motions are governed by Title 2, Chapter 400 and shall be determined by the judge appointed pursuant to Rule 19-722.

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

MARYLAND RULES OF PROCEDURE
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT
CHAPTER 400 - DISCOVERY

Amend Rule 2-412 (d) by making a stylistic change to the tagline, as follows:

RULE 2-412. DEPOSITION - NOTICE

. . .

(d) Designation of Person to Testify ~~for~~ on Behalf of an Organization

A party may in a notice and subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, managing agents, or other persons who will testify on its behalf regarding the matters described and may set forth the matters on which each person designated will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization.

. . .