COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Training Rooms 5 and 6 of the Judicial Education and Conference Center, 2011-D Commerce Park Drive, Annapolis, Maryland on October 7, 2011.

Members present:

Hon. Alan M. Wilner, Chair
Linda M. Schuett, Esq., Vice Chair

Robert R. Bowie, Esq.
James E. Carbine, Esq.
Hon. Joseph H. H. Kaplan
Hon. Thomas J. Love
Zakia Mahasa, Esq.
Timothy F. Maloney, Esq.
Robert R. Michael, Esq.
Scott G. Patterson, Esq.
Hon. W. Michel Pierson
Senator Norman R. Stone, Jr.
Steven M. Sullivan, Esq.
Melvin J. Sykes, Esq.
Hon. Julia B. Weatherly

In attendance:

Sandra F. Haines, Esq., Reporter
Sherie B. Libber, Esq., Assistant Reporter
Kara K. Lynch, Esq., Assistant Reporter
Pamela Cardullo Ortiz, Esq., Maryland Access to Justice Commission
Laurie Ruth, Esq., The Women's Law Center
Margaret H. Phipps, Register of Wills, Calvert County
Tyson P. Bennett, Esq.

The Chair convened the meeting. He told the Committee that he had two announcements. He was sorry to report the death of the father of Debbie Potter, a member of the Committee. Another announcement was that the Committee had possibly been bumped from the room scheduled for the November 18, 2011 meeting. They had been notified this morning that a graduation ceremony for judicial employees who had taken courses would be held on

November 18, 2011, and the entire building may be used for that. The Rules Committee Office had called Roxanne McKagan, who is the facilities manager. She seemed to think that this problem could be worked out. If it could not, she would find the Committee another room in which to meet.

Agenda Item 1. Reconsideration of proposed amendments to: Rule 10-202 (Certificates and Consents Required), Rule 6-122 (Petitions), Rule 6-125 (Service), Rule 10-203 (Service; Notice), Rule 6-443 (Meeting of Distributees and Distribution by Court), Rule 10-601 (Petition for Assumption of Jurisdiction - Person Whose Identity or Whereabouts is Unknown), Rule 10-402 (Petition by a Parent for Judicial Appointment or a Standby Guardian), Rule 10-403 (Petition by Standby Guardian for Judicial Appointment After Parental Designation), Rule 10-602 (Notice), Rule 6-416 (Attorney's Fees or Personal Representative's Commissions), Rule 10-111 (Petition for Guardianship of Minor), Rule 10-112 (Petition for Guardianship of Alleged Disabled Person), Rule 10-201 (Petition for Appointment of a Guardian Of the Person), and Rule 10-708 (Fiduciary's Account and Report of Trust Clerk)

Mr. Sykes presented Rule 10-202, Certificates and Consents Required, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 200 - GUARDIAN OF PERSON

AMEND Rule 10-202 by adding a new section pertaining to parental consents and by making stylistic changes, as follows:

Rule 10-202. CERTIFICATES <u>AND CONSENTS REQUIRED</u>

<u>(a) Certificates</u>

~~(a)~~ (1) Generally Required

Except as provided in section (d), if guardianship of the person of a disabled person is sought, the petitioner shall file with the petition signed and verified certificates of ~~(1)~~ (A) two physicians licensed to practice medicine in the United States who have examined the disabled person, or ~~(2)~~ (B) one licensed physician or who has examined the disabled person and one licensed psychologist or certified clinical social worker who has seen and evaluated the disabled person. An examination or evaluation by at least one of the health care professionals under this subsection shall occur within 21 days before the filing of the petition.

~~(b)~~ (2) Contents

Each certificate shall state: ~~(1)~~ (A) the name, address, and qualifications of the person who performed the examination or evaluation, ~~(2)~~ (B) a brief history of the person's involvement with the disabled person, ~~(3)~~ (C) the date of the last examination or evaluation of the disabled person, and ~~(4)~~ (D) the person's opinion as to: ~~(A)~~ (i) the cause, nature, extent, and probable duration of the disability, ~~(B)~~ (ii) whether institutional care is required, and ~~(C)~~ (iii) whether the disabled person has sufficient mental capacity to understand the nature of and consent to the appointment of a guardian.

~~(c)~~ (3) Delayed Filing of Certificates

~~(1)~~ (A) After Refusal to Permit Examination

If the petition is not accompanied by the required certificate and the petition alleges that the disabled person is residing with or under the control of a person who has refused to permit examination by a physician or evaluation by a psychologist or certified clinical social worker, and that the disabled person may be at risk unless a guardian is appointed, the court shall defer issuance of

a show cause order. The court shall instead issue an order requiring that the person who has refused to permit the disabled person to be examined or evaluated appear personally on a date specified in the order and show cause why the disabled person should not be examined or evaluated. The order shall be personally served on that person and on the disabled person.

~~(2)~~ (B) Appointment of Health Care Professionals by Court

If the court finds after a hearing that examinations are necessary, it shall appoint two physicians or one physician and one psychologist or certified clinical social worker to conduct the examinations or the examination and evaluation and file their reports with the court. If both health care professionals find the person to be disabled, the court shall issue a show cause order requiring the alleged disabled person to answer the petition for guardianship and shall require the petitioner to give notice pursuant to Rule 10-203. Otherwise, the petition shall be dismissed.

~~(d)~~ (4) Beneficiary of the Department of Veterans Affairs

If guardianship of the person of a disabled person who is a beneficiary of the United States Department of Veterans Affairs is being sought, the petitioner shall file with the petition, in lieu of the two certificates required by ~~section (a)~~ subsection (a)(1) of this Rule, a certificate of the Secretary of that Department or an authorized representative of the Secretary stating that the person has been rated as disabled by the Department in accordance with the laws and regulations governing the Department of Veterans Affairs. The certificate shall be prima facie evidence of the necessity for the appointment.

(b) Consent to Guardianship of a Minor

(1) Generally

If guardianship of the person of a minor child is sought, consent of the parent or parents shall be obtained. As a condition of approval of the petition, the parent or parents shall sign a form consenting to the guardianship. If parental consent is not available because the parent or parents cannot be located, the petitioner shall file an affidavit of attempts to locate filed in the form set forth in Rule 10-203. Otherwise, the petitioner shall state why the parent or parents' consent could not be obtained.

(2) Form of Parent's Consent to Guardianship

The parent's consent to guardianship of a minor shall be filed with the court in substantially the following form:

[CAPTION]

PARENT'S CONSENT TO GUARDIANSHIP OF A MINOR

I, _____, _____
(name of parent) (relationship)

of _____, a minor child, declare that:
(minor's name)

1. I am aware of the Petition of _____
(petitioner's name)

to become guardian of _____.
(minor's name)

2. I understand that the reason the guardianship is needed

is _____

_____

and this set of conditions is expected to end _____

_____.
(state time frame or date it is expected to end)

3. I feel that it is in the best interest of _____

_____ that the Petition for
(minor's name)

Guardianship be granted.

4. I understand that I have the right to revoke my consent at any time.

I do solemnly affirm under the penalties of perjury that the contents of the foregoing are true and correct to the best of my knowledge, information, and belief.

_____
Signature of Parent Date

_____

_____
Address

_____
Telephone Number

Cross reference: Code, Estates and Trusts Article, §13-705.
Rule 1-341.

Source: This Rule is in part derived from former Rule R73 b 1 and b 2 and is in part new.

Rule 10-202 was accompanied by the following Reporter's Note.

To ensure that parental consents are obtained when a guardianship of a minor has been filed, the Probate/Fiduciary Subcommittee recommended the addition of a form, "Consent to Guardianship of a Minor." This provision would require the filing of the form "Attempt to Locate," which has been proposed by the Subcommittee, when a parent cannot be located. The form was drafted by a

committee of registers of wills, Orphans' Court judges, and members of the bar and of the Estates and Trusts Section of the Maryland State Bar Association.

At the November 19, 2010 meeting of the Rules Committee, the Committee approved the form and directed that the reference to "Rule 1-305," which was not adopted, be conformed to the language in the other Rules that refer to an affidavit of attempts to locate.

Mr. Sykes told the Committee that he and the Chair had reviewed Rule 10-202 and concluded that it needs more work. The title of the Rule is "Certificates and Consents Required." Consent may be unavailable and may not be required, or a parent may refuse to consent. He suggested that the word "Required" be eliminated from the title. Subsection (a)(1) of Rule 10-202 addresses what is generally required with an exception. A consent needs to be filed with the petition. The last sentence requires an examination or evaluation by at least one health care professional, but the language "under this subsection" is not needed. He suggested that the words "shall occur" should be changed to the words "shall be made." These are all style changes.

The Vice Chair pointed out that the beginning language of subsection (a)(1) in Rule 10-202 is "[e]xcept as provided in section (d)...", but there is no longer a section (d). The correct reference is "subsection (a)(4)." By consensus, the Committee approved of this change. Master Mahasa asked about the word "or" in the language in subsection (a)(1) that reads "...one

licensed physician or who...". The Chair responded that the word "or" has to be deleted. The Reporter said that she would check to see if this referred to a physician or someone else. Either the word "or" comes out, or another individual has to be added.

Mr. Sykes said that the Chair had noted a problem in subsection (b)(1) of Rule 10-202. The Court of Appeals does not have the authority to tell a parent that he or she has to sign the consent. This is not procedural and is purely substantive. The Chair inquired if the Subcommittee had considered whether the guardian of the person of a minor could ever be appointed without parental consent, and if so, whether the guardian could be appointed if the parent objects. In either case, where an argument can be made that the child needs a guardian of the person, and a parent does not consent, would this become a juvenile court matter?

Mr. Sykes replied that both the circuit court and the Orphans' Court have jurisdiction. The Chair said that the juvenile court is under the circuit court. Can the Orphans' Court appoint a guardian of the person for a child where the parent objects or does not consent? Should this be a juvenile court issue as to whether the child is in need of assistance? Mr. Sykes responded that this is one of the consequences of the joint jurisdiction of the circuit court and the Orphans' Court. Under Code, Estates and Trusts Article, §13-105, the Orphans' Court can do what the circuit court can do as far as guardianship of the person of a child. The Chair noted that this involves a

minor child, and the parent does not consent to the guardianship.

Judge Weatherly commented that Prince George's County has a docket of cases involving disabled children born to drug-addicted parents. The Chair questioned whether this should be a pure guardianship matter or whether it should be a juvenile court matter. Master Mahasa answered that this is under the juvenile courts. The Reporter added that this would be on the Child in Need of Assistance (CINA) docket. The Chair commented that the Orphans' Court would not have a CINA docket.

Judge Weatherly remarked that she had heard a case involving the guardianship of a minor where the child was born severely handicapped, and the mentally retarded parent did not consent to the guardianship. The parent was not competent enough to consent. The Chair asked why someone would ever be appointed the guardian of a person of a newborn child. Judge Weatherly responded that some children have received money under a medical malpractice case. This would not be a newborn, because it takes time after the birth to determine the damages. The Chair inquired if this would be a guardian of the person or a guardian of the property. Judge Weatherly said that a guardian of the person and of the property may be appointed if the child has significant medical issues. There had not been a contested case until recently.

Master Mahasa asked whether this is on the CINA docket in Prince George's County as a parent who is not able to take care of a child. Judge Weatherly answered that this has always been a

guardianship matter. It may not be a guardian of the person for a long period of time, but the mother may have not been able to get the child to a physician or to take care of the child in other ways. The Chair commented that this is a classic CINA case. Master Mahasa agreed, noting that this is a parent who is unable to care for his or her child.

The Reporter asked if the proceeding pertaining to this person was blended into the guardianship of the property. Judge Weatherly responded that a family member came in and asked for a guardian of the person when the mother was unable to take her child to the physician and was not taking other actions to care for the child. The Department of Social Services (DSS) did not step in to take over. Master Mahasa said that sometimes the parent volunteers to give the child to a guardian. Judge Weatherly answered that in this case, it turned out not to be voluntary. The Chair remarked that he was not sure how this kind of case fits within the jurisdiction of the juvenile court. Usually, the juvenile court has already acted and declared the child as CINA. Would there need to be a guardian of the person of the child? Judge Weatherly noted that if something is filed in the Orphans' Court and the circuit court, the Orphans' Court case is transferred to the circuit court.

The Vice Chair pointed out that the consent form states that the person who is filing for guardianship of a minor has to get consent. However, it appears from the Rule that if no consent is obtained, then the matter is over. The Chair responded that the

Vice Chair was correct that Rule 10-202 is ambiguous. The person applying to be guardian would have to show why he or she did not get the consent. The Vice Chair asked why it would matter. The Chair noted that the Rule suggests that there may be a guardianship of the person without a consent of the parent. The Vice Chair commented that Rule 10-202 may suggest this, but it is contrary to the previous sentence in subsection (b)(1), which states that the parent must consent to the guardianship.

Mr. Sykes suggested that the way to address these problems would be to provide in Rule 10-202 that if guardianship of the person of a minor person is sought and the parent or the parents consent to the guardianship, the petitioner shall file the consent in the proceeding. If the consent is not available, because the parent or parents cannot be identified or located, the petitioner would file an affidavit in the form set forth. The only question which this Rule does not address, and the Subcommittee may have not thought through, is what happens if a parent refuses to consent. This issue can be finessed by leaving it alone, but the relationship between the Orphans' Court and the juvenile court is something that the Subcommittee ought to consider. The Chair remarked that this is almost like the issue of due process considered in *Troxel v. Granville*, 530 U.S. 57 (2000), taking away a parent's right to raise her or her child.

Mr. Sykes commented that there is an analogy that can be applied. If no certificate can be obtained from someone who

refuses to do something, there is a procedure for notice and an adversary hearing. This is an issue that the Subcommittee had not considered and probably should. The Chair asked Mr. Sykes if Rule 10-202 should go back to the Subcommittee, and Mr. Sykes answered affirmatively. He said that the approval of the full Committee could be obtained as far as the Rule goes. If the parents consent, there is a form for the consent to be filed. If they do not consent, there is a statement as to why. The rest of the Rule as to what happens if there is no consent can be discussed by the Subcommittee. The Vice Chair said that to leave that in the Rule makes it very non-user-friendly. The way that Rule 10-202 is written now, consent of the parents is required. Mr. Sykes responded that consent should not be required in the Rule. The Vice Chair asked if consent is necessary to proceed with the guardianship. The Chair pointed out that this is the issue, and it is substantive law as to whether a guardian of the person of a child can be appointed without the consent of the child's parents, assuming that the parents' rights have not been terminated.

Mr. Sykes told the Committee that after he had discussed this issue with Ms. Libber, Assistant Reporter, she had drafted a change to the language of subsection (b)(1), which provides that as a condition of approval, the parents shall sign. This language is in the version of Rule 10-202 that was handed out today. The consent of the parent or parents is a condition for the order of guardianship. The Chair said that he did not know

the answer to the questions that he had posed. It seemed to him that these questions needed to be explored. They are substantive issues.

The Vice Chair inquired why it is necessary to fill out the affidavit of attempts to locate in the Rule if the substantive law provides that the consent of the parent is required to grant a guardianship of the person of a minor. The Chair commented that it may be that the parents are not around. Judge Weatherly noted that drug-addicted parents are common in the cases she hears. The Vice Chair remarked that the law may require parental consent, even if the parents are drug-addicted.

Mr. Sykes pointed out that there is a difference between getting the consent and giving the consent. If consent is refused, then it is a different situation. If consent is unobtainable because the parents cannot be found, and all of the reasonable efforts made to find them do not work out, this is not the same as if the parents had refused consent. The Vice Chair added that the law may provide that the guardianship can be granted, if the petitioner made every attempt to find the parents and could not. Mr. Sykes responded that he did not think that this is the law.

The Chair said that it was not clear to him what the law permits. In the situation in which the parents do not consent, it is not clear if there is anything constitutionally or what the relationship is with the juvenile court. Even if the parents do consent, there may be a juvenile court issue. It may be a way of

avoiding a CINA case. Mr. Sykes noted that the solution may be to state in the Rule that if the parents consent, the consent should be filed.

Judge Weatherly pointed out that there will be some cases in which parents consent and some cases in which parents object. In some cases, parents are simply not engaged in the act of parenting. They may not actively oppose the guardianship. The Chair commented that a procedure exists in the Code and the Rules with respect to terminating parental rights (TPR). This is more severe than a guardianship of the person. It is a matter of degree. Judge Weatherly added that there are cases where the parents' rights do not have to be terminated. The idea is that young parents or misbehaving parents need time to grow up and take the responsibility for raising their children. Sometimes, the parents file custody cases. The Chair said that filing a custody case is a separate issue from filing a guardianship of the person.

Judge Weatherly inquired whether a guardian of the person should be able to consent to medical procedures performed on the ward. The Chair responded that a guardianship of the person means that the guardian is acting in place of the parents. Judge Weatherly observed that in the vast majority of their cases in which there is a guardianship of the person, third parties are the guardians. In August, there is a rush to file these guardianships to get the children enrolled in school. The Reporter inquired if those cases are usually done by consent.

Judge Weatherly answered negatively.

Master Mahasa asked how this could be effected, if the parents had not been divested of their parental privilege. Under what authority is the privilege given to someone else? Judge Weatherly replied that without any question, in a custody case, the third parties are held to a higher standard. Most of the cases in Prince George's County are filed in the Orphans' Court. The person files a petition. He or she is always looking for an immediate order usually filed after August 20 desperately trying to get the child or children into school. Testimony is taken in the courtroom, a show cause order is issued, and service is to be made on the parents. Master Mahasa remarked that the parents are getting notice of this.

The Chair asked if custody is awarded without parental consent. Judge Weatherly responded that many of the parents are served and do not file any objection. They do not consent, but they do not object. Master Mahasa asked Judge Weatherly whether custody is awarded in her county if the parents have objected. Judge Weatherly answered that if the court were to find that the parent has significant mental health issues or is currently drug-addicted and on the street, and the child has been in the custody of the grandparents from birth to age five, there are times that the court will award custody over the objection of the parents. Master Mahasa inquired whether there must be a finding of CINA. Judge Weatherly replied that the custody can be awarded without a finding of CINA.

Judge Weatherly commented that a guardianship is different from a CINA case. If the grandparent has been taking care of the child, there will not be a CINA case. She indicated that this did not mean that there is never a CINA case, and that custody can be awarded without the child being declared a CINA. In a custody case, there has to be a higher standard. The court has to find that the parents are unfit. Judge Weatherly said that she sees many grandparents raising grandchildren. The schools often push these guardianships, whether they should or not. She had a question whether a guardianship should be necessary to put the child in school. Mr. Sykes noted that he had no problem with the form of the consent, except that sometimes the wording of the form is "I do solemnly affirm," and in other places, the wording is "I solemnly affirm."

The Chair suggested that rather than discussing Rule 10-202 piecemeal, the entire Rule should go back to the Subcommittee. Master Mahasa referred to Code, Family Law, §5-3A-19, which addresses consent of parents more in the CINA cases. She suggested that the Subcommittee should look at this law. It addresses when parents are not involved in a case, and consent is given to an institution or to the DSS. The Chair said that Rule 10-202 would go back to the Subcommittee for redrafting.

Mr. Sykes presented Rule 6-122, Petitions, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 6-122 to add the word "substantially" to section (a), to make changes and reorganize sections 2. and 3. of the form of petition, to add language to section 4. of the form used by the registers, to delete the notes after and add a cross reference to section 4. of the form used by the registers, and to make stylistic changes, as follows:

Rule 6-122. PETITIONS

(a) Petition for Probate

The Petition for Probate shall be in substantially the following form:

IN THE ORPHANS' COURT FOR

(OR) _____, MARYLAND

BEFORE THE REGISTER OF WILLS FOR

IN THE ESTATE OF:

_____ ESTATE NO: _____

FOR:

[ ] REGULAR ESTATE PETITION FOR PROBATE Estate value in excess of $30,000. (If spouse is sole heir or legatee, $50,000.) Complete and attach Schedule A.	[ ] SMALL ESTATE PETITION FOR ADMINISTRATION Estate value of $30,000 or less. (If spouse is sole heir or legatee, $50,000.) Complete and attach Schedule B.	[ ] WILL OF NO ESTATE Complete items 2 and 5 [ ] LIMITED ORDERS Complete item 2 and attach Schedule C

The petition of:

_____	_____
Name	Address
	_____
_____	_____
Name	Address
	_____
_____	_____
Name	Address
	_____

Each of us states:

1. I am (a) at least 18 years of age and either a citizen of the United States or a permanent resident alien spouse of the decedent or (b) a trust company or any other corporation authorized by law to act as a personal representative.

2. (a) The Decedent, _____, was domiciled in _____, (County) State of _____ and died on the _____ day of _____, _____, at _____. (place of death)

~~3. If the~~ (b) The decedent was not domiciled in this county at the time of death, but this is the proper office in which to file this petition because: _____ _____.

~~4.~~ 3. I am entitled to priority of appointment as personal

representative of the decedent's estate pursuant to §5-104 of the Estates and Trusts Article, Annotated Code of Maryland because:

_____

_____.

4. I am mentally competent.

5.

[ ] I have not been convicted of a crime,

[ ] I have not been convicted of a crime other than violations of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment,

[ ] I have been convicted of the following crime(s):

_____

_____

_____,

~~and~~ 6. I am not excluded by other provisions of §5-105 (b) of the Estate and Trusts Article, Annotated Code of Maryland from serving as personal representative.

~~5.~~ 7. I have made a diligent search for the decedent's will and to the best of my knowledge:

[ ] none exists; or

[ ] the will dated _____ (including codicils, if any, dated _____) accompanying this petition is the last will and it came into my hands in the following manner: _____

_____

and the names and last known addresses of the witnesses are:

_____ _____

_____ _____

_____ _____

~~6.~~ 8. Other proceedings, if any, regarding the decedent or the estate are as follows:

_____

_____

_____.

~~7.~~ 9. If any information required by paragraphs 2 through 6 has not been furnished, the reason is:_____

_____.

~~8.~~ 10. If appointed, I accept the duties of the office of personal representative and consent to personal jurisdiction in any action brought in this State against me as personal representative or arising out of the duties of the office of personal representative.

WHEREFORE, I request appointment as personal representative of the decedent's estate and the following relief as indicated:

[ ] that the will and codicils, if any, be admitted to administrative probate;

[ ] that the will and codicils, if any, be admitted to judicial probate;

[ ] that the will and codicils, if any, be filed only;

[ ] that the following additional relief be granted: _____

_____

I solemnly affirm under the penalties of perjury that the contents of the foregoing petition are true to the best of my knowledge, information, and belief.

_____	_____
Attorney	Petitioner Date
_____	_____
Address	Petitioner Date
_____	_____
	Petitioner Date
_____	_____
Telephone Number	Telephone Number (optional)

IN THE ORPHANS' COURT FOR

(OR) _____, MARYLAND

BEFORE THE REGISTER OF WILLS FOR

IN THE ESTATE OF:

_____ ESTATE NO. _____

SCHEDULE - A

Regular Estate

Estimated Value of Estate and Unsecured Debts

Personal property (approximate value) ..... $ _____

Real property (approximate value) ..... $ _____

Value of property subject to:

(a) Direct Inheritance Tax of ___% ..... $_____

(b) Collateral Inheritance Tax of ___% ..... $_____

Unsecured Debts (approximate amount) ..... $_____

_____

I solemnly affirm under the penalties of perjury that the contents of the foregoing schedule are true to the best of my knowledge, information, and belief.

_____	_____	
Attorney	Petitioner	Date
_____	_____	
Address	Petitioner	Date
_____	_____	
	Petitioner	Date
_____	_____	
Telephone Number	Telephone Number (optional)	

.....

(FOR REGISTER'S USE)

Safekeeping Wills _____ Custody Wills _____

Bond Set $ _____ Deputy _____

IN THE ORPHANS' COURT FOR

(OR) _____, MARYLAND

BEFORE THE REGISTER OF WILLS FOR

IN THE ESTATE OF:

_____ ESTATE NO. _____

SCHEDULE - B

Small Estate - Assets and Debts of the Decedent

1. I have made a diligent search to discover all property and debts of the decedent and set forth below are:

(a) A listing of all real and personal property owned by the decedent, individually or as tenant in common, and of any other property to which the decedent or estate would be entitled, including descriptions, values, and how the values were determined:

_____

_____

_____

(b) A listing of all creditors and claimants and the amounts claimed, including secured*, contingent and disputed claims:

_____

_____

2. Allowable funeral expenses are $ _____; statutory family allowances are $ _____; and expenses of administration claimed are $ _____.

3. Attached is a List of Interested Persons.

4. After the time for filing claims has expired, subject to the statutory order of priorities, and subject to the resolution of disputed claims by the parties or the court, I shall (1) pay all proper claims** in the order of priority as set forth in Code, Estates and Trusts Article, §§8-104 and 8-105, expenses, and allowances not previously paid; (2) if necessary, sell property of the estate in order to do so; and (3) distribute the remaining assets of the estate in accordance with the will or, if

none, with the intestacy laws of this State.

Date	Personal Representative

~~*NOTE: §5-601 (d) of the Estates and Trusts Article, Annotated Code of Maryland "For the purpose of this subtitle - value is determined by the fair market value of property less debts of record secured by the property as of the date of death, to the extent that insurance benefits are not payable to the lien holder or secured party for the secured debt."~~

~~**NOTE: Proper claims shall be paid pursuant to the provisions of Code, Estates and Trusts Article, §§8-104 and 8-105.~~

Cross reference: The jurisdictional amount to qualify for a small estate is determined to be the gross value of assets less certain secured debt. See Code, Estates and Trusts Article, §5-601 (d).

I solemnly affirm under the penalties of perjury that the contents of the foregoing schedule are true to the best of my knowledge, information, and belief.

Attorney	Petitioner	Date
Address	Petitioner	Date
	Petitioner	Date
Telephone Number	Telephone Number (optional)	

. . .

Rule 6-122 was accompanied by the following Reporter’s Note.

> At the November 19, 2010 Rules Committee meeting, the issue of the meaning of the term “serious crime” came up, because the Probate/Fiduciary Subcommittee had suggested changing the form in Rule 6-122 to refer to the two important factors affecting someone’s

entitlement to appointment as a personal representative cited in Code, Estates and Trusts Article, §5-105 (b) – mental competence and not having been convicted of a serious crime. The Committee wrestled with the meaning of the term "serious crime." Rather than include the term in the petition for probate, the Committee suggested that if anyone applying to be a personal representative has been convicted of a crime other than one not carrying a possible sentence of imprisonment, the petition should list the specific crimes for which he or she was convicted. This change has been made to section 5. of the form.

The Subcommittee recommends adding the word "substantially" to the first line of section (a).

The Probate/Fiduciary Subcommittee recommends modifying sections 2. and 3. of the form of petition by combining them and changing the language slightly to make those two sections clearer. The Subcommittee also recommends deleting the notes that are after section 4. of the form the registers use and instead adding clarifying language to section 4. and a cross reference after section 4. The Subcommittee's view was that the notes are mainly for the benefit of pro se persons who will likely not understand them, so in place of the notes, simpler language would be added to the form, and a cross reference to the relevant statutes would also be added.

Mr. Sykes told the Committee that a change had been proposed for section (a) in Rule 6-122. The word "substantially" had been added to conform to other Rules. Another change had been suggested for subsections 2. (a) and (b). In looking them over, Mr. Sykes remarked that they appear to be alternatives. If a person is applying for probate in County A, and under subsection 2. (a), the petitioner states the county in which the decedent

died is, subsection 2. (b) is not necessary, because it states that the decedent was not domiciled in the county named previously in subsection (a). The Chair noted that subsection 2. (a) allows the petitioner to put in the name of any county. If the petition is not filed in the county where the decedent was domiciled, then the petitioner would have to answer subsection 2. (b). The Vice Chair expressed the opinion that these two subsections should not be listed as (a) and (b). What is subsection (b) should be the second sentence of subsection (a). If the decedent had not been domiciled in the county where the death took place, then the second sentence would be filled out. Mr. Sykes noted that the language "this county" is somewhat vague. These are style issues. The Chair said that under certain circumstances a petitioner can file in a county other than the one in which the petitioner was domiciled.

Ms. Phipps commented that the only reason the registers of wills would use what is now subsection 2. (b) was for the venue statute. It would be when the decedent did not have an estate in another state. The Chair pointed out that the provision is broader than that. The Chair remarked that after the decision in *Boer v. University Specialty Hospital*, 421 Md. 529 (2011), this provision will be used for other purposes, too. If an estate has not already been opened somewhere else and the person dies as a resident of another county but is not domiciled there, the petition can be filed in that county.

The Vice Chair observed that the words “If the” have already been taken out. This is the existing language of the Rule. Why was the Rule changed? She had heard the comment that it was for venue purposes, but the way this is worded with the “if” clause in there still allows it to be for venue purposes. Mr. Sykes responded that the Reporter’s note provides that the Subcommittee recommended modifying sections 2. and 3 by combining them and changing the language slightly to make the two sections clearer. The Chair commented that section 3. addresses a different issue.

The Vice Chair suggested that the number “3.” be taken out, and then sections 2. and 3. can be combined. Mr. Sykes agreed with this suggestion. The Vice Chair added that this is a matter of style. Mr. Sykes said that Rule 6-122 should provide where the decedent was domiciled. If the decedent is domiciled in a different county, then the petitioner explains why it is the right place to file the petition.

Judge Weatherly asked whether the second part would be scratched out if it does not apply. The Reporter answered that the petitioner would simply put in “N/A.” Judge Weatherly inquired how this would be handled if the two sections were part of one paragraph, and subsection (b) does not apply. The Vice Chair questioned how this would be filled in in any event. If it does not apply, the form still has a blank line. The petitioner would have to fill in “not applicable” or something similar. Judge Weatherly expressed the view that this may be confusing.

The Reporter pointed out that the current form has a section

1., section 2., and section 3. Section 3. reads: "If the decedent was not domiciled in this county at the time of death, this is the proper office in which to file this petition because: _____ ." The Reporter asked whether Ms. Phipps was having trouble with this. Ms. Phipps responded that this format would be appropriate. By consensus, the Committee decided not to change subsections 2. (a) and (b).

Mr. Sykes said that subsections 4. and 5. had been added. Mr. Sykes referred to the cross reference near the end of the form. He suggested that it be inverted, so that it begins with "See Code, Estates and Trusts Article, §5-601 (d) (the jurisdictional amount...)." The Vice Chair said that as a matter of style, sometimes the cross references read as follows: "For the jurisdictional amount to qualify for a small estate, see Code...". The Reporter commented that this is more like a Committee note. The Vice Chair asked what the language in the cross reference that reads "is determined to be" means. Mr. Sykes noted that the words "determined to be" could be deleted. This is a matter of style. The Chair commented that the Style Subcommittee can look at this.

Mr. Sykes inquired if Code, Estates and Trusts Article, §8-104 cited in section 4. refers to a priority of debts. He had looked at this provision and could not find any reference to priority of payments. The next statute cited, Code, Estates and Trusts Article, §8-105, is the section that addresses priority of payments. Ms. Libber remarked that the Subcommittee was trying

to get rid of the note that is after the lines for the date and name of the personal representative. The underlined language in subsection 4. was substituted in place of the note. Code, Estates and Trusts Article, §§8-104 and 8-105 are cited in the second note that has now been deleted.

The Reporter commented that the Subcommittee had moved the note into the body of the form, but the note had read: "Proper claims shall be paid pursuant to the provisions of Code, Estates and Trusts Article, §§8-104 and 8-105." Section 8-104 refers to the method for proper claims, and §8-105 refers to the priority. The Vice Chair suggested that the wording of the language could be "...pay all proper claims pursuant to Code, Estates and Trusts Article, §8-104 and in the order of priority as set forth in Code, Estates and Trusts Article, §8-105,...". She asked what was wrong with leaving this in a note. The Reporter responded that this is within a form itself that is going to the public. Ms. Libber added that the Subcommittee's view was that people would not understand what had been contained in the notes. Mr. Sykes remarked that *pro se* people do not know about notes. The Vice Chair commented that they would not be able to go to the Code sections cited, either.

The Chair asked the Committee how to address this. Should the reference to Code, Estates and Trusts Article, §8-104 be taken out of the text and the two notes be stricken? Mr. Sykes replied affirmatively. The Reporter said that she thought that

the decision was that the language would be "...pay all proper claims made pursuant to Code, Estates and Trusts Article, §8-104 and the order of priority that is set forth in Code, Estates and Trusts Article, §8-105....". The Vice Chair noted that this makes it clearer. By consensus, the Committee approved of this change.

By consensus, the Committee approved Rule 6-122 as amended.

Mr. Sykes presented Rule 6-125, Service, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 6-125 to add a new section (c) that provides a certain form and to make stylistic changes, as follows:

Rule 6-125. SERVICE

(a) Method of Service - Generally

Except where these rules specifically require that service shall be made by certified mail, service may be made by personal delivery or by first class mail. Service by certified mail is complete upon delivery. Service by first class mail is complete upon mailing. If a person is represented by an attorney of record, service shall be made on the attorney pursuant to Rule 1-321. Service need not be made on any person who has filed a waiver of notice pursuant to Rule 6-126.

Cross reference: For service on a person under disability, see Code, Estates and Trusts Article, §1-103 (d).

(b) Certificate of Service

(1) When Required

A certificate of service shall be filed for every paper that is required to be served.

(2) Service by Certified Mail

If the paper is served by certified mail, the certificate shall be in the following form:

I hereby certify that on this ____ day of _____, _____, I
(month) (year)
mailed by certified mail a copy of the foregoing paper to the following persons:

_____.
(name and address)

_____
Signature

(3) Service by Personal Delivery or First Class Mail

If the paper is served by personal delivery or first class mail, the certificate shall be in the following form:

I hereby certify that on the ____ day of _____, _____, I
(month) (year)
delivered or mailed, postage prepaid, a copy of the foregoing paper to the following persons:

_____.
(name and address)

_____
Signature

(c) Affidavit of Attempts to Locate or Identify

An affidavit of attempts to locate shall be in substantially the following form:

[CAPTION]

AFFIDAVIT OF ATTEMPTS TO LOCATE

I, _____

[ ] a party

[ ] an attorney

[ ] a person interested in the above-captioned matter

have attempted to locate _____ by the following means:

_____

_____.

[ ] I have attempted to identify unknown persons, who may be entitled to notice, by the following means:

_____

_____.

[ ] I have attempted to contact the persons listed below who I have reason to believe are friends, acquaintances, or relatives of _____, as follows:

Names	Addresses
_____	_____
_____	_____
_____	_____
_____	_____

[ ] I have searched the internet and telephone directory in an effort to find the above-named person with the following results:

_____

_____

[ ] I have taken the following additional reasonable efforts to locate the above-named person: _____

_____

_____.

I solemnly affirm under the penalties of perjury that the contents of the foregoing paper are true and correct to the best of my knowledge, information, and belief and that I do not know the whereabouts of _____.

_____
Name of Party

~~(c)~~ (d) Proof

If no return receipt is received apparently signed by the addressee and there is no proof of actual notice, no action taken in a proceeding may prejudice the rights of the person entitled to notice unless proof is made by verified writing to the satisfaction of the court or register that reasonable efforts have been made to locate and warn the addressee of the pendency of the proceeding.

Cross reference: Code, Estates and Trusts Article, §1-103 (c).

Rule 6-125 was accompanied by the following Reporter's note.

> The Rules Committee was not in favor of a specific form to be added to Title 1 describing the attempts to locate or identify a person, because it was too broad and would affect so many Rules. The recommendation was to add the form to Titles 6 and 10, since the proposal had come from the Probate/Fiduciary Subcommittee. The Subcommittee modified the form and recommends adding it to Rules 6-125 and 10-203. The Rules in Title 6 and 10 that address attempts to locate and identify persons will refer to the form in Rules 6-125 and 10-203. The identification of persons is particularly relevant in wrongful death actions in which the party bringing the action know there may be siblings or relatives of the decedent who should be notified but does not know their names.

Mr. Sykes noted that the title of section (c) in Rule 6-125 is "Affidavit of Attempts to Locate or Identify." The next sentence reads "An affidavit of attempts to locate shall be in...". Ms. Libber said that this was an oversight, and the words "or identify" should have been added after the word "locate." Mr. Sykes explained that there may be siblings who need to be located, but they may have another name that is unknown due to marriage. The Vice Chair commented that the point of the affidavit seems to be that the person filling it out first has to figure out who the person is and once that is determined, then find out where the person is. Mr. Sykes responded that this was correct. The Vice Chair said that the word "identify" should come before the word "locate." Mr. Sykes pointed out that in most cases, the person filling out the affidavit would be locating someone.

The Chair noted that the third box under the affidavit form

in section (c) of Rule 6-125 reads as follows: “I... a person interested in the above-captioned matter have attempted to locate _____ by the following means...”. The word “identify” should not be included here. Ms. Libber commented that the next box pertains to identifying unknown persons. She acknowledged that the word “identify” should not always be put with the word “locate.” The Chair asked if the word “locate” should be added to the language providing for the attempt to identify unknown persons. The Reporter observed that this is only if someone has been unsuccessful at first identifying the person, which is one scenario, and then maybe the person could be identified, but not located. The form should provide for either identifying or locating, because if the identity of the person is known, it may be that the problem is locating him or her. If the identity is unknown, there could be no attempt to locate the person.

The Vice Chair noted that the first part of the affidavit is a box that reads “a party.” Should there be a beginning phrase to this affidavit? The Reporter answered that the beginning is “I, _____.” She suggested that the word “am” should go in after the word “I.” The Vice Chair inquired about the phrase in the form that reads “I have attempted to identify unknown persons...”. The Chair expressed the view that this should contain the language “identify and locate...”. The Vice Chair asked how anyone could identify or locate an unknown person. The Chair responded that first the person would have to be identified. The Vice Chair remarked that no one can identify an

unknown person. Ms. Libber said that this would mean people who might be related, but the person filling out the form does not know who they are.

The Vice Chair suggested that the word “unknown” should be left out. She referred to the language that reads “I ... a person interested in the above-captioned matter have attempted to locate _____” and asked if a name is supposed to be filled in there. The Reporter explained that a name is supposed to be added after the word “I,” so that the form would read “I, Jane Smith, am a party, an attorney, or a person interested in the above-captioned matter...”. Mr. Sykes expressed the opinion that the word “am” is not necessary. It should read “I, _____, a party, an attorney, or a person interested in the above-captioned matter have attempted to locate _____.” The Reporter commented that it is somewhat unclear as to how to fill this out.

The Vice Chair said that she did not like the format of the first section of the affidavit. The Chair suggested that the first part could read as follows: “I am...”. Then the person filling out the form would check one of the boxes. A period would be placed after the word “matter.” A new sentence would then read: “I have attempted to locate _____ by the following means...”. This would be a separate box. The Vice Chair agreed, noting that this would be a parallel structure just like the next sentence, which begins: “I have attempted to identify unknown persons...:”. The Chair suggested that this

should read: “I have attempted to identify and locate unknown persons...”. The Vice Chair expressed her agreement with this suggestion. The previous area to be filled in is not clear. Is the previous statement supposed to be: “ I am a person interested in the above-captioned matter... and I have attempted to locate _____ by the following means...”? Does this refer to naming one person or to naming all one’s nieces? The next statement provides that there may be other people who are entitled to notice, and this is what the person filling out the form has done to try to find those people.

The Reporter commented that instructions should be added underneath these lines, so that people know what they are supposed to fill in. The first one would be “I” and then underneath would be “name of affiant.” The next one would be “I have attempted to locate...,” and then the language “name of missing person” would go under the blank. The Chair suggested that the form could state: “ I have attempted to locate the following known persons....”.

Judge Weatherly noted that section (c) provides that the form has to be verified to the satisfaction of the court, and she asked whether the court produces something such as an order indicating the court is satisfied with the efforts to locate if a person cannot be served because of no address available. Ms. Phipps commented that people come to the office of the Register of Wills with a list of interested persons. The person with the list may not want to let the register know where the interested

person is, because it may diminish the inheritance of the person coming in. The affidavit form may help in discovering where the missing people are.

The Vice Chair remarked that in her view, the form needs to state that the person has attempted to locate all of the people who would be entitled to notice, and then state how the person did this. She added that she found the form to be confusing. The Reporter agreed with the Vice Chair that the form should begin by stating that the person filling it out has attempted to locate all of the persons who would be entitled to notice, and that the person has had the problem that he or she could identify the people listed but could not find them. A second problem would be that the person could not figure out who he or she should be identifying, and the person would describe what was done to try to figure out who should be identified. The form could be broken down this way. The Chair remarked that the person may not know whether the decedent had children or grandchildren.

The Vice Chair noted that this form could be used as a kind of way of tracking the whole universe of those who could have been entitled to notice. The person filling out the form states that this is the information he or she found, and this is what he or she did with respect to those that were found but could not be located. The Chair said that this information is required currently. A form is proposed to be added to Rule 6-125 that focuses on the information needed and gives the Orphans' Court

and the Registers what they need to know.

Ms. Phipps commented that, before an estate can be closed, those persons interested in the estate have to give some reason why a person who may be entitled to notice cannot be located. Her office is currently using a simple form to try to encourage people to give the information, but the form does not refer to the identity of the interested persons. The Reporter asked Ms. Phipps if the problem is people who are self-represented and do not bother to try to locate the missing persons. Ms. Phipps said that people come in to her office and give her a list of interested persons with no more than three names on it. Often they will state that the address is unknown. It is important to know what the person did to try to find the missing people. The form would hopefully encourage the dissemination of more information.

Mr. Sykes remarked that the point is to attempt to locate persons whose identity is known. The next step is to identify persons who may be entitled to notice but who are not presently identified. The Chair commented that beyond locating known persons, in the situation where a name is listed, such as “Mary Smith,” the explanation could be that she was the child of a relative. If the question is asked whether that person had other children, the answer may be that this is not known. Ms. Phipps remarked that if a sibling has died, then the Register would want to know the names of the children of that person.

Judge Weatherly expressed the opinion that the form needs

more work. One problem is that the names of persons are asked for but not relationships to the decedent. Ms. Phipps noted that the relationship is asked for on the list of interested persons. Mr. Sykes commented that even if the location of the named person is not known or the name of the person is not known, that person might be an interested party.

The Chair said that he could see three scenarios. One is that it is not known if any persons entitled to notice exist. The second is that it is known that persons entitled to notice do exist, but their identity is not known. The third is that their identity is known, but not their location. Mr. Sykes remarked that two of the scenarios may merge. The Chair commented that all of them may merge depending on the circumstances. When the Rules in Title 6 were drafted, many forms were included, and they have been uniform throughout the State. The wording of the form discussed today is not just a matter of style. It is important that the necessary information be captured.

Ms. Phipps observed that the bottom line on this is that the notice to creditors and notice to unknown interested persons help in the long run to cover all the bases. The Chair agreed, adding that the question is not whether there should be a form, but what information is to be captured and whether the proposed form is capturing that information. He asked if Allan Gibber, Esq., a consultant to the Probate and Fiduciary Subcommittee, had worked on this form. Mr. Sykes answered affirmatively, noting that Mr. Gibber was the de facto chair of the Subcommittee, because Mr.

Sykes had been on vacation.

The Reporter asked if the Subcommittee would like another category added to the form, which would be people who would ordinarily be entitled to notice but have passed away. Mr. Sykes replied negatively. The Chair noted that Rule 10-203, Service; Notice, would also need to be reconsidered, because it has the same issues. He stated that Rules 6-125 and 10-203 would be sent back to the Subcommittee for further discussion.

Mr. Sykes presented Rule 6-443, Meeting of Distributees and Distribution by Court, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-443 to add language to section (a) pertaining to a certain affidavit, as follows:

Rule 6-443. MEETING OF DISTRIBUTEES AND DISTRIBUTION BY COURT

(a) Request

When the personal representative cannot obtain agreement from all interested persons entitled to distribution, or if the personal representative has reason to believe that there may be a person entitled to distribution whose name, address, or survival is unknown, the personal representative may file with the court a request for a meeting, under the supervision of the court, of all interested persons entitled to distribution. The request shall set forth the purpose of the meeting, may include the proposed distribution, and shall ask the court to set

a date for the meeting. If the personal representative has reason to believe that there may be an interested person entitled to distribution whose name, address, or survival is unknown, the request shall be accompanied by an affidavit of attempts to locate or identify in the form set forth in Rule 6-125 (c) so stating and setting forth the good faith efforts made to identify and locate the person.

(b) Notice

The court shall set a date for the meeting allowing sufficient time for the personal representative to comply with the notice requirements set forth in this section. At least 20 days before the meeting the personal representative shall serve on each distributee whose identity and whereabouts are known a notice of the date, time, and place of the meeting, and if the request was accompanied by an affidavit under section (a) of this Rule, the personal representative shall publish notice of the date, time, and place, and purpose of the meeting. The notice shall be published in a newspaper of general circulation once a week for three successive weeks in the county of appointment. The first publication shall be made at least 20 days before the meeting. The personal representative shall make such other efforts to learn the names and addresses of additional interested persons as the court may direct.

(c) Appointment of Disinterested Persons

At any time, the court may appoint two disinterested persons, not related to the distributees, to recommend a proposed distribution or sale.

(d) Order

Following the meeting, the court shall issue an appropriate order of distribution or sale.

Cross reference: Code, Estates and Trusts Article, §§9-107 and 9-112.

Rule 6-443 was accompanied by the following Reporter's note.

See the Reporter's note to the proposed amendments to Rule 6-125.

Mr. Sykes told the Committee that Rule 6-443 cross-references the form added to Rule 6-125. The Vice Chair suggested that the new language should be "of attempts to locate or identify substantially in the form set forth in Rule 6-125 (c)...". This change would apply throughout the Rules cross-referencing Rule 6-125. By consensus, the Committee agreed with this suggestion. The Chair pointed out that Rule 6-443 would have to be held until the form in Rule 6-125 has been changed. He added that Rule 10-601, Petition for Assumption of Jurisdiction - Person Whose Identity or Whereabouts is Unknown, would have to be held, also.

Mr. Sykes presented Rule 10-402, Petition by a Parent for Judicial Appointment of a Standby Guardian, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 600 - ABSENT OF UNKNOWN PERSONS

AMEND Rule 10-402 to add language pertaining to a certain affidavit to and to delete language from section (d), as follows:

Rule 10-402. PETITION BY A PARENT FOR JUDICIAL APPOINTMENT OF A STANDBY GUARDIAN

. . .

(d) Notice

Unless the court orders otherwise, the petitioner shall send by ordinary mail and by certified mail to all interested persons whose whereabouts are known a copy of the petition and a "Notice to Interested Persons" pursuant to section (e) of this Rule. Service upon a minor under the age of ten years may be waived provided that the other service requirements of this section are met. If the court is satisfied from the affidavit of attempts to locate or identify filed by the petitioner in the form set forth in Rule 10-203, that the petitioner~~, after reasonable efforts made in good faith,~~ has been unable to ascertain the whereabouts of a person having parental rights, the court may order, as to that individual, that the "Notice to Interested Persons Whose Whereabouts are Unknown," which is set out in section (f) of this Rule, be published one time in the county of that individual's last known residence or be posted at that county's courthouse door or on a bulletin board within its immediate vicinity.

. . .

Rule 10-402 was accompanied by the following Reporter's note.

See the Reporter's note to the proposed amendments to Rule 6-125.

The Chair said that the new language in Rule 10-402 refers to whether the court is satisfied from the affidavit of attempts to locate or identify. He suggested that the words "or other evidence" be added, so that the court is not limited to considering only the affidavit. The Vice Chair remarked that she was confused by the language "locate or identify." If the court is satisfied from the affidavit of attempts to locate or

identify, but the petitioner is unable to ascertain the whereabouts of the person, it would mean that the petitioner would have had to have identified the person. It would have to refer to a person that the petitioner knew about but was unable to find. This language does not include the concept of a person who is completely unknown. The new language is only referring to the kind of person who is known and has been identified but cannot be located. It does not refer at all to the inability to identify someone, but the affidavit is of attempts to locate or identify. It could be cured by changing the language to "[i]f the court is satisfied from the affidavit filed pursuant to Rule 10-203 that...". The Chair commented that this would be a style issue.

The Chair said that the language "or other evidence" should also be added to the new language so that considering other evidence is a basis on which the court can be satisfied. He suggested that the same change be made to the next Rule for consideration, Rule 10-403, Petition by Standby Guardian for Judicial Appointment after Parental Designation.

The Vice Chair inquired what other evidence this would be. Would there be an evidentiary hearing? The Chair replied that he did not know what the other evidence would be. The court may find that there is evidence other than what is in the affidavit. The Vice Chair noted that if that language is added in, it would encourage people to offer more evidence. The Chair remarked that if someone has other evidence, he or she should be able to offer

it. The Vice Chair said that it should have been put into the affidavit. The Chair agreed that the person should have put it into the affidavit, but there may have been some reason that he or she did not do so. The way the Rule reads now, the court can only look at the affidavit.

The Reporter observed that Rule 10-402 refers only to a petition for a standby guardian. Most of these cases would not be contested. The Vice Chair inquired about leaving out the new language, so that the Rule would read that the court is satisfied that the petitioner has been unable to ascertain the whereabouts of a person having parental rights. The Reporter asked whether this would mean leaving out the reference to Rule 10-203. Ms. Libber said that it would be leaving out the underlined language. The Chair pointed out that the underlined language appears in the next two Rules as well.

The Vice Chair questioned whether there was an intention to mandate that the court be satisfied only from the affidavit. Mr. Sykes answered that this was not intended. The Vice Chair suggested that the underlined language be taken out. The Reporter asked if the language that was shown as stricken which was: ", after reasonable efforts made in good faith" should be put back into the Rule. Either a reference to the affidavit, or a statement as to the standard of reasonable efforts in good faith should be in the Rule. The affidavit would indicate to the court what those efforts were, or a statement of the standard should be in the Rule. Ms. Libber suggested that a cross

reference could be added at the end of section (d) that would provide that one way for the court to know whether the efforts made to locate or identify someone would be to consider the affidavit. The Reporter said that the good faith standard should be left in. Ms. Libber responded that the language referring to the good faith standard would remain in the Rule, but the Rule would indicate that there is an affidavit, also.

The Reporter asked how the Committee wanted to handle this. The Chair stated that the purpose is to have the affidavit and require substantial compliance with it. He expressed the concern that in a given case, the court should be able to look at something else other than the affidavit if something else exists. Otherwise, the Rule could be interpreted that the court cannot consider the other evidence even though the evidence is admissible. The Vice Chair remarked that the court could also ask someone to file another affidavit to include that evidence. The Chair noted that a similar provision was added to Rules 2-306 and 3-306, Judgment on Affidavit, which was that the court could consider other evidence in a default situation. Mr. Sykes expressed the view that in Rules 10-402 and 10-403, Petition by Standby Guardian for Judicial Appointment after Parental Designation, it is enough to state that the court is satisfied. The new language can be eliminated. The Vice Chair said that there would be no change to the Rule. The Reporter added that the language referring to the good faith standard would go back in.

By consensus, the Committee agreed that Rules 10-402 and 10-403 should not be changed.

Mr. Sykes presented Rule 6-416, Attorney's Fees or Personal Representative's Commissions, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-416 to change a word in subsection (a)(1) and to add language pertaining to certain conditions for payment of attorneys' fees without court approval and to make stylistic changes, as follows:

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

(a) Subject to Court Approval

(1) Contents of Petition

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

(2) Filing - Separate or Joint Petitions

Petitions for attorney's fees and personal representative's commissions shall be filed with the court and may be filed as separate or joint petitions.

(3) Notice

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

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

You are hereby notified that a petition for allowance of attorney's fees or personal representative's commissions has been filed.

You have 20 days after service of the petition within which to file written exceptions and to request a hearing.

(4) Allowance by Court

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

(5) Exception

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

(6) Disposition

If timely exceptions are not filed, the order of the court allowing the attorney's fees or personal representative's commissions becomes final. Upon the filing of timely exceptions,

the court shall set the matter for hearing and notify the personal representative and other persons that the court deems appropriate of the date, time, place, and purpose of the hearing.

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

~~(b)~~ (1) ~~Consent in Lieu of Court Approval~~ Payment of Contingency Fee for Services Other Than Estate Administration

~~(1) Conditions for Payment~~

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

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

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

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

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

(2) Consent in Lieu of Court Approval

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

(A) the combined sum of all payments of attorney's fees and personal representative's commissions does not exceed the amounts

provided in Code, Estates and Trusts Article, §7-601; and

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

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

IN THE ESTATE OF:

_____ Estate No. _____

CONSENT TO COMPENSATION FOR

PERSONAL REPRESENTATIVE AND/OR ATTORNEY

I understand that the law, Estates and Trusts Article, §7-601, provides a formula to establish the maximum total compensation to be paid for personal representative's commissions and/or attorney's fees without order of court. If the total compensation being requested falls within the maximum allowable amount, and the request is consented to by all unpaid creditors who have filed claims and all interested persons, this payment need not be subject to review or approval by the Court.
A creditor or an interested party may, but is not required to, consent to these fees.

The formula sets total compensation at 9% of the first $20,000 of the gross estate PLUS 3.6% of the excess over $20,000.

Based on this formula, the total allowable statutory maximum based on the gross estate known at this time is_____,

LESS any personal representative's commissions and/or attorney's fees previously approved as required by law and paid. To date, $_____ in personal representative's commissions and $_____ in attorney's fees have been paid.

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

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

Amount	To	Name of Personal Representative/Attorney
_____	_____	
_____	_____	
_____	_____	
_____	_____	

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

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

_____ _____

Attorney Personal Representative

_____ _____

Address Personal Representative

_____
Address

_____
Telephone Number

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

~~(2)~~ (3) Designation of Payment

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

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

Rule 6-416 was accompanied by the following Reporter's note.

> The Honorable William R. Evans, Chief Judge of the Baltimore County Orphans' Court suggested that the word "anticipates" in subsection (a)(1) be changed to the word "estimates," because an attorney may not be able to anticipate future fees. The Probate/Fiduciary Subcommittee is in accord with this suggestion.
>
> The 2011 legislature enacted Chapter 80, Laws of 2011 (SB 673) that added more conditions for payment of certain attorneys' fees without court approval. The Subcommittee recommends including these conditions in Rule 6-416.

The Chair referred to subsection (b)(2) of Rule 6-416, which provides that the payment of attorney's fees and personal representative's commissions may be made without court approval,

and he asked if language should be added that would state that the fee is in conformance with Rule 1.5 of the Maryland Lawyers' Rules of Professional Conduct. Then Rule 6-416 would read as it is presented "...and does not exceed the amounts provided in....". It is important to avoid a situation in which the contingency fee is 70%, because this is not allowed. The Vice Chair asked what percentage is allowed. The Chair answered that 50% is allowed. It does not mean that 50% is appropriate for every case, but this amount cannot be exceeded.

The Vice Chair inquired who determines whether the contingency fee conforms to the Rules. Mr. Michael replied that ultimately, Bar Counsel makes the determination. The Chair said that Rule 6-416 allows the fee to be paid as a contingency fee without court approval. The Vice Chair remarked that the attorney who is paying himself or herself is determining whether that attorney's own contingency fee is appropriate. The Chair responded that the fee has to be in conformance with Rule 1.5. The Vice Chair acknowledged that the appropriateness of the fee is ultimately determined by Bar Counsel, but she asked who makes this determination on the day of the decision without court approval.

Mr. Sykes noted that the contingency agreements vary. It may be 25% before settlement, 33% if the case goes to court, and 40% if an appeal is taken. Other percentages may vary. It may be the same percentage no matter whether the case settled, or it was litigated in court. Problems will arise if the parties are

not allowed to determine what is reasonable up to a certain limit. Under a valid contingency fee agreement, there still could be problems. There is a certain freedom to contract between parties.

Judge Pierson pointed out that the Reporter's note states that Chapter 80, Laws of 2011 (SB 673) added more conditions for payment of attorneys' fees. Are these conditions exactly what the statute provided? Ms. Libber answered affirmatively. Judge Pierson asked whether the statute authorizes payment of fees without reference to whether they are valid under Rule 1.5. The Chair remarked that the legislature can pass any statute it chooses, but under its inherent authority to regulate the practice of law through the adoption and enforcement of Rules of ethics, the Court of Appeals has asserted for itself the right to put limits on what an attorney can charge as his or her fees. If the legislature tried to allow a fee that the Court would find unreasonable, the Court could well find this to be unconstitutional. Mr. Sykes commented that a cross reference to the statute could be added. The Chair said that his only concern was that the Rule not imply that the Court of Appeals by rule would purport to permit the payment of a fee that is unlawful.

The Vice Chair inquired what the amount is that is set forth in Code, Estates and Trusts Article, §7-601 and whether the statute states that so long as the combined sum of all payments of attorney's fees and personal representative's are not greater than a certain amount, court approval is not necessary. Ms.

Phipps answered that this is true. The formula for it is 9% of the first $20,000 and 3.6% of the remainder. What is in the underlined language is excluded from this formula. The Chair noted that what has been added could be more than that formula. Mr. Sykes remarked that it is not an administrative expense. Mr. Carbine inquired what the motive for this change to the Rule was. The Chair replied that the motive was the statute.

Mr. Carbine asked if there was some reason that the Orphans' Court does not approve the contingency fee agreement. Judge Pierson explained that the background to this change was that estates had various claims from personal injury to wrongful death. Then the attorneys who were handling those cases complained about the delay in those fees being reviewed by the Orphans' Court. They said that the estate hires an attorney to pursue this claim for them. This is not part of the fees for administration of the estate which is traditionally what the Orphans' Court reviews.

Mr. Carbine said that he was in agreement with this, but what he had referred to was when the agreement is signed at the beginning. Is the agreement already in place before the estate is opened? The Reporter responded that sometimes it is, and sometimes it is not. If the decedent signed the original contingency fee agreement, then that would already be in place based on what the decedent had done, but the other scenario is that the personal representative could contract with the attorney. The Chair said that one case is before the decedent

dies, and it is a negligence case. If the decedent dies, there would be a wrongful death claim. Mr. Carbine remarked that if the concern is unconscionable agreements, then the approval should be at the front end and not the back end. The Chair commented that he was not pushing for the change he had suggested. The language in the Rule suggests that the attorney's fees and personal representative's commissions can be paid if the amount does not exceed what the party had agreed to pay.

Ms. Phipps explained that an Orphans' Court judge in Baltimore County had asked the Attorney General for the ability to approve the attorney's fees. Technically, most of the contingency fee arrangements were signed before the decedent died. The court did not have control over it, because it had already been effected. The Attorney General rendered an opinion that the court did have the authority to approve the fees. Each time a settlement came in, petitions for attorneys' fees were filed, and it was bogging down the courts in the larger jurisdictions. The law then changed. If there is a contingency agreement in effect, the court does not necessarily have to approve it. Mr. Maloney noted that this is what caused the legislation to be enacted, because of concern that the opinion of the Attorney General was too broad. The Vice Chair suggested that no further changes needed to be made to the Rule.

By consensus, the Committee approved Rule 6-416 as presented.

Mr. Sykes presented Rule 10-111, Petition for Guardianship

of Minor, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 - GENERAL PROVISIONS

ADD new Rule 10-111, as follows:

Rule 10-111. PETITION FOR GUARDIANSHIP OF MINOR

A petition for guardianship of a minor shall be substantially in the following form:

[CAPTION]

PETITION FOR GUARDIANSHIP OF MINOR

[ ] Guardianship of Person [ ] Guardianship of Property [ ] Guardianship of Person and Property

The petitioner, _____, whose address is _____, represents to the Court that:

1. The minor _____, age ____, born on the _____ day of _____, _____ at _____,
(place of birth)
_____, is the male/female child of _____ and _____. A birth certificate of the minor is attached.
(city and state)

2. The petitioner born in the _____ month of _____

(number) (year)

is the _____ of the minor.

(a) The petitioner's interest in the minor's property is _____.

(b) The petitioner

[ ] has not been convicted of a crime.

[ ] has not been convicted of a crime other than violations of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment.

[ ] has been convicted of the following crime(s):

_____

_____

_____.

3. A list of the names and addresses of all interested persons (mother, father, guardian, the minor's heirs at law, any other person having assumed responsibility for the minor, each government agency paying benefits to or for the minor, any person having any interest in the minor's property; and all others exercising any control over the minor or the minor's property) and the nature of their interest(s) (see Code, Estates and Trusts Article, §13-101 (j)) is attached.

4. The names and addresses of the persons with whom the minor resided over the past five years, and the length of time of the minor's residence with each person are, as follows:

Names	Addresses	State Time Frame
_____	_____	_____
_____	_____	_____
_____	_____	_____

5. The name(s) of one or more persons other than Petitioner(s) to whom correspondence can be sent on behalf of the minor, including a minor who is at least ten years of age are, as follows:

Names	Addresses
_____	_____
_____	_____
_____	_____
_____	_____

6. Guardianship is sought for the following reason(s):

_____

_____

_____

7. If this Petition is for Guardianship of the Property, the following is the list of all the property in which the minor has any interest including an absolute interest, a joint interest, or an interest less than absolute (e.g. trust, life estate).

Property	Location	Value	Trustee, Custodian, Agent, Co-Tenant, etc.
_____	_____	_____	_____
_____	_____	_____	_____

_____ _____ _____ _____

_____ _____ _____ _____

8. (a) All other proceedings regarding the minor (including the guardianship of the person or property, Delinquency, CINS, CINA, Custody, Criminal) are, as follows:

_____

_____

_____

8. (b) All proceedings regarding the petition filed in this court or any other court are, as follows:

_____

_____

_____

9. All exhibits required by Maryland Rule 10-301 (d)* are attached.

WHEREFORE, the Petitioner(s) request that this court issue an order to direct all interested persons to show cause why the Petitioner should not be appointed as guardian of (person, property, or person and property) of the minor.

I do solemnly declare and affirm under the penalties of perjury that the contents of the foregoing Petition are true and correct to the best of my knowledge, information, and belief.

_____ _____

Attorney Petitioner

_____ _____

Address

Telephone Number

Petitioner

Address

Telephone Number

INSTRUCTIONS

*1. Exhibits required by Maryland Rule 10-301 (d) are:

(a) A copy of any instrument nominating a guardian;

(b) If the petition is for the appointment of a guardian for a minor who is a beneficiary of the Department of Veterans Affairs, a certificate of the Administrator or the Administrator's authorized representative, setting forth the age of the minor as shown by the records of the Veterans Administration, and the fact that appointment of a guardian is a condition precedent to the payment of any moneys due the minor from the Veterans Administration shall be prima facie evidence of the necessity for the appointment [Section 13-802, Estates & Trusts Article and Maryland Rule 10-301 (d)]

2. Attached additional sheets, if necessary, to answer all the information requested on this petition.

PETITION FOR GUARDIANSHIP OF PERSON OF MINOR

List of Interested Persons

	Name	Address
Mother:		
Father:		
Guardian:		

_____ _____

Heirs at Law: _____ _____

_____ _____

Government
Agency: _____ _____

_____ _____

Minor's
Attorney: _____ _____

_____ _____

Petitioner's
Attorney: _____ _____

_____ _____

Other: _____ _____

_____ _____

Other: _____ _____

_____ _____

I do solemnly declare and affirm under the penalties of perjury that the contents of the foregoing list of interested persons are true and correct to the best of my knowledge, information, and belief.

_____ _____
Attorney Petitioner

_____ _____
Address Petitioner

_____ _____
Telephone Number Address

_____
Telephone Number

Rule 10-111 was accompanied by the following Reporter's note.

> The Probate/Fiduciary Subcommittee initially proposed the addition of a new form of petition of a guardianship of a minor, new Rule 10-111. This form was drafted by a committee of registers of wills, Orphans' Court judges, members of the bar and of the Estates and Trusts Section of the Maryland State Bar Association. Currently, someone petitioning to be the guardian of the person of a minor is required to file a petition whose contents are described in section (c) of Rule 10-201, and someone petitioning to be the guardian of the property of a minor is required to file a petition whose contents are described in section (c) of Rule 10-301. The Subcommittee felt it would be easier and more uniform if the petitions were filed using a specific form. Because Rules 10-201 and 10-301 also address guardianships of the person or property or both of alleged disabled persons, the Subcommittee decided that it would be more consistent to also include a similar form for guardianships of alleged disabled persons. This would be in Rule 10-112. The adoption of these forms would mean that the contents provision of Rules 10-201 and 10-301 would no longer be necessary.
>
> The Rules Committee approved the form and suggested that in place of the language referring to whether the petitioner has been convicted of a crime, the same language that was added to section 4. of the Petition for Probate in Rule 6-122 be added to subsection 2. b. of the form Petition for Guardianship of a Minor. The Committee of registers of wills, Orphans' Court judges, and members of the bar requested that the list of interested persons be a separate document. An estates and trusts attorney asked that the list include a verification section at the end. The Subcommittee agrees with these changes.

The Chair referred to subsection 8. (a) of the form in Rule 10-111. Voluntary placement is not present in the proceedings listed, which is provided for in Code, Courts Article, §3-803. The juvenile court has to approve an extension of a voluntary placement if it is over a year, which may result in a proceeding. Master Mahasa remarked that this would not be in court without a petition. The voluntary placements are all pre-judicial. The Chair pointed out that the court has to approve an extension. The Reporter commented that this provision has a parenthetical, which has the word "including." Once it is ascertained how voluntary placements fit in, they could be put in as part of the list.

The Chair noted that Code, Courts Article, §3-803 (a) provides that the court has exclusive jurisdiction over voluntary placements. Master Mahasa reiterated that voluntary placements do not come before the court. She suggested that the language "other juvenile proceedings" could be placed within the parentheses. This would be appropriate even if petitions for voluntary placement are pre-filed. The Chair observed that a termination of parental rights (TPR) could be included, because it involves a minor. Master Mahasa said that she had taken an earlier look at the Family Law Article of the Code, which touches on CINA cases. The proceedings referred to in that Code provision are different from the ones in the Orphans' Court. The Reporter expressed the opinion that subsection 8. (a) was broadly

written. It could refer to traffic cases of a 16-year-old. The Chair suggested that the reference to “Delinquency,” “CINS” and “CINA” be taken out and replaced by the language “any proceedings in juvenile court.” By consensus, the Committee agreed to this suggestion.

The Vice Chair pointed out that the form of the affidavit is different than the one in Rule 1-304, Form of Affidavit, which states “I solemnly affirm...”. The form in Rule 10-111 is “I do solemnly declare and affirm...”. She suggested that the language of Rule 1-304 be used. By consensus, the Committee agreed with this suggestion.

By consensus, the Committee approved Rule 10-111 as amended.

Mr. Sykes presented Rule 10-112, Petition for Guardianship of Alleged Disabled Person, for the Committee’s consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 - GENERAL PROVISIONS

ADD new Rule 10-112, as follows:

Rule 10-112. PETITION FOR GUARDIANSHIP OF ALLEGED DISABLED PERSON

A petition for guardianship of an alleged disabled person shall be substantially in the following form:

[CAPTION]

PETITION FOR GUARDIANSHIP OF ALLEGED DISABLED PERSON

[ ] Guardianship of Person [ ] Guardianship of Property [ ] Guardianship of Person and Property

The petitioner, _____, whose address is _____, and whose telephone number is _____, represents to the court that:

1. The alleged disabled person _____, age ____, born on the _____ day of _____, _____ at _____,
(place of birth)
_____, is the male/female child of _____ and _____.
(city and state)

2. The petitioner born in the _____ month of _____
(number) (year)
is the _____ of the alleged disabled person.

(a) The petitioner's interest in the property of the alleged disabled person is _____ _____.

(b) the petitioner

[ ] has not been convicted of a crime.

[ ] has not been convicted of a crime other than violations of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of

imprisonment.

[ ] has been convicted of the following crime(s):

_____

_____

_____.

3. A list of the names and addresses of all interested persons (mother, father, guardian, the alleged disabled person's heirs at law, any other person having assumed responsibility for the alleged disabled person, each government agency paying benefits to or for the alleged disabled person, any person having any interest in the property of the alleged disabled person; and all others exercising any control over the alleged disabled persons or the person's property) and the nature of their interest(s) (see Code, Estates and Trusts Article, §13-101 (j)) is attached.

4. The names and addresses of the persons with whom the alleged disabled person resided over the past five years, and the length of time of the alleged disabled person's residence with each person are, as follows:

Names	Addresses	State Time Frame
_____	_____	_____
_____	_____	_____
_____	_____	_____

5. The name(s) of one or more persons other than Petitioner(s) to whom correspondence can be sent on behalf of the alleged disabled person are, as follows:

Names	Addresses
_____	_____
_____	_____
_____	_____
_____	_____

6. A brief description of the alleged disability and how it affects the alleged disabled person's ability to function is, as follows:

_____

_____

_____

7. Guardianship is sought for the following reason(s) (include (a) allegations demonstrating an inability of the person to make or communicate responsible decisions concerning the person's health care, food, clothing, or shelter, because of mental disability, disease, habitual drunkenness, or addition to drugs, and (b) a description of less restrictive alternatives that have been attempted and have failed):

_____

_____

_____

8. If this Petition is for guardianship of the property, the following is the list of all the property in which the alleged disabled person has any interest including an absolute interest, a joint interest, or an interest less than absolute (e.g. trust, life estate):

Property	Location	Value	Trustee, Custodian, Agent, Co-Tenant, etc.
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

9. (a) All other proceedings regarding the alleged disabled person (including guardianship of the person or property and criminal) are, as follows:

_____

_____

_____

9. (b) All proceedings regarding the petition filed in this court or any other court are, as follows:

_____

_____

_____

10. If a guardian or conservator has been appointed for the alleged disabled person in another proceeding, the name and address of the guardian or conservator and the court that appointed the guardian or conservator are, as follows:

_____ _____
Name Address

_____
Court

11. All exhibits required by Maryland Rules 10-202 (d) and 10-301 (d)* are attached.

WHEREFORE, the Petitioner(s) request that this court issue an order to direct all interested persons to show cause why the Petitioner should not be appointed as guardian of (person, property, or person and property) of the alleged disabled person.

I do solemnly declare and affirm under the penalties of perjury that the contents of the foregoing Petition are true and correct to the best of my knowledge, information, and belief.

_____	_____
Attorney	Petitioner
_____	_____
Address	Petitioner
_____	_____
Telephone Number	Address
	_____
	Telephone Number

INSTRUCTIONS

*1. Exhibits required by Maryland Rules 10-202 (d) and 10-301 (d) are:

(a) A copy of any instrument nominating a guardian;

(b) If the petition is for the appointment of a guardian of an alleged disabled person who is a beneficiary of the Department of Veterans Affairs, in lieu of the certificates required by Rule 10-202 (a), a certificate of the Secretary of that Department or an authorized representative of the Secretary setting forth the fact that the person has been rated as disabled by the Department. [Maryland Rules 10-202 (d) and 10-301 (d)]

2. Attached additional sheets, if necessary, to answer all the information requested on this petition.

PETITION FOR GUARDIANSHIP OF PERSON OF MINOR

List of Interested Persons

	Name	Address
Mother:	_____	_____
	_____	_____
Father:	_____	_____
	_____	_____
Guardian:	_____	_____
	_____	_____
Heirs at Law:	_____	_____
	_____	_____
Government Agency:	_____	_____
	_____	_____
Alleged Disabled Person's Attorney:	_____	_____
	_____	_____
Petitioner's Attorney:	_____	_____
	_____	_____
Other:	_____	_____
	_____	_____
Other:	_____	_____
	_____	_____

I do solemnly declare and affirm under the penalties of perjury that the contents of the foregoing list of interested

persons are true and correct to the best of my knowledge, information, and belief.

_____	_____
Attorney	Petitioner
_____	_____
Address	Petitioner
_____	_____
Telephone Number	Address
	_____
	Telephone Number

Rule 10-112 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 10-111.

The Chair asked about the placement of the List of Interested Persons at the end Rule 10-112. Ms. Libber responded that the Registers of Wills had asked for a separate document. Ms. Phipps explained that when Rule 10-112 was originally drafted, the list was part of the Rule, but it did not have a separate verification as to its contents. The Vice Chair suggested that it be placed as item 3. or 10. in the petition form. The Reporter noted that it would fit in as no. 3. She suggested that item 3. begin as follows: "[t]he following list of the names and addresses of all interested persons....". By consensus, the Committee agreed with this suggestion. The same change would be made to Rule 10-111.

The Chair suggested that in item 2. in place of the language

"born in the _____ month of _____" with the notations underneath for the number of the month and the year, the language "born on _____" should be substituted. This would also be changed in Rule 10-111. By consensus, the Committee agreed to this change.

Judge Weatherly inquired if the attorney's fax number should be required at the end of the Rule where the attorney provides his or her telephone number. The Vice Chair pointed out that Rule 1-311, Signing of Pleadings and Other Papers, provides that a pleading or other paper may contain the signer's e-mail address and fax number. Most petitions filed require the petitioner's e-mail address and fax number. Ms. Phipps suggested that the telephone number of interested persons be required. These people are reluctant to provide this information, because it could be available on Casesearch. The Vice Chair noted that the same problem exists in all cases. She asked if the public is aware of the information provided on Casesearch. Ms. Phipps answered that it is used frequently.

The Vice Chair suggested that if someone has an e-mail address and fax number, the person should be required to provide it. The Chair commented that identifying information can be barred from public access. Victims would not want to have their personal information on Casesearch. Judge Weatherly remarked that there is a need to have access to self-represented people. The Reporter suggested that attorneys should give their e-mail address and fax number. By consensus, the Committee approved

this suggestion.

By consensus, the Committee approved Rule 10-112 as amended and approved the same amendments to Rule 10-111.

Mr. Sykes presented Rule 10-201, Petition for Appointment of a Guardian of the Person, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 200 - GUARDIAN OF PERSON

AMEND Rule 10-201 by adding a new section (b) pertaining to the form of petition, by deleting current section (c), by adding a new section (d) containing a form for designation of a guardian by a minor, by adding a cross reference at the end of the Rule, and by making stylistic changes, as follows:

Rule 10-201. PETITION FOR APPOINTMENT OF A GUARDIAN OF <u>THE</u> PERSON

(a) Who May File

An interested person may file a petition requesting a court to appoint a guardian of a minor or alleged disabled person.

<u>(b) Form of Petition</u>

<u>The petition for a guardianship of the person of a minor shall be filed in substantially the form set forth in Rule 10-111. The petition for a guardianship of the person of an alleged disabled person shall be filed in substantially the form set forth in Rule 10-112.</u>

~~(b)~~ <u>(c)</u> Venue

(1) Resident

If the minor or alleged disabled person is a resident of Maryland, the petition shall be filed in the county where (A) the minor or alleged disabled person resides or (B) the person has been admitted for the purpose of medical care or treatment to either a general or a special hospital which is not a State facility as defined in Code, Health-General Article, §10-406 or a licensed private facility as defined in Code, Health-General Article, §§10-501 to 10-511.

(2) Nonresident

If the minor or alleged disabled person does not reside in this State, a petition for guardianship of the person may be filed in any county in which the person is physically present.

~~(c) Contents~~

~~The petition shall be captioned, "In the Matter of . . ." [stating the name of the minor or alleged disabled person]. It shall be signed and verified by the petitioner, may contain a request for the guardianship of property, and shall contain at least the following information:~~

~~(1) The petitioner's name, address, age, and telephone number.~~

~~(2) The petitioner's familial or other relationship to the minor or alleged disabled person.~~

~~(3) Whether the person who is the subject of the petition is a minor or alleged disabled person, and, if an alleged disabled person, a brief description of the alleged disability and how it affects the alleged disabled person's ability to function.~~

~~(4) The reasons why the court should appoint a guardian of the person and, if the subject of the petition is a disabled person, allegations demonstrating an inability of that person to make or communicate responsible decisions concerning the person, including provisions for health care, food,~~

~~clothing, or shelter, because of mental disability, disease, habitual drunkenness or addiction to drugs, and a description of less restrictive alternatives that have been attempted and have failed.~~

~~Cross reference: Code, Estates and Trusts Article, §13-705 (b).~~

~~(5) An identification of any instrument nominating a guardian or constituting a durable power of attorney, with a copy attached to the petition, if possible, and, if not, an explanation of its absence.~~

~~Cross reference: Code, Estates and Trusts Article, §13-701.~~

~~(6) If a guardian or conservator has been appointed for the alleged disabled person in another proceeding, the name and address of the guardian or conservator and the court that appointed the guardian or conservator. If a guardianship or conservatorship proceeding was previously filed in any other court, the name and address of the court, the case number, if known, and whether the proceeding is still pending in that court.~~

~~(7) A list of (A) the name, age, sex, and address of the minor or alleged disabled person, (B) the name and address of the persons with whom the minor or disabled person resides, and (C) if the minor or alleged disabled person resides with the petitioner, the name and address of another person on whom service can be made.~~

~~(8) The name, address, telephone number, and nature of interest of all other interested persons and all other persons exercising control of the minor or alleged disabled person, to the extent known or reasonably ascertainable.~~

~~(9) If the minor or alleged disabled person is represented by an attorney, the name and address of the attorney.~~

~~(10) A statement that the certificates required by Rule 10-202 are attached, or, if~~

~~not, an explanation of their absence.~~

~~(11) If the petition also seeks a guardianship of the property, the additional information required by Rule 10-301.~~

~~(12) A statement of the relief sought.~~

(d) Designation of a Guardian of the Person by a Minor

After a minor's 14th birthday, a minor may designate a guardian of the minor's person in substantially the following form:

[CAPTION]

DESIGNATION OF A GUARDIAN OF THE PERSON BY A MINOR

I, _____, a minor child, having obtained my 14th birthday, declare:

1. I am aware of the Petition of _____ (petitioner's name) to become the Guardian of my person.

2. I hereby designate _____ as the Guardian of my person.

3. I understand that I have the right to revoke this designation at any time up to the granting of the Guardianship.

I do solemnly affirm under the penalties of perjury that the content of the foregoing minor's designation for Guardianship are true and correct to the best of my knowledge, information and belief.

_____

Signature of Minor Date

Cross reference: Code, Estates and Trusts Article, §13-702.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule R71 a.
Section (b) is new.
Section ~~(b)~~ (c) is derived from former Rule R72 a and b.
~~Section (c) is derived in part from former Rule R73 a and in part from former Rule V71 c.~~
Section (d) is new.

Rule 10-201 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 10-111 as to the form of the petition.

The Probate/Fiduciary Subcommittee recommended the addition of a form, "Designation of a Guardian of the Person by a Minor" to Rule 10-201 to be consistent with Code, Estates and Trusts Article, §13-702. This form was drafted by a committee of registers of wills, Orphans' Court judges as well as members of the bar and of the Estates and Trusts Section of the Maryland State Bar Association. The Rules Committee approved the form. The Subcommittee changed the wording of section (d) slightly for clarity.

The Chair said that the word "obtained" in the first line of the form in section (d) should be the word "attained." By consensus, the Committee agreed to this change.

By consensus, the Committee approved Rule 10-201 as amended.

The Chair stated that consideration of Rule 10-708, Fiduciary's Account and Report of Trust Clerk, which had been listed on the agenda for today, would be deferred.

Agenda Item 2. Consideration of proposed amendments to: Rule 1-321 (Service of Pleadings and Papers Other than Original Pleadings), Rule 2-131 (Appearance), Rule 3-131 (Appearance), and Maryland Lawyers' Rule of Professional Conduct, Rule 1.2 (Scope of Representation and Allocation of Authority Between Client and Lawyer)

The Chair told the Committee that since Mr. Brault, Chair of the Attorneys Subcommittee, was not present, the Chair would give some background regarding the proposed changes to the Rules. The proposals came from the Access to Justice Commission. Pamela Ortiz, Esq., Commission Director, was present at today's meeting. Also present was Professor Michael Millemann, a professor at the University of Maryland School of Law and a member of the Commission.

The Chair presented Rules 1.2, Scope of Representation and Allocation of Authority Between Client and Lawyer; 1-321, Service of Pleadings and Papers other than Original Pleadings; 2-131, Appearance; and 3-131, Appearance for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

APPENDIX: THE MARYLAND LAWYERS' RULES OF PROFESSIONAL CONDUCT

CLIENT-LAWYER RELATIONSHIP

AMEND Rule 1.2 by adding language to section (c), by adding language to the Comment, and by making stylistic changes, as follows:

Rule 1.2. SCOPE OF REPRESENTATION AND

ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of the representation and, when appropriate, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation <u>in accordance with applicable Maryland Rules</u> if <u>(1)</u> the limitation is reasonable under the circumstances and ~~the client gives informed consent~~ <u>(2) with the client's informed consent, the scope and limitations of the representation are clearly set forth in a written agreement between the lawyer and the client</u>.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

COMMENT

Scope of Representation. - [1] Both lawyer and client have authority and responsibility in the objectives and means of

representation. The client has ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. Within those limits, a client also has a right to consult with the lawyer about the means to be used in pursuing those objectives. At the same time, a lawyer is not required to pursue objectives or employ means simply because a client may wish that the lawyer do so. A clear distinction between objectives and means sometimes cannot be drawn, and in many cases the client-lawyer relationship partakes of a joint undertaking. In questions of means, the lawyer should assume responsibility for technical and legal tactical issues, but should defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected.

[2] On occasion, however, a lawyer and a client may disagree about the means to be used to accomplish the client's objectives. Because of the varied nature of the matters about which a lawyer and client might disagree and because the actions in question may implicate the interests of a tribunal or other persons, this Rule does not prescribe how such disagreements are to be resolved. Other law, however, may be applicable and should be consulted by the lawyer. The lawyer should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental disagreement with the client, the lawyer may withdraw from the representation. See Rule 1.16 (b)(4). Conversely, the client may resolve the disagreement by discharging the lawyer. See Rule 1.16 (a)(3).

[3] At the outset of a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to Rule 1.4, a lawyer may rely on such an advance authorization. The client may, however, revoke such authority at any time.

[4] In a case in which the client appears to be suffering diminished capacity, the lawyer's duty to abide by the client's decisions is to be guided by reference to Rule 1.14.

Independence from Client's Views or Activities. - [5] Legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client does not constitute approval of the client's views or activities.

Agreements Limiting Scope of Representation. - [6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide

competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[8] A lawyer and a client may agree that the scope of the representation is to be limited to clearly defined specific tasks or objectives, such as: (1) without entering an appearance, filing papers, or otherwise participating on the client's behalf in any judicial or administrative proceeding, (i) giving legal advice to the client regarding the client's rights, responsibilities, or obligations with respect to particular matters, (ii) conducting factual investigations for the client, (iii) representing the client in settlement negotiations or in private alternative dispute resolution proceedings, (iv) evaluating and advising the client with regard to settlement options or proposed agreements, or (v) drafting documents, performing legal research, and providing advice that the client or another attorney appearing for the client may use in a judicial or administrative proceeding; or (2) in accordance with applicable Maryland Rules, representing the client in discrete judicial or administrative proceedings, such as a court-ordered alternative dispute resolution proceeding, a *pendente lite* proceeding, or proceedings on a temporary restraining order, a particular motion, or a specific issue in a multi-issue action or proceeding. Before entering into such an agreement, the lawyer shall fully and fairly inform the client of the extent and limits of the lawyer's obligations under the agreement.

~~[8]~~ [9] All agreements concerning a lawyer's representation of a client must accord with the Maryland Lawyers' Rules of Professional Conduct and other law. See, e.g., Rule 1.1, 1.8 and 5.6.

Criminal, Fraudulent and Prohibited Transactions. - ~~[9]~~ [10] Paragraph (d) prohibits a lawyer from knowingly counseling

or assisting a client to commit a crime or fraud. This prohibition, however, does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. The fact that a client uses advice in a course of action that is criminal or fraudulent does not, of itself, make a lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

~~[10]~~ [11] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See Rule 1.16(a). In some cases withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. See Rules 1.6, 4.1.

~~[11]~~ [12] Where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.

~~[12]~~ [13] Paragraph (d) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer must not participate in a transaction to effectuate criminal or fraudulent avoidance of tax liability. Paragraph (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of paragraph (d) recognizes that determining the

validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

~~[13]~~ [14] If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Maryland Lawyers' Rules of Professional Conduct or other law or if the lawyer intends to act contrary to the client's instructions, the lawyer must consult with the client regarding the limitations on the lawyer's conduct. See Rule 1.4(a)(4).

Model Rules Comparison. -- Rule 1.2 is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct except for wording changes in Rule 1.2(a) and the retention of existing Maryland language in Comment [1].

Rule 1.2 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 1-321.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-321 to add a new section (b) pertaining to service after entry of limited appearance and to make stylistic changes, as follows:

Rule 1-321. SERVICE OF PLEADINGS AND PAPERS OTHER THAN ORIGINAL PLEADINGS

(a) Generally

Except as otherwise provided in these rules or by order of court, every pleading and other paper filed after the original pleading shall be served upon each of the parties. If service is required or permitted to be made upon a party represented by an attorney, service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivery of a copy or by mailing it to the address most recently stated in a pleading or paper filed by the attorney or party, or if not stated, to the last known address. Delivery of a copy within this Rule means: handing it to the attorney or to the party; or leaving it at the office of the person to be served with an individual in charge; or, if there is no one in charge, leaving it in a conspicuous place in the office; or, if the office is closed or the person to be served has no office, leaving it at the dwelling house or usual place of abode of that person with some individual of suitable age and discretion who is residing there. Service by mail is complete upon mailing.

(b) Service After Entry of Limited Appearance

Every document required to be served upon a party's attorney that is to be served after entry of a limited appearance shall be served upon the party and, unless the attorney's appearance has been stricken pursuant to Rules 2-131 (b) or 3-131 (b), upon the attorney entering that appearance.

~~(b)~~ (c) Party in Default - Exception

No pleading or other paper after the original pleading need be served on a party in default for failure to appear except a pleading asserting a new or additional claim for relief against the party which shall be served in accordance with the rules for service of original process.

~~(c)~~ (d) Requests to Clerk - Exception

A request directed to the clerk for the issuance of process or any writ need not be served on any party.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 306 a 1 and c and the 1980 version of Fed. R. Civ. P. 5 (a).
Section (b) is new.
Section ~~(b)~~ (c) is derived from former Rule 306 b and the 1980 version of Fed. R. Civ. P. 5 (a).
Section ~~(c)~~ (d) is new.

Rule 1-321 was accompanied by the following Reporter's Note.

The Maryland Access to Justice Commission and family law practitioners have requested that provisions concerning limited scope representation be added to the Maryland Rules. Amendments to Rules 1-321, 2-131, and 3-131 and Rule 1.2 of the Maryland Lawyers' Rules of Professional Conduct are proposed by the Attorneys Subcommittee to expressly authorize the entry of limited appearances in the District Court and circuit courts, to address the service of pleadings and papers after an attorney enters a limited appearance, and to provide guidance regarding informed consent of the client when an attorney and a client wish to agree to limited scope representation.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 2-131 by adding a new section (b) pertaining to limited appearances, as

follows:

Rule 2-131. APPEARANCE

(a) By an Attorney or in Proper Person

Except as otherwise provided by rule or statute: (1) an individual may enter an appearance by an attorney or in proper person and (2) a person other than an individual may enter an appearance only by an attorney.

(b) Limited Appearance

An attorney, acting pursuant to an agreement with a client for limited representation that complies with Maryland Lawyers' Rule of Professional Conduct 1.2(c), may enter an appearance limited to participating in a discrete judicial proceeding. The appearance shall specify the scope of the appearance including, to the extent possible, the specific proceeding to which it applies. When the particular proceeding has concluded or the purpose for which the appearance was entered has otherwise been accomplished, the attorney shall file a notice to that effect and shall strike the appearance.

Cross reference: See Maryland Lawyers' Rule of Professional Conduct 1.2, Comment 8.

~~(b)~~ (c) How Entered

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

~~(c)~~ (d) Effect

The entry of an appearance is not a waiver of the right to assert any defense in accordance with these rules. Special appearances are abolished.

Cross reference: Rules 1-311, 1-312, 1-313; Rules 14, 15, and 16 of the Rules Governing Admission to the Bar. See also Rule 1-202 (t) for the definition of "person".

Source: This Rule is in part derived from former Rule 124 and in part new.

Rule 2-131 was accompanied by the following Reporter's Note.

See the Reporter's note to Rule 1-321.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 3-131 by adding a new section (b) pertaining to limited appearances, as follows:

Rule 3-131. APPEARANCE

(a) By an Attorney or in Proper Person

Except as otherwise provided by rule or statute: (1) an individual may enter an appearance by an attorney or in proper person and (2) a person other than an individual may enter an appearance only by an attorney.

(b) Limited Appearance

An attorney, acting pursuant to an agreement with a client for limited representation that complies with Maryland Lawyers' Rule of Professional Conduct 1.2

(c), may enter an appearance limited to participating in a discrete judicial proceeding. The appearance shall specify the scope of the appearance including, to the extent possible, the specific proceeding to which it applies. When the particular proceeding has concluded or the purpose for which the appearance was entered has otherwise been accomplished, the attorney shall file a notice to that effect and shall strike the appearance.

Cross reference: See Maryland Lawyers' Rule of Professional Conduct Rule 1.2, Comment 8.

~~(b)~~ (c) How Entered

An appearance may be entered by filing a pleading, motion, or notice of intention to defend, by filing a written request for the entry of an appearance, or, if the court permits, by orally requesting the entry of an appearance in open court.

~~(c)~~ (d) Effect

The entry of an appearance is not a waiver of the right to assert any defense in accordance with these rules. Special appearances are abolished.

Cross reference: Rules 1-311, 1-312, 1-313; Rules 14 and 15 of the Rules Governing Admission to the Bar. See also Rule 1-202 (t) for the definition of "person", and Code, Business Occupations and Professions Article, §10-206 (b) (1), (2), and (4) for certain exceptions applicable in the District Court.

Source: This Rule is in part derived from former Rule 124 and in part new.

Rule 3-131 was accompanied by the following Reporter's Note.

See the Reporter's note to Rule 1-321.

The Chair explained that currently the issue of limited representation is referred to in section (c) of Rule 1.2 and in

Comment 6. Section (c) is a brief sentence providing only that the scope of representation may be limited if the limitation is reasonable and the client gives informed consent. Comment 6 has some examples of when limited representation might be appropriate. Limited representation is in two forms. One is advice to self-represented persons, such as giving legal advice or drafting documents. It would not include the attorney entering an appearance. The second form is the attorney entering an appearance for limited, specific matters. Examples of these matters are in new Comment 8, which has been proposed for addition. The attorney can represent the client in court-annexed alternative dispute resolution. The purpose of the proposed change is to lay out more clearly in the text of the Rule and in new Comment 8 the boundaries of limited representation. Changes to three Rules are needed. Rule 1-321 provides for service after entry of a limited appearance. Rule 2-131 provides for a limited appearance in the circuit court. Rule 3-131 provides for a limited appearance in the District Court.

The Chair said that the Subcommittee had discussed a number of subsidiary issues, including whether some prior judicial approval needs to be obtained to enter a limited appearance, or if it is necessary for the attorney to withdraw once the goal of the limited appearance has been achieved. The Subcommittee had decided that withdrawal was not necessary, because when there are no court proceedings, the court would not even see the representation unless someone were to object.

The Chair told the Committee that Ms. Kathy Smith, the clerk representative on the Committee, who was not present at the meeting, had sent a letter, copies of which were handed out, asking that this agenda item be postponed for technical reasons. The issue is that in order for the clerks to code limited appearances, the circuit court case management system would have to be modified. Should this issue be taken up at all today?

Ms. Ortiz commented that the intent of the Access to Justice Commission stemmed from a recognition that over the last decade, there has been an increase in the number of self-represented litigants. Many are under financial duress and cannot afford counsel. Attorneys have been experimenting with affordable ways to offer these people legal services. The American Bar Association and some other states have developed a model set of rules for clients who cannot afford legal representation from the beginning to the end of the case. Family law matters use up a great deal of money. This affects access to justice. Many states have rules that promote limited representation. Currently, Rule 1.2 permits limited representation.

The Commission's proposal is to go farther than simply permitting it, to promote it, and give the guidelines for it. Ms. Ortiz noted that Ms. Smith had been a member of the Commission. The Commission had envisioned that an attorney who entered a limited appearance would receive notices, and when the appearance was completed, the attorney would withdraw from the case. From the perspective of the clerks, it would be handled as

an ordinary case. The person who is then self-represented would continue to receive notices. Ms. Smith had pointed out that under the case management system, the party would not get automated notices. The question is how important is it for the parties to receive notices. What is the impact of limited representation on the case management system? There is not one separate system. The Judicial Information Systems (JIS) personnel would have to look at this. The Judiciary is not likely to invest in updating an old system.

Ms. Ortiz said that Professor Millemann had suggested that one solution to the problem of notices is to not continue to provide notices to the parties, but to rely on the attorney who withdrew from the limited representation to provide the notices. Another suggestion was to ask JIS to modify the system, so that even when the limited representation is completed, the self-represented parties can continue to be notified. Master Mahasa remarked that while the attorney is in the case, the case can be treated as any case with an attorney. The onus is on the attorney to inform the client about the case. Judge Pierson commented that this is a substantive issue. Baltimore City already has an issue concerning time standards. A problem that comes up regularly is that an attorney withdraws, then the self-represented client asks for more time, because he or she did not know that the attorney withdrew from the case. It is necessary to clarify whether the attorney is in or out of the case if limited representation is permitted. If a party is not getting

notices, this would lead into the problem that the party did not know about the attorney's withdrawal.

Ms. Ortiz said that this is a legitimate concern. Limited representation is not for every client. It depends on effective communication between the attorney and his or her client. Judge Pierson noted that the Rule drafted by the Subcommittee is not as comprehensive as the one drafted by the Access to Justice Commission. He asked the meaning of the language in section (b) of Rule 2-131 that reads "discrete judicial proceeding." The Chair replied that an attorney could represent someone in an Alternative Dispute Resolution proceeding. The Vice Chair added that the attorney could represent someone on a motion to dismiss or a motion for summary judgment. The Chair commented that even if the party is represented by other counsel, an attorney may enter an appearance on a particular issue, although not for the entire case. The issues for the Rule to resolve are whether an attorney can file a limited appearance, how to define what the attorney is in the case for, and when the appearance ends. Judge Pierson expressed the view that section (b) of Rule 2-131 does not answer those questions.

Mr. Maloney remarked that it is hard to define what is discrete, because the issues in cases are all connected. He asked if any other states have a rule on limited appearance. Ms. Ortiz replied affirmatively, pointing out that many states have added language to section (c) of Rule 1.2. Attorneys need more clarification than what is currently in Rule 1.2 in

Maryland. The Rule drafted by the Commission is taken from the rule in Vermont, which has been endorsed by the ABA. Alaska, Arizona, Colorado and Florida all permit limited appearances. She added that she did not have examples of states that specially preclude them.

Judge Pierson noted that Rule X, which had been drafted by the Access to Justice Commission, laid out a list of items that an attorney could handle in a limited appearance. This is the better way to draft a rule. He expressed his concern about the ones that impact the court. Mr. Maloney suggested that the discussion be deferred until the Committee could see the rules in other states. Judge Pierson said that to allay his concerns, he would like to see the purposes of a limited appearance in the Rule. The Rule should clarify that the filing for a limited appearance should be in a prescribed form, attesting to the client's understanding that the appearance is only for a certain named issue and that the client is responsible for the rest of the case.

The Chair pointed out another issue to be considered that has not been specified in the Rule. When an attorney hired for a limited representation prepares documents for the client to use, is it necessary for the client to reveal that the attorney prepared the documents? It is a ghostwriting problem. This issue has been debated all over the country. Federal courts require disclosure, and most state courts do not.

The Chair said that this matter would be deferred.

Agenda Item 3. Consideration of proposed amendments to Rule 15-1001 (Wrongful Death)

Mr. Michael presented Rule 15-1001, Wrongful Death, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1000 - OTHER SPECIAL PROCEEDINGS

AMEND Rule 15-1001, to add to section (b) the language "or the action is commenced in this State," to reverse the order of sections (c) and (d), to add language to section (c) regarding good faith efforts, to add a specific form of notice to use plaintiffs, to change the procedure for service of the complaint and notice, to add new section (e) providing for a waiver by inaction, and to add new section (f) concerning use plaintiffs identified after a complaint is filed and the relation back of certain amendments to a complaint, as follows:

Rule 15-1001. WRONGFUL DEATH

(a) Applicability

This Rule applies to an action involving a claim for damages for wrongful death.

Cross reference: See Code, Courts Article, §§3-901 through 3-904, relating to wrongful death claims generally. See Code, Courts Article, §5-806, relating to wrongful death claims between parents and children arising out of the operation of a motor vehicle. See also Code, Labor and Employment Article, §9-901 et seq. relating to wrongful death

claims when workers' compensation may also be available, and Code, Insurance Article, §20-601, relating to certain wrongful death claims against the Maryland Automobile Insurance Fund. See also Code, Estates and Trusts Article, §8-103, relating to the limitation on presentation of claims against a decedent's estate.

(b) Plaintiff

If the wrongful act occurred in this State, or the action is commenced in this State, all persons who are or may be entitled by law to damages by reason of the wrongful death shall be named as plaintiffs whether or not they join in the action. The words “to the use of" shall precede the name of any person named as a plaintiff who does not join in the action.

~~(d)~~ (c) Complaint

In addition to complying with Rules 2-303 through 2-305, the complaint shall state the relationship of each plaintiff to the decedent whose death is alleged to have been caused by the wrongful act. The complaint shall also state that the party or parties bringing the action have made a good faith effort to locate, identify, and name all use plaintiffs.

~~(c)~~ (d) Notice to Use Plaintiff

The party bringing the action shall ~~mail~~ serve a copy of the complaint ~~by certified mail to any use plaintiff at the use plaintiff 's last known address. Proof of mailing shall be filed as provided in Rule 2-126.~~ on each use plaintiff pursuant to Rule 2-121. The complaint shall be accompanied by a Notice in substantially the following form:

[Caption of case]

NOTICE TO [Name of Use Plaintiff]

You may have a right to claim an award

of damages in this action. If you decide to make a claim, you must notify the court in which the complaint was filed, in writing, of your decision by the deadline stated in this Notice. To avoid waiver of any rights you may have, you must respond within 30 days after being served if you reside in Maryland, 60 days after being served if you reside elsewhere in the United States, or 90 days after being served if you reside outside of the United States. You may represent yourself, or you may obtain an attorney to represent you. If the court does not receive your written decision by the deadline, the court may find that you have lost your right to participate in the action and claim any recovery.

If you decide to participate, you must present your claim in accordance with court Rules, procedures, and orders.

(e) Waiver by Inaction

If a use plaintiff who is served with a complaint and Notice in accordance with section (d) of this Rule does not file a response within the time stated in the Notice, the use plaintiff may not participate in the action or claim any recovery unless, for good cause shown, the court excuses the late response.

(f) Subsequently Identified Use Plaintiff

If, despite good faith efforts to identify and locate all use plaintiffs, a person entitled to be named as a use plaintiff is identified after the complaint is filed, the newly identified use plaintiff shall be added by amendment to the complaint as soon as practicable and served in accordance with section (d) of this Rule and Rule 2-341(d). The amendment shall relate back to the date of filing of the original complaint.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule Q40.
Section (b) is derived from former Rule Q41

a.
Section ~~(d)~~ (c) is derived from former Rule Q42.
Section ~~(e)~~ (d) is new.
Section (e) is new.
Section (f) is new.

Rule 15-1001 was accompanied by the following Reporter's Note.

The consolidated cases of *Ace American Insurance, et al. v. Williams, et al.* and *Williams, et al. v. Work, et al.*, 418 Md. 400 (2011) address the issue of notice to use plaintiffs in wrongful death actions. A judge of the Court of Appeals has requested that the Rules Committee consider whether any changes to the Rules pertaining to notice to use plaintiffs as a means of protecting statutory beneficiaries are necessary. The Process, Parties, and Pleading Subcommittee recommends expanding the notice provision in Rule 15-1001 to include a specific form of notice to use plaintiffs and changing the way notice is served on use plaintiffs. Instead of notice sent by certified mail to the last known address of the use plaintiff, the amendment requires service in accordance with Rule 2-121.

The proposed amendment to section (b) unifies the procedure for all wrongful death cases that are filed in Maryland, regardless of whether the wrongful death occurred in Maryland. The amendment to section (c) requires the party or parties filing suit to affirmatively plead that a good faith effort has been made to locate all use plaintiffs. These amendments increase the likelihood that all individuals with a claim will be joined in a single wrongful death action.

New section (e) implements the waiver stated in the notice.

New section (f) requires that a plaintiff amend the complaint to add a use plaintiff who is identified subsequent to the

> filing of the original complaint. New section (f) further provides that, if a plaintiff made a good faith effort to identify all use plaintiffs prior to filing the original complaint, the amendment shall relate back to the date of the original complaint.
>
> A stylistic change, reversing the order of current sections (c) and (d), also is proposed.

Mr. Michael explained that the purpose of the amendment to Rule 15-1001 was to comply with recent cases that address potential issues with use plaintiffs, who are not represented by the plaintiff bringing the action but who are listed as statutory beneficiaries. An example of how not to deal with use plaintiffs is in *Ace v. Williams* and *Williams v. Work*, 418 Md. 400 (2011). In the opinion, the court cited an article written by Mr. Michael. The Chair added that the Court of Appeals quoted from that article. Mr. Michael noted that this area of the law has been an uncharted swamp. The proposed change to the Rule would be an improvement on understanding this issue. In a recent case in Baltimore City, a use plaintiff appeared at the last minute, and the court granted a dismissal for lack of a necessary party.

Mr. Michael pointed out the first change to Rule 15-1001 is in section (b). It adds the fact that the action was commenced in the State as a situation where use plaintiffs may be included in the wrongful death action. *Walker v. Essex*, 318 Md. 516 (1990) held that there should be one cause of action. Defendants should not be vexed by the filing of multiple cases.

Mr. Michael noted that the second proposed change to Rule 15-1001 is in section (c). A problem for the plaintiff attorney is that he or she must look for other people who are in direct conflict with the attorney's clients. Adding more use plaintiffs may water down the client's recovery. In *Williams*, the attorney represented Family One in the first case, and then he represented Family Two. The second family filed a motion to reopen the case. Master Mahasa inquired whether the attorney had overcome the potential conflict of interest. Mr. Michael answered that the attorney was required to name the use plaintiffs to the extent that he could deduce who they were. It is the better of two evils to name them despite the conflict.

Mr. Michael noted that the third proposed change in Rule 15-1001 is in section (d). The current Rule requires that the party bringing the action mail a copy of the complaint by certified mail to any use plaintiff. The proposed change is that the party serve a copy of the complaint on the use plaintiffs. The new language provides for a termination of the rights of the use plaintiff. The Honorable James Kenney, formerly a judge of the Court of Special Appeals, had previously raised the issue of whether termination of rights of use plaintiffs can be effected by rule or if it must be by statute. The Vice Chair commented that use plaintiffs must be served. There is no alternative form of notice. Mr. Michael pointed out that service is effected according to Rule 2-121, Process – Service – In Personam, which

provides that the court may order any other means of service if service cannot be effected pursuant to that Rule. Rule 2-122, Process – Service – In Rem or Quasi in Rem, provides for an alternative form of service.

Mr. Michael said that section (d) provides that the use plaintiff has to petition the court. If there is no personal service, it would be helpful to look at how other states terminate the rights of the use plaintiff. He suggested that the word "statutory" be added after the word "a" and before the word "right" in the first sentence of the notice and that a second sentence be added to the notice that would read, as follows: "Only one action on behalf of all persons entitled to make a claim is permitted." This would encourage the participation of use plaintiffs.

Judge Kenney had expressed some concern about the waiver of rights by inaction provided for in section (e). He had asked whether a rule can terminate these rights. When writing the article on this subject, Mr. Michael had received calls from attorneys about the problem of the attorney who is aware of use plaintiffs, but the case is settled. Then before the statute of limitations expires, the use plaintiff comes forward, but the insurance company has already paid out the limits of the policy. The Chair commented that section (e) provides that the court can excuse the late response filed by the use plaintiff. Mr. Michael noted that the practical problem is that no money is left. Mr. Maloney cautioned against writing a rule based on this.

Senator Stone remarked that this must have happened in the past, and he asked what was done then. Mr. Michael replied that he was familiar with most cases, and he did not recall this type of case. The Vice Chair commented that other states must be facing the same issues. Mr. Michael responded that Maryland has some unique features, so it is difficult to compare it with other states. The cases must be filed within three years, there is no disability which other states have, and anyone under the age of 18 is not excused from filing. The Chair pointed out that the third issue has been tested in *Piselli v. 75th Street Med. P.A.,* 371 Md. 188 (2002).

Mr. Michael noted that the condition precedent applies to a child who is older than 18. This has not been challenged on a constitutional basis. Mr. Maloney remarked that dismissal of the case for failure to name a use plaintiff is a harsh sanction. Cases in which there is a good faith failure to name a use plaintiff should not be dismissed. The Rule has no standard as to when a case should be dismissed.

Mr. Michael said that section (f) was changed in response to *Muti v. University of Maryland Medical Systems Corp.* 197 Md. App. 561 (1991), which involved a wrongful death case with the lack of a necessary party. Mr. Maloney suggested the addition of another sentence that would provide that a case would not be dismissed if the plaintiff made a good faith effort to locate a missing person. By consensus, the Committee approved this addition.

The Vice Chair suggested that the following language be added to the beginning of section (f): “Notwithstanding any scheduling order or prohibitions in the amendment rule...”. By consensus, the Committee approved this suggestion.

Mr. Carbine inquired if the issue of necessary parties to a lawsuit is different from the issue of use plaintiffs. Judge Pierson responded that under the Rules of Procedure, parties may be added. Mr. Michael explained that addition of parties is different than the addition of use plaintiffs. The statute pertaining to wrongful death, Code, Courts Article, §3-904, requires that the action for wrongful death be filed within three years of the death of the injured person. Disability of the plaintiff or the plaintiff’s lack of knowledge is not an excuse for failure to name a use plaintiff.

The Vice Chair suggested that in lieu of the language in the second sentence of the notice in section (d) that reads: “ you must respond,” the following language should be substituted: “you must file your response.” By consensus, the Committee agreed with this change.

By consensus, the Committee approved Rule 15-1001 as amended.

The Chair stated that there were other matters to discuss.

Additional Agenda Items

The Chair presented Rule 4-326, Jury – Review of Evidence – Communications, for the Committee’s consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-326 (d) to add a sentence requiring the court to place certain information pertaining to communications with the jury on the record, as follows:

Rule 4-326. JURY - REVIEW OF EVIDENCE - COMMUNICATIONS

(a) Jurors' Notes

The court may, and on request of any party shall, provide paper notepads for use by sworn jurors, including any alternates, during trial and deliberations. The court shall maintain control over the jurors' notes during the trial and promptly destroy the notes after the trial. Notes may not be reviewed or relied upon for any purpose by any person other than the author. If a sworn juror is unable to use a notepad because of a disability, the court shall provide a reasonable accommodation.

(b) Items Taken to Jury Room

Sworn jurors may take their notes with them when they retire for deliberation. Unless the court for good cause orders otherwise, the jury may also take the charging document and exhibits that have been admitted in evidence, except that a deposition may not be taken into the jury room without the agreement of all parties and the consent of the court. Electronically recorded instructions or oral instructions reduced to writing may be taken into the jury room only with the permission of the court. On request of a party or on the court's own initiative, the charging documents shall reflect only those charges on which the jury is to deliberate. The court may impose safeguards for the preservation of the

exhibits and the safety of the jury.

Cross reference: See Rule 5-802.1 (e).

(c) Jury Request to Review Evidence

The court, after notice to the parties, may make available to the jury testimony or other evidence requested by it. In order that undue prominence not be given to the evidence requested, the court may also make available additional evidence relating to the same factual issue.

(d) Communications with Jury

The court shall notify the defendant and the State's Attorney of the receipt of any communication from the jury pertaining to the action as promptly as practicable and in any event before responding to the communication. All such communications between the court and the jury shall be on the record in open court or shall be in writing and filed in the action. The court shall state on the record that the defendant and the State's Attorney were notified, the nature of the communication, and how it was addressed. The clerk or the court shall note on a written communication the date and time it was received from the jury.

Source: This Rule is derived as follows:
Section (a) is new.
Section (b) is derived from former Rule 758 a and b and 757 e.
Section (c) is derived from former Rule 758 c.
Section (d) is derived from former Rule 758 d.

The Chair said that he had received an e-mail from the Honorable Glenn T. Harrell, Jr., a judge on the Court of Appeals, sent on behalf of the Court pertaining to two cases in which a writ of certiorari had been granted, then dismissed as improvidently granted. The concern was the issue of the notes

that the judge receives from the jury. The Chair remarked that he thought that Rule 4-326 was clear that the judge should notify the defendant and the State's Attorney that the judge had received a communication from the jury, unless the communication was not important. This would give the parties an opportunity to comment before the judge responds to the communication.

The Court asked the Committee to consider adding a requirement in Rule 4-326 that the court would state on the record that the defendant and the State's Attorney were notified, the nature of the communication, and how it was addressed. A copy of Rule 4-326 that contains this amendment had been distributed at the meeting. This needed to be discussed at that time, so the amendment could be approved, and the Rule sent to the Court. Mr. Maloney expressed the opinion that this additional language was a good idea and that Rule 2-521, Jury – Review of Evidence – Communications, the corresponding civil Rule, should also be amended accordingly. Judge Kaplan moved that the new language be approved, the motion was seconded, and it passed unanimously.

The Chair presented Rule 5-404, Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 400 - RELEVANCY AND ITS LIMITS

AMEND Rule 5-404 (b) to correct a

certain term and an obsolete statutory reference, as follows:

Rule 5-404. CHARACTER EVIDENCE NOT ADMISSIBLE TO PROVE CONDUCT; EXCEPTIONS; OTHER CRIMES

. . .

(b) Other Crimes, Wrongs, or Acts

Evidence of other crimes, wrongs, or acts including delinquent acts as defined by Code, Courts Article, ~~§3-801~~ §3-8A-01 is not admissible to prove the character of a person in order to show action in conformity therewith. Such evidence, however, may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident.

. . .

Rule 5-404 was accompanied by the following Reporter's Note.

The amendment to Rule 5-404 corrects an obsolete statutory reference and corrects the term "acts" to read "delinquent acts."

The Chair told the Committee that there was an error in section (b) of Rule 5-404. The former Code provision, Code, Courts Article, §3-801 had not applied to delinquency, which is no longer the case. Neither the old or the current Code provisions define the word "acts." Rule 5-404 was intended to cover delinquent acts. The proposed change is one of "housekeeping" to correct the term "acts" to read "delinquent acts" and to correct the obsolete statutory reference. Judge Kaplan moved to approve the proposed changes to Rule 5-404, the

motion was seconded, and it passed unanimously.

The Chair presented three alternative versions of Rule 17-201, Authority to Order ADR, and a "hand-out" version of Rule 17-302, General Procedures and Requirements, for the Committee's consideration.

Alternative #1

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 200 – PROCEEDINGS IN CIRCUIT COURT

Rule 17-201. AUTHORITY TO ORDER ADR

(a) Generally

A circuit court may order a party and the party's attorney to participate in ADR but only in accordance with the Rules in this Chapter and in Chapter 100 of this Title.

(b) Referral Prohibited

(1) The court may not enter an order of referral to ADR in a protective order action under Code, Family Law Article, Title 4, Subtitle 5, Domestic Violence.

(2) If the court learns that the parties are subject to (A) an active protective order under Code, Family Law Article, Title 4, Subtitle 5, Domestic Violence or (B) an active peace order under Code, Courts Article, Title 3, Subtitle 15 where the parties had been in an intimate relationship and there had been the equivalent of domestic violence, the court may not enter an order of referral to ADR in any other civil action involving the same parties.

Committee note: Although Code, Courts Article, §3-1505 (d)(1)(v) allows mediation

to be included in a final peace order as a form of relief if the parties agree to it, the court should be especially careful in its determination as to whether mediation is appropriate where the parties are in an intimate relationship and there has been the equivalent of domestic violence.

(c) Mediation of Child Access Disputes

Rule 9-205 governs the authority of a circuit court to order mediation of a dispute as to child custody or visitation, and the Rules in Title 17 do not apply to proceedings under that Rule except as otherwise provided in that Rule.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 17-103 (a) (2011).
Section (b) is new.
Section (c) is derived from former Rule 17-103 (c)(1) (2011).

Alternative #2

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 200 – PROCEEDINGS IN CIRCUIT COURT

Rule 17-201. AUTHORITY TO ORDER ADR

(a) Generally

A circuit court may order a party and the party's attorney to participate in ADR but only in accordance with the Rules in this Chapter and in Chapter 100 of this Title.

(b) Referral Prohibited

The court may not enter an order of referral to ADR:

(1) in a protective order action under Code, Family Law Article, Title 4, Subtitle 5, Domestic Violence;

(2) in a peace order proceeding under Code, Courts Article, Title 3, Subtitle 15 where the parties had been in an intimate relationship and there is the equivalent of domestic violence; or

Committee note: Although Code, Courts Article, §3-1505 (d)(1)(v) allows mediation to be included in a final peace order as a form of relief if the parties agree to it, subsection (b)(2) of this Rule prohibits that relief where the parties are in an intimate relationship and there has been the equivalent of domestic violence.

(3) if the court learns that the parties are subject to (A) an active protective order under Code, Family Law Article, Title 4, Subtitle 5, Domestic Violence or (B) an active peace order under Code, Courts Article, Title 3, Subtitle 15 where the parties had been in an intimate relationship and there had been the equivalent of domestic violence, in any other civil action involving the same parties.

(c) Mediation of Child Access Disputes

Rule 9-205 governs the authority of a circuit court to order mediation of a dispute as to child custody or visitation, and the Rules in Title 17 do not apply to proceedings under that Rule except as otherwise provided in that Rule.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 17-103 (a) (2011).
Section (b) is new.
Section (c) is derived from former Rule 17-103 (c)(1) (2011).

Alternative #3

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 200 – PROCEEDINGS IN CIRCUIT COURT

Rule 17-201. AUTHORITY TO ORDER ADR

(a) Generally

A circuit court may order a party and the party's attorney to participate in ADR but only in accordance with the Rules in this Chapter and in Chapter 100 of this Title.

(b) Referral Prohibited

The court may not enter an order of referral to ADR **(1)** in a protective order action under Code, Family Law Article, Title 4, Subtitle 5, Domestic Violence**; or (2) if the court learns that the parties are subject to an active protective order under Code, Family Law Article, Title 4, Subtitle 5, Domestic Violence, in any other civil action involving the same parties.**

Committee note: Although Code, Courts Article, §3-1505 (d)(1)(v) allows mediation to be included in a final peace order as a form of relief if the parties agree to it, the court should be especially careful in its determination as to whether mediation is appropriate in a peace order proceeding or in any other civil action involving the parties to a peace order proceeding where the parties are in an intimate relationship and there has been the equivalent of domestic violence.

(c) Mediation of Child Access Disputes

Rule 9-205 governs the authority of a circuit court to order mediation of a dispute as to child custody or visitation, and the

Rules in Title 17 do not apply to proceedings under that Rule except as otherwise provided in that Rule.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 17-103 (a) (2011).
Section (b) is new.
Section (c) is derived from former Rule 17-103 (c)(1) (2011).

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 300 – PROCEEDINGS IN THE DISTRICT COURT

Rule 17-302. GENERAL PROCEDURES AND REQUIREMENTS

(a) Authority to Order ADR

Subject to sections (b) and (c) of this Rule and Rule 17-303, the court, on or before the day of a scheduled trial, may order a party and the party's attorney to participate in one non-fee-for-service mediation or one non-fee-for-service settlement conference.

Committee note: Under this Rule, an order of referral to ADR may be entered regardless of whether a party is represented by an attorney. This Rule does not preclude the court from offering an additional ADR upon request of the parties.

(b) Referral Prohibited

(1) The court may not enter an order of referral to ADR in a protective order action under Code, Family Law Article, Title 4, Subtitle 5, Domestic Violence.

(2) If the court learns that the parties are subject to <u>(A)</u> an active protective order under Code, Family Law Article, Title 4,

Subtitle 5, Domestic Violence or (B) an active peace order under Code, Courts Article, Title 3, Subtitle 15 where the parties had been in an intimate relationship and there had been the equivalent of domestic violence, the court may not enter an order of referral to ADR in any other civil action involving the same parties.

Committee note: Although Code, Courts Article, §3-1505 (d)(1)(v) allows mediation to be included in a final peace order as a form of relief if the parties agree to it, the court should be especially careful in its determination as to whether mediation is appropriate where the parties are in an intimate relationship and there has been the equivalent of domestic violence.

. . .

The Chair explained that the Alternative Dispute Resolution (ADR) Rules had already been approved, but the issue of how to address cases where the parties are subject to an active protective order or an active peace order had been omitted. The Reporter noted that at the September 2011 meeting, the Committee had delegated the drafting of this to Jonathan Rosenthal, Esq., Executive Director of ADR Programs for the District Court of Maryland; the Honorable Dorothy Wilson, District Court Judge in Baltimore County; and the Honorable John Norton, of the District Court in Dorchester County and a member of the Committee. Three alternative versions of Rule 17-201 have been distributed for discussion.

The Chair said that the Committee had agreed that cases involving pure domestic violence would not be suitable for

mediation. In any other case, there may be an imbalance between the parties, who sometimes should not even be in the same room. Code, Courts Article, §3-1505 permits a court in a peace order case, to send the parties to mediation. Peace orders may involve disputes between neighbors or disputes between parties in an intimate relationship but parties who are not married or do not have children in common. These cases are not under Code, Family Law Article, Title 4, Subtitle 5, Domestic Violence, but they are under Code, Courts Article, Title 3, Subtitle 15 pertaining to peace orders. The Subcommittee had some concerns about these cases being in the same rule as domestic violence cases.

Mr. Maloney inquired whether the language "intimate relationship" is defined. He pointed out that peace orders in disputes between neighbors are not the same as peace orders in disputes between parties in an intimate relationship. The Chair noted that the statute permits mediation in peace order cases. In a domestic violence situation under the Family Law Article, the case is not sent to mediation. Should the same principle apply to peace order cases where the parties are in an intimate relationship?

Mr. Maloney expressed the view that the Committee note is not necessary. If the referral to ADR in a case involving an intimate relationship is prohibited, the Rule should state this, or a cross reference to the granting of ADR in the peace order statute should be added.

The Chair said that the Committee note allowing mediation as

a form of relief in a peace order case could be made part of the text of the Rule, and that the note should not provide that the court has to be careful in its determination. Mr. Maloney remarked that the Committee note goes overboard. It should state that the statute permits mediation. The Chair cautioned that mediation is permitted in peace order cases. The Reporter commented that the note should provide that the final peace order can include mediation as a form of relief only if the parties agree. Mr. Maloney expressed the opinion that this is all the note should provide. It should not state that judges have to use caution in determining if mediation is appropriate.

The Chair stated that Alternative #2 prohibits referral to any ADR. Mr. Carbine observed that a couple who are adversaries may be in other cases where they have an aligned interest. Those cases should not be eliminated by Rule 17-201.

Judge Pierson responded that he has a contrary view. He did not see a problem with the Rule stating that ADR is not prohibited. It is not prohibited by the statute. However, because it is like a domestic violence case, the court needs to be careful.

Mr. Maloney commented that the problem is that this is not what the statute provides. He was not sure that it is a function of a Committee note to caution judges. Should all Committee notes be changed to give judges warnings as to when they should and should not be imposing certain orders?

The Chair noted that the bolded provisions in the

alternatives may be in contravention of the statute. If there is a mediation where there is a peace order in place, and the parties agreed to it, then it is permitted. The Rule cannot provide that it is never permitted. Judge Pierson pointed out that subsection (b)(2) of Rule 17-201 seems to provide the opposite, and any reference to a prohibition should be taken out.

Mr. Maloney inquired why section (b) of Rule 17-201 is necessary. It simply restates the law, which states that a referral to ADR cannot be ordered under the domestic violence statute. The Reporter commented that this is not in the statute itself. Mr. Maloney stated that what is in the statute is in the peace order statute, which provides that if the parties agree, the case may be ordered to ADR. Why is it necessary for the Rule to go beyond this?

The Reporter said that there are at least four possible scenarios. One is that the case is an actual domestic violence case. As a policy, but not having anything to do with the statute, the view of the ADR Subcommittee and this Committee was that if it is an actual domestic violence case, there can be no mediation even though the statute is silent on this. The Chair noted that if this is stated in the Rule, then in the first line of section (b), the word "mediation" should be substituted for the acronym "ADR." The Reporter responded that there would be no ADR in an actual domestic violence case, which is what the Committee decided last time. The Chair noted that all the focus was on mediation. The Reporter said that the focus was on

mediation because of the peace order statute. Her second point was the problem with the peace order statute itself, which specifically states that in the final peace order, as a form of relief, if the parties agree, the court can order mediation. It does not refer to other forms of ADR.

Mr. Maloney inquired why Rule 17-201 could not simply reference the law. Why is it necessary to have a cautionary note if the parties agree? The Reporter answered that the idea is that there is an imbalance in domestic violence cases, and the court should not order people to a mediation when this imbalance exists. Mr. Maloney remarked that the statute provides that the parties can agree to it. The Reporter responded that the parties might be in a situation where they are feeling pressure to agree. Mr. Maloney expressed the view that the Committee note tells the court how to use its discretion when the statute expressly authorizes mediation if the parties agree. The Reporter noted that the idea of the Rule is that the parties are in an intimate relationship, and the behavior looks very much like domestic violence.

Mr. Maloney commented that many seminars are held in this building on these kind of issues, and this ought to be raised in a seminar. He knew of many Rules where he felt judges should use caution, but only this one Rule provides for this. The Reporter answered that it should be this way, because the case being discussed looks like a domestic violence case, but it is not. There are peace order situations where there is no intimate

relationship. It may be two neighbors who are squabbling. Mr. Maloney remarked that this gets into the issue of defining what is an intimate relationship.

The Chair said that in Alternative #2, the court may not order ADR in a peace order proceeding. The Committee note could be deleted. The Reporter commented that the Honorable John Norton, a member of the Rules Committee who was not present, had wanted the language in after the Code cite in subsection (b)(2) of Rule 17-201. The Chair said that this language could remain in the Rule. The Reporter noted that this language gets into the issue of what "intimate" means. Judge Love remarked that he did not have the statute in front of him, but he did not think that the language referring to the "intimate relationship" appears in the statute. The Honorable James Salmon, a retired judge of the Court of Special Appeals, had defined this as people living under the same roof in an intimate relationship for at least 90 days in the past calendar year.

Judge Weatherly observed that people involved in a peace order would not fall under this definition. This language is trying to pull in the relationships between girlfriends and boyfriends. The Chair added that this definition is going too far. Mr. Carbine said that Judge Norton and many other judges wanted this language. The Chair said that Code, Courts Article, §3-1505 (d) reads as follows: "The final peace order may include any or all of the following relief: ...direct the respondent or petitioner to participate in professionally supervised

counseling, or if the parties are amenable, mediation...". He pointed out that because it is in the final peace order statute, the language in the Rule may not be necessary.

Judge Love remarked that some confusion is created because the phrase "intimate relationship" is used in the context of cohabitants, which comprise the domestic violence cases, and those cases cannot be mediated. The issue is a finite set of facts where someone is intimate with someone else, but they are not in an "intimate relationship" or are not cohabiting.

Judge Weatherly asked what an "intimate relationship" is. Is it a high school boyfriend and girlfriend dating, but not having sex? Master Mahasa suggested that it may be facts that the court has to hear to determine whether the relationship is intimate and whether there is domestic violence. Judge Love observed that what frequently comes up is where the ex-girlfriend and the ex-boyfriend never had lived together and have no children in common. The relationship is over, and someone cannot get used to that fact. Many peace orders pertain to this set of facts. This may be what the Rule is trying to address.

Mr. Maloney inquired if the Committee note mandates that the parties are to be asked if they were intimate. Master Mahasa responded that someone has filed a case, so it is necessary to find out some information. There has to be some evidence, but it is not necessary to go fishing for it. Judge Weatherly said that the idea is to carve out the boyfriend-girlfriend situation from all of the other peace order cases.

The Chair noted that the peace order statute has dealt with this situation. It provides that the judge can order mediation if the parties agree. Judge Pierson suggested removing all of the language pertaining to peace orders. The Reporter said that one more scenario is if there is an active domestic violence order, and the parties are in some other dispute. Can the court order ADR? Mr. Maloney answered affirmatively.

Judge Pierson remarked that he thought that the consensus at the last meeting was that if the parties were in a domestic violence case, mediation could not be ordered in another civil action between them or in which they were involved. Mr. Maloney asked if this included a divorce case that has a domestic violence protective order. This would cut out some cases that ought to be mediated. Judge Pierson noted that the policy in Baltimore City is that if there is a domestic violence order, the judges do not refer anything to mediation. Mr. Maloney remarked that he could think of many cases where the domestic violence order is the entry into the divorce case. Most of the time is spent on the divorce, but there is a protective order the parties agreed to. The divorce goes on for 1½ years, and the parties are ready for mediation.

The Reporter noted that Rule 17-201 refers to an "active" peace order. There are "stay-away" orders, where the parties should not be in the same room, much less in a mediation together. Mr. Maloney observed that there may be a protective order, so that one party cannot go to the other party's house.

This does not mean that the divorce case does not badly need mediation. The Chair commented it depends on how broad the "no contact" provision is. Judge Weatherly said that the judges often check off boxes on the order, and the standard is "no contact."

The Chair pointed out that in the collateral case, whether they are the only parties or they are parties to a multi-party case and they have common interests, one way to address this is to not send the case to ADR unless both parties agree. If the parties in a multi-party case have the same interests, they could not go to ADR, either. No part of the case could be sent to ADR, which means that the parties may be facing a six-week trial that is not necessary. The Reporter said that if the extent of the court order is very broad, requiring the parties have to stay away from each other under all circumstances, the court is violating its own order by ordering the parties to be in the same room. Judge Weatherly noted that people with serious domestic violence issues are brought into court frequently. Judge Pierson added that the judges do not ask if the parties agree, because they may say they agree, but as the Reporter had pointed out, the agreement may not really be an agreement.

The Chair commented that he had never heard of a problem with ADR with respect to domestic violence cases other than mediation. This is where the imbalance is a problem. It is a safety issue putting the parties in the same room. Judge Weatherly asked about settlement conferences. The Chair replied

that settlement conferences are closer to mediation. This Rule prohibits all of them. The Reporter asked if the solution would be to only keep subsection (b)(1) of Rule 17-201 and limit this prohibition to the protective order action in the actual domestic violence case, not getting into other collateral cases, peace orders, etc.

Mr. Maloney noted that the judicial officers can be expected to have common sense in dealing with these cases. The Chair added that they can do this even without a Committee note. By consensus, the Committee agreed to the Reporter's suggestion. The Chair stated that the Committee note will be deleted from Rule 17-201 and that section (b) will contain only the language of subsection (b)(1) of Alternative #1. Rule 17-302 will be conformed to the changes made to Rule 17-201.

There being no further business before the Committee, the Chair adjourned the meeting.