

COURT OF APPEALS STANDING COMMITTEE  
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee virtually held  
via Zoom for Government on Friday, January 8, 2021.

Members present:

Hon. Alan M. Wilner, Chair

H. Kenneth Armstrong, Esq.	Irwin R. Kramer, Esq.
Hon. Vicki Ballou-Watts	Victor H. Laws, III, Esq.
Julia Doyle Bernhardt, Esq.	Dawne D. Lindsey, Clerk
Hon. Pamela J. Brown	Bruce L. Marcus, Esq.
Hon. Yvette M. Bryant	Donna Ellen McBride, Esq.
Sen. Robert G. Cassilly	Stephen S. McCloskey, Esq.
Hon. John P. Davey	Hon. Douglas R. M. Nazarian
Mary Anne Day, Esq.	Hon. Paula A. Price
Del. Kathleen Dumais	Scott D. Shellenberger, Esq.
Alvin I. Frederick, Esq.	Gregory K. Wells, Esq.
Pamela Q. Harris, State Court Administrator	Hon. Dorothy J. Wilson
	Thurman W. Zollicoffer, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter  
Colby L. Schmidt, Esq., Deputy Reporter  
Heather Cobun, Esq., Assistant Reporter  
Charlita Ablakwa  
Tanya Bernstein, Esq., Director, Commission on Judicial  
Disabilities  
William Beveridge, Jr., Esq., The Law Offices of Peter T.  
Nicholl  
Brandy R. Cannon, Esq., U.S. Dept. of Veterans Affairs  
Cori Coates, JIS, Business Systems Analyst  
Thomas Dolina, Esq., Bodie, Dolina, Hobbs, Friddell & Grenzer,  
P.C.  
Joseph Dudek, Esq., Office of the Attorney General  
Allen R. Dyer, Esq.  
Debra Gardner, Esq., Public Justice Center  
Nancy Harris, JIS, Sr. Technical Business Analyst  
Raymond Hein, Esq., Deputy Bar Counsel, Attorney Grievance  
Commission

Jeffrey J. Hines, Esq., Goodell, DeVries, Leech & Dann, LLP  
Kendra Randall Jolivet, Esq., Executive Secretary, Commission on  
Judicial Disabilities  
Jose Jay Knight, Esq., Court of Special Appeals ADR Programs  
Linda Lamone, Esq., Maryland State Board of Elections  
Lydia Lawless, Esq., Bar Counsel, Attorney Grievance Commission  
Marianne J. Lee, Esq., Executive Secretary, Attorney Grievance  
Commission  
Michele McDonald, Esq., Office of the Attorney General, Courts &  
Judicial Affairs  
Hon. John P. Morrissey, Chief Judge, District Court of Maryland  
Scott E. Nevin, Esq.  
Sarah Parks, Esq.  
Hon. Michael Reed  
Mr. Jason E. Rheinstein  
Erin A. Risch, Esq., Deputy Bar Counsel, Attorney Grievance  
Commission  
Paul Sandler, Esq.  
Thomas Stahl, Esq., Spencer & Stahl, P.C.  
Scott Stevens, Esq.  
Gillian Tonkin, Esq., Staff Attorney, District Court of Maryland  
Mr. Andrew Ucheomumu  
Mark H. Weisner, Esq., Office of the Attorney General  
Michael Winkelman, Esq., McCarthy, Winkelman & Mester LLP  
Brian L. Zavín, Esq., Office of the Public Defender

The Chair convened the meeting.

Agenda Item 1. Consideration of a proposed revision of Rule 5-702 (Testimony by Experts) and conforming amendment to: Rule 5-901 (Requirement of Authentication or Identification)

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Mr. Armstrong presented proposed Rule 5-702, Testimony by Experts, and proposed amendments to Rule 5-901, Requirement of Authentication or Identification, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 700 - OPINIONS AND EXPERT TESTIMONY

DELETE current Rule 5-702 and ADD new Rule 5-702,  
as follows:

RULE 5-702. TESTIMONY BY EXPERTS

(a) Generally

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

(1) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

(2) the testimony is based on sufficient facts or data;

(3) the testimony is the product of reliable principles and methods; and

(4) the expert has reliably applied the principles and methods to the facts of the case.

(b) Factors to Consider

In applying the standards set forth in section (a), the court shall consider relevant factors for determining the reliability of the expected testimony. These factors are flexible and may include but are not limited to:

(1) whether a theory or technique can be and has been tested;

(2) whether a theory or technique has been subjected to peer review and publication;

(3) whether a particular scientific technique has a known or potential rate of error;

(4) the existence and maintenance of standards and controls;

(5) whether a theory or technique is generally accepted;

(6) whether experts are proposing to testify about matters growing naturally and directly out of research they have conducted independent of litigation, or whether they have developed their opinions expressly for the purpose of testifying;

(7) whether the expert has unjustifiably extrapolated from an accepted premise to an unfounded conclusion;

(8) whether the expert has adequately accounted for obvious alternative explanations;

(9) whether the expert is being as careful as the expert would be in the expert's regular professional work outside the expert's paid litigation consulting; and

(10) whether the field of expertise claimed by the expert is known to reach reliable results for the type of opinion the expert would give.

Cross reference: See *Rochkind v. Stevenson*, \_\_\_ Md. \_\_\_ (2020).

Source: This Rule is new. It is derived from the 2020 version of Fed. R. Evid. 702 and *Rochkind v. Stevenson*, \_\_\_ Md. \_\_\_ (2020).

Rule 5-702 was accompanied by the following Reporter's note.

The Evidence Subcommittee recommends that current Rule 5-702 be deleted and replaced by proposed revised Rule 5-702, which codifies the holding in *Rochkind v. Stevenson*, \_\_\_ Md. \_\_\_ (2020). In that case, the Court of Appeals adopted the *Daubert* reliability factors for expert testimony (*Daubert v. Merrell Dow*

*Pharmaceuticals, Inc.*, 509 U.S. 579 (1993)) and rejected the previous *Frye-Reed* standard (*Frye v. United States*, 293 U.S. 1003 (D.C. Cir. 1923) and *Reed v. State*, 282 Md. 374 (1978)).

Section (a) is derived from Fed. R. Evid. 702, which states the general principle that a witness qualified as an expert by knowledge, skill, experience, training, or education may testify if certain conditions are met.

Section (b) lists the non-exhaustive factors for the court to consider, if relevant, in determining the reliability of testimony under section (a). Subsections (b)(1) through (5) are derived from the *Daubert* opinion, which emphasized that the factors were neither exclusive nor dispositive. Subsections (b)(6) through (10) are additional factors developed by courts that the Court of Appeals found persuasive in interpreting the admissibility Rule.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 900 - AUTHENTICATION AND IDENTIFICATION

AMEND Rule 5-901 by updating a Committee note following subsection (b)(9), as follows:

Rule 5-901. REQUIREMENT OF AUTHENTICATION OR IDENTIFICATION

. . .

(b) Illustrations

. . .

(9) Process or System

Evidence describing a process or system used to produce the proffered exhibit or testimony and

showing that the process or system produces an accurate result.

Committee note: This Rule is not intended to indicate the type of evidence that may be required to establish that a system or process produces an accurate result. See, e.g., Rule 5-702 ~~and its Committee note.~~

. . .

Rule 5-901 was accompanied by the following Reporter's note.

The proposed amendment to Rule 5-901 updates a Committee note following subsection (b) (9) in light of proposed amendments to Rule 5-702.

Mr. Armstrong explained that proposed Rule 5-702 incorporates the Court of Appeals' decision in *Stanley Rochkind v. Starlena Stevenson*, No. 47, Sept. Term 2019 (opinion on Aug. 28, 2020), which adopted the *Daubert* factors (*Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993)) for determining the admissibility of expert testimony. He explained that the Evidence Subcommittee approved the draft which is before the Committee. Section (a) reorganizes the existing Rule into a slightly different order and adds new subsections (a) (3) and (4), which are drawn from Fed. R. of Evid. 702. He said that the Subcommittee's goal was to adopt a Rule as close to Fed. R. of Evid. 702 as possible to allow for consistent case law among federal courts and other states which have adopted the federal rule. Mr. Armstrong continued that the Subcommittee considered whether the additional factors listed in the *Rochkind* decision,

which are from the federal rules committee note, should be included in the body of the Maryland Rule or in a Committee note. The vote at the Subcommittee level was to put the factors in the Rule. He also noted that section (b) initially read, "In applying the standards set forth in section (a), the Court shall consider relevant factors for determining the reliability of the expected testimony." It was suggested to the Subcommittee that it would be more appropriate to include the additional sentence now in the proposed draft, which explains that the additional factors are flexible and "include but are not limited" to the enumerated list. Mr. Armstrong added that Mr. Winkleman raised the issue of whether the first sentence of section (b) should read the court "shall consider," "should consider," or "may consider" the additional factors in applying section (a). Mr. Wells suggested that section (b) read: "The relevant factors for determining the reliability of the expected testimony are flexible and may include but are not limited to." Mr. Wells moved to amend section (b) using his suggested language. The motion was seconded and approved by majority vote.

Mr. Winkleman said that he wrote a letter to the Committee on behalf of the Maryland Association of Justice and a second letter from himself as an individual and asked that those comments be treated as separate from each other. He explained that Mr. Wells' amendment addresses the issue of "shall" vs.

"may" but he does not believe it is appropriate to adopt Fed. R. of Evid. 702. He said that the Court did not adopt the federal rule but rather held that Maryland Rule 5-702 should be interpreted using the factors the majority set forth in the opinion. The Chair pointed out that in *Rochkind* the Court was issuing a judicial opinion, which does not preclude the Rules Committee from recommending to the Court the adoption of the federal rule, which the judges can do in their rulemaking capacity. The Chair called for a motion. No motion was made.

Mr. Winkleman also asked the Committee to consider the concerns raised by the dissenting judges in *Rochkind* regarding the potential impact of the decision on minority and underserved communities. Judge Nazarian said that he sits on a Judiciary subcommittee currently reviewing the Maryland Rules for access to justice issues and has thought about how to address Mr. Winkleman's point. He suggested adding a general Committee note to draw attention to the concern now, which could be amended later as part of a broader proposal that the Judiciary subcommittee may make in the future. Judge Nazarian moved to add a Committee note and Del. Dumais seconded. Judge Nazarian proposed: "In applying the factors set forth in this subsection, courts also should consider the potential impact of these factors on people of color and members of underserved or other



disadvantaged communities." The Committee approved the amendment by majority vote.

There being no motion to further amend or reject the proposed Rule, it was approved as amended.

Mr. Armstrong explained that a conforming amendment to Rule 5-901 alters a Committee note. A motion to adopt the conforming amendment was made and seconded. The Committee approved the amendment by majority vote.

There being no motion to further amend or reject the proposed Rule, it was approved as amended.

Agenda Item 2. Consideration of a proposed revision of Rule 5-902 (Self-Authentication) and conforming amendment to: Rule 5-803 (Hearsay Exceptions: Unavailability of Declarant not Required)

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Mr. Armstrong presented proposed Rule 5-902, Self-Authentication, and Rule 5-803, Hearsay Exceptions: Unavailability of Declarant not Required, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 900 - AUTHENTICATION AND IDENTIFICATION

DELETE current Rule 5-902 and ADD new Rule 5-902, as follows:

Rule 5-902. SELF-AUTHENTICATION

Subject to the conditions in this Rule, the following items of evidence are self-authenticating, and, except as required by statute or this Rule, require no testimony or other extrinsic evidence of authenticity in order to be admitted:

(1) Domestic Public Documents Under Seal

A document bearing a seal purporting to be that of the United States, or of any state, district, commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the trust territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

(2) Domestic Public Documents Not Under Seal

A document purporting to bear the signature in the official capacity of an officer or employee of any entity included in paragraph (1) of this Rule, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

(3) Foreign Public Documents

A document that purports to be signed or attested by a person who is authorized by a foreign country's law to do so. The document must be accompanied by a final certification that certifies the genuineness of the signature and official position of the signer or attester - or of any foreign official whose certificate of genuineness relates to the signature or attestation or is in a chain of certificates of genuineness relating to the signature or attestation. The certification may be made by a secretary of a United States embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States. If all parties have been given a reasonable opportunity to investigate the document's authenticity and accuracy, the court may, for good cause, either:

(A) order that it be treated as presumptively authentic without final certification; or

(B) allow it to be evidenced by an attested summary with or without final certification.

(4) Certified Copies of Public Records

A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with this Rule or complying with any applicable statute or these rules.

(5) Official Publications

Books, pamphlets, or other publications purporting to be issued or authorized by a public agency.

(6) Newspapers and Periodicals

Printed materials purporting to be newspapers or periodicals.

(7) Trade Inscriptions and the Like

Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.

(8) Acknowledged Documents

Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments.

(9) Commercial Paper and Related Documents

To the extent provided by applicable commercial law, commercial paper, signatures thereon, and related documents.

Cross reference: See, e.g., Code, Commercial Law Article, §§ 1-202, 3-308, and 3-505.

(10) Presumptions Under Statutes or Treaties

Any signature, document, or other matter declared by applicable statute or treaty to be presumptively genuine or authentic.

(11) Items as to Which Required Objections Not Made

Unless justice otherwise requires, any item as to which, by statute, rule, or court order, a written objection as to authenticity is required to be made before trial, and an objection was not made in conformance with the statute, rule, or order.

(12) Certified Records of Regularly Conducted Activity

The original or a copy of a record of a regularly conducted activity that meets the requirements of Rule 5-803 (b) (6) [ **(A) - (C)** ] and has been certified in a Certification of Custodian of Records or Other Qualified Individual Form substantially in compliance with such a form approved by the State Court Administrator and posted on the Judiciary website, provided that, before the trial or hearing in which the record will be offered into evidence, the proponent (A) gives an adverse party reasonable written notice of the intent to offer the record and (B) makes the record and certification available for inspection so that the adverse party has a fair opportunity to challenge them on the ground that the sources of information or the method or circumstances of preparation indicate lack of trustworthiness.

Committee note: An objection to self-authentication under paragraph (12) of this Rule made in advance of trial does not constitute a waiver of any other ground that may be asserted as to admissibility at trial.

In a consumer debt collection action not resolved by judgment on affidavit, Code, Courts Article, § 5-1203 (b) (2) requires that a debt buyer or a collector acting on behalf of a debt buyer introduce specified documents "in accordance with the Rules of Evidence applicable to actions that are not small claims actions brought under § 4-405 of this Article."

Consequently, if the debt buyer or collector intends to offer business records into evidence in a small claim action without in-court testimony of a witness, the debt buyer must provide notice to the opposing party in conformance with Rule 5-902 (12).

(13) Certified Records Generated by an Electronic Process or System

A record generated by an electronic process or system that produces an accurate result, as shown by a certification of a qualified person that complies with the certification and notification requirements of paragraph (12) of this Rule.

(14) Certified Data Copied from an Electronic Device, Storage Medium, or File

Data copied from an electronic device, storage medium, or file, if authenticated by a process of digital identification, as shown by a certification of a qualified person that complies with the certification and notification requirements of paragraph (12) of this Rule.

Committee note: Paragraphs 13 and 14 are derived from Fed. R. Evid. 902 (13) and (14). See Advisory Committee Notes attached to the Federal provisions for an explanation of how these provisions are intended to operate.

Nothing in paragraphs (13) and (14) is intended to limit a party from establishing authenticity of electronic evidence on any ground provided in these Rules, including under Rule 5-901 or through judicial notice where appropriate.

A certification under paragraphs (13) and (14) can only establish that the proffered item is authentic. The opponent remains free to object to admissibility of the proffered item on other grounds.

Source: This Rule is in part derived from the 2020 version of Fed. R. Evid. 902 and is in part new.

Rule 5-902 was accompanied by the following

Reporter's note.

The Evidence Subcommittee recommends that current Rule 5-902 be deleted and replaced by proposed revised Rule 5-902, which aligns the Maryland Rule with Fed. R. Evid. 902.

Paragraph (1) is derived from current Rule 5-902 (a) (1).

Paragraph (2) is derived from current Rule 5-902 (a) (2).

Paragraph (3) is derived from Fed. R. Evid. 902(3). Current Rule 5-902 (a) (3) contains a similar provision.

Paragraph (4) is derived from current Rule 5-902 (a) (4).

Paragraph (5) is derived from current Rule 5-902 (a) (5).

Paragraph (6) is derived from current Rule 5-902 (a) (6).

Paragraph (7) is derived from current Rule 5-902 (a) (7).

Paragraph (8) is derived from current Rule 5-902 (a) (8).

Paragraph (9) is derived from current Rule 5-902 (a) (9).

Paragraph (10) is derived from current Rule 5-902 (a) (10).

Paragraph (11) is derived from current Rule 5-902 (a) (11). There is no counterpart to this paragraph in the Federal Rules.

Paragraph (12) is derived from Fed. R. Evid. 902 (12) and current Rule 5-902 (b) (1). The current subsection includes a form certificate. The proposed new paragraph refers to a form approved by the State Court Administrator and posted on the Judiciary website. The current section requires a party intending to offer the record to provide written notice to the adverse party at least ten days before the proceeding. The adverse party has five days from

service of the notice to file a written objection. The proposed new paragraph incorporates the "reasonable notice" requirement from the Federal Rule. The Committee note following paragraph (12) is in the current Rule.

Paragraph (13) is derived from Fed. R. Evid. 902 (13). The Federal Rule sets forth a procedure to authenticate certain electronic evidence such as a registry showing that a certain device was connected to a computer. Certification must comply with the certification and notification requirements of new paragraph (12).

Paragraph (14) is derived from Fed. R. Evid. 902 (14). The Federal Rule allows a party to authenticate data copied from an electronic device, storage medium, or file, such as a forensic copy of a hard drive, through a certification. Certification must comply with the certification and notification requirements of new paragraph (12).

A Committee note following paragraphs (13) and (14) refers to the Advisory Committee notes to the Federal Rules, which provide detailed information about the intended applications of the paragraphs. The Committee note also states that a party may establish authenticity of electronic evidence through other means and that a certification of authenticity is separate from the issue of admissibility.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 800 - HEARSAY

AMEND Rule 5-803 by updating a cross reference following subsection (b)(6), as follows:

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

. . .

(b) Other Exceptions

(1) Present Sense Impression

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

(2) Excited Utterance

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

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

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

(4) Statements for Purposes of Medical Diagnosis or Treatment

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

(5) Recorded Recollection

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

(6) Records of Regularly Conducted Business Activity

A memorandum, report, record, or data compilation of acts, events, conditions, opinions, or



diagnoses if (A) it was made at or near the time of the act, event, or condition, or the rendition of the diagnosis, (B) it was made by a person with knowledge or from information transmitted by a person with knowledge, (C) it was made and kept in the course of a regularly conducted business activity, and (D) the regular practice of that business was to make and keep the memorandum, report, record, or data compilation. A record of this kind may be excluded if the source of information or the method or circumstances of the preparation of the record indicate that the information in the record lacks trustworthiness. In this paragraph, "business" includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

Cross reference: Rule 5-902 ~~(b)~~ (12).

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

. . .

Rule 5-803 was accompanied by the following

Reporter's note.

The proposed amendment to Rule 5-803 updates a cross reference following subsection (b) (6) in light of proposed amendments to Rule 5-902.

Mr. Armstrong explained that Rule 5-902 is presented as a new Rule but in substance contains significant portions of current Rule 5-902 with two new additions. The subsections are changed from letters to numbers and the substantive changes begin in section (11), which is designed to be a catch-all requiring compliance with statutes. Section (12) pertains to certified records of a regularly conducted activity that are

self-authenticating. The form certification from current Rule 5-902 (a) (12) is no longer in the Rule but instead will be on the State Court Administrator website. Mr. Armstrong expressed his support for moving the form out of the Rule, which avoids the necessity of changing the Rule as form certificates evolve. He pointed out the bolded section of section (12), which highlights a potential inconsistency with the admissibility rules for business records in the hearsay rule. Rule 5-803 (b) (6) has four subparts and contains an admissibility standard at the end of the subsection.

Mr. Armstrong explained that the bolded option limits the reference to Rule 5-803 (b) (6) (A)-(C). Mr. Armstrong moved to adopt the bolded section and limit the reference. Mr. Wells seconded the motion. Mr. Laws pointed out that the admissibility standard in the subsection follows subsection (b) (6) (D) and suggested that the Rule refer to Rule 5-803 (b) (6) (A)-(D). Mr. Armstrong accepted Mr. Laws' suggestion as an amendment to his motion. The motion was seconded and the Committee approved the amendment by majority vote.

Mr. Armstrong said that section (12) also changes the timing requirement to a reasonableness standard. Sections (13) and (14) are consistent with the procedure in section (12). Section (13) applies to records generated by an electronic process and section (14) applies to records from an

electronic device, storage medium, or file. The Chair commented that sections (13) and (14) add types of records which were added to Fed. R. of Evid. 902 two years ago.

There being no motion to further amend or reject the proposed Rule, it was approved as amended.

Mr. Armstrong said that a conforming amendment to Rule 5-803 alters a cross reference. A motion to adopt the conforming amendment was made and seconded. The Committee approved the amendment by majority vote.

Agenda Item 3. Consideration of proposed amendments to Rule 16-919 (Creation of New Judicial Records)

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The Chair presented Rule 16-919, Creation of New Judicial Records, for consideration.

MARYLAND RULES OF PROCEDURE  
TITLE 16 - COURT ADMINISTRATION  
CHAPTER 900 - ACCESS TO JUDICIAL RECORDS  
DIVISION 2. LIMITATIONS ON ACCESS

AMEND Rule 16-919, as follows:

Rule 16-919. CREATION OF NEW JUDICIAL RECORDS

(a) Scope

This Rule applies to requests for (1) the creation of a new judicial record from ~~(1)~~ electronic databases maintained by a judicial agency or special judicial unit or (2) a reformatting of existing judicial records in any form.

Cross reference: See Rule 16-918 for electronic access to existing electronic records.

(b) Definition

In this Rule, "reformatting" includes indexing, compilation, programming, or reorganization of existing judicial records, documents, or information.

(c) Generally

(1) Except as required by other law, a custodian, judicial agency, or special judicial unit is not required to create a new judicial record or reformat existing judicial records not necessary to be created or reformatted for judicial functions.

(2) The removal, deletion, or redaction from a judicial record of information not subject to inspection under the Rules in this Chapter in order to make the judicial record subject to inspection does not create or reformat a new record within the meaning of this Rule.

(3) If a custodian, judicial agency, or special judicial unit (A) reformats existing judicial records or other documents or information to create a new judicial record, or (B) comes into possession of a new judicial record created by another from the reformatting of other judicial records, documents or information, and there is no basis under the Rules in this Chapter to deny inspection of that new judicial record or some part of that judicial record, the new judicial record or part for which there is no basis to deny inspection shall be subject to inspection.

(d) Request

A person who desires to obtain ~~electronic information~~ judicial records pursuant to section (a) of this Rule shall submit to the custodian a written request that describes with particularity the

information that is sought. If there is no known custodian, the request shall be made to the SCA, who shall designate a custodian.

(e) Review and Response

(1) Generally. The custodian shall review the request, may consult with other employees, legal counsel, or technical experts, and, within 30 business days after receipt of the request, shall take one of the following actions:

(A) Approve the request to the extent that the information requested is subject to inspection under the Rules in this Chapter or Title 20 and that will not directly or indirectly impose significant fiscal or operational burdens on any court, judicial agency, or special judicial unit.

(B) Conditionally approve a request to the extent that the information requested is subject to inspection under the Rules in this Chapter or Title 20 but will directly or indirectly impose significant and reasonably calculable fiscal or operational burdens on a court, judicial agency, or special judicial unit, on condition of the requester's prepayment in full of all additional expenses reasonably expected to be incurred as a result of the approval.

(C) Deny the request and state the reason for the denial if or to the extent that:

(i) the request seeks inspection of information from judicial records that is not subject to inspection under the Rules in this Chapter or Title 20;

(ii) the requester fails or refuses to satisfy a condition imposed under subsection (e) (1) (B) of this Rule;

(iii) granting the request would impose significant and reasonably calculable operational burdens on a court, judicial agency, or special judicial unit that cannot be overcome merely by prepayment of additional expenses under subsection (e) (1) (B) of this Rule; ~~or any other practicable condition; or~~

(iv) the request directly or indirectly imposes a significant but not reasonably calculable fiscal or operational burden on any court, judicial agency, or special judicial unit; or.

(v) the request is a repeated one by the same or affiliated person for the same records that were previously provided or that were the subject of a prior request that was properly denied and there has been no material change in the basis for the denial.

Cross reference: See Glass v. Anne Arundel Cty., 453 Md. 201 (2017).

(2) Considerations. In determining whether to grant or deny the request, the custodian shall consider the following, to the extent relevant:

(A) whether the data processing system, operational system, electronic filing system, or manual or electronic storage and retrieval system used by or planned for the court, judicial agency, or special judicial unit that maintains the judicial records can currently provide the inspection requested in the manner requested and in conformance with the Rules in this Chapter, and, if not, any changes or effort required to enable those systems to provide that inspection;

(B) whether any changes to the data processing, operational, electronic filing, or storage or retrieval systems used by or planned for other courts, other judicial agencies, or other special judicial units in the State would be required in order to avoid undue disparity in the ability of those courts, agencies, or units to provide equivalent inspection of judicial records maintained by them;

(C) any other fiscal, personnel, or operational impact of the request ~~proposed program~~ on the court, other judicial agency, or special judicial unit or on the State judicial system as a whole;

(D) whether there is a substantial possibility that information retrieved ~~through the program~~ may be used for any fraudulent or other unlawful purpose or may result in the dissemination of inaccurate or misleading information concerning judicial records or

individuals who are the subject of judicial records and, if so, whether there are any safeguards to prevent misuse of disseminated information and the dissemination of inaccurate or misleading information; and

(E) whether (1) the request would be unduly burdensome for the custodian or judicial agency, (ii) there is any practicable way to narrow the request to make it manageable, and (iii) the burden on the custodian or judicial agency would outweigh the public interest in the information; and

~~(E)~~ (F) any other consideration that the custodian finds relevant.

(3) Before invoking subsection (e)(1)(C)(iii) or (iv), the custodian shall extend to the person making the request an opportunity to confer with the custodian in an attempt to reduce the request to manageable proportions.

~~(3)~~ (4) Notice of Denial. If the custodian denies the request, the custodian shall give written notice to the requester and summarize the reasons for the denial. If the denial is on the basis that compliance with the request would be unduly burdensome, the notice shall state the relevant facts supporting that conclusion.

Source: This Rule is derived from former Rule 16-909 (f) (2019).

Rule 16-919 was accompanied by the following

Reporter's note.

The proposed amendments to Rule 16-919 have been requested by the State Court Administrator to clarify and expand upon procedures pertaining to requests for the creation of a new judicial record or reformatting of an existing judicial record not necessary to be created or reformatted for judicial functions.

The Chair said that the proposed amendment to Rule 16-919 was triggered by advice from the Maryland Office of the Attorney General and the legal department of the Administrative Office of the Courts. He explained that the amendment is intended to clarify the considerations to be applied when a request is made for the creation of a new judicial record or a reformatting of existing judicial records that are not required for judicial purposes. The AOC has generally granted those requests when complying will not unduly burden the Judiciary.

He noted that two years ago, a member of the public asked the AOC to create a new record by reformatting existing records in a way that would require significant judicial resources. The request was denied but there was nothing in the Rule clarifying that an unduly burdensome request could be denied based on the resources required. He said that the proposed amendments also allow the custodian to deny a repeat request from the same individual or organization. Ms. Harris pointed out that page six contains a numbering error. By consensus, the Committee approved the proposed Rule.

Agenda Item 4. Consideration of proposed amendments to: Rule 19-702 (Attorney Grievance Commission), Rule 18-405 (*Ex Parte* Communications), Rule 18-409.1 (Subpoenas), Rule 18-411 (Commission on Judicial Disabilities), Rule 18-433 (Discovery), Rule 18-437 (Proceedings in Court of Special Appeals), Rule 18-438 (Suspension of Execution of Discipline), and Rule 19-102 (State Board of Law Examiners).

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Mr. Frederick presented proposed amendments to Rule 19-702, Attorney Grievance Commission; Rule 18-405, Ex Parte Communications; Rule 18-409.1, Subpoenas; Rule 18-411, Commission on Judicial Disabilities; Rule 18-433, Discovery; Rule 18-437, Proceedings in Court of Special Appeals; Rule 18-438, Suspension of Execution of Discipline; and Rule 19-102, State Board of Law Examiners, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

AMEND Rule 19-702 by retitling "Executive Secretary" as "Executive Counsel and Director," as follows:

Rule 19-702. ATTORNEY GRIEVANCE COMMISSION

. . .

(e) Executive ~~Secretary~~ Counsel and Director

The Commission may select an attorney to serve as the Executive ~~Secretary~~ Counsel and Director. The Executive ~~Secretary~~ Counsel and Director shall serve at the pleasure of the Commission and receive the compensation set forth in the budget of the Commission. As directed by the Commission, the Executive ~~Secretary~~ Counsel and Director shall (1) receive documents that are filed with the Commission and maintain the records of the Commission, (2) prepare the agenda of meetings of the Commission and before each meeting send to each Commission member a copy of the agenda and meeting materials, (3) serve as in-house attorney to the Commission, (4) serve as liaison to the Chair of the Peer Review Committee, and (5) have such other administrative powers and duties assigned by the Commission.

(f) Removal of Commission Members

The Court of Appeals may remove a member of the Commission at any time.

(g) Quorum

The presence of seven members of the Commission constitutes a quorum for the transaction of business. The concurrence of seven members is required for all actions taken by the Commission other than adjournment of a meeting for lack of a quorum.

(h) Powers and Duties

The Commission has the powers and duties to:

(1) recommend to the Court of Appeals the adoption of procedural and administrative guidelines and policies consistent with these Rules;

(2) employ and prescribe the compensation of the Executive ~~Secretary~~ Counsel and Director;

(3) with the approval of the Court of Appeals, appoint Bar Counsel;

(4) supervise the activities of Bar Counsel;

(5) authorize Bar Counsel to employ attorneys, investigators, and staff personnel and to prescribe their compensation;

(6) appoint special counsel as the need arises;

(7) appoint members of the Peer Review Committee, designate the Chair and one or more Vice Chairs, and remove any member for cause;

(8) employ and prescribe the compensation of personnel to assist the Chair of the Peer Review Committee;

(9) exercise the authority granted in the Rules in this Chapter with respect to the approval or disapproval of (A) the dismissal of a complaint or Statement of Charges, (B) the termination of a complaint with or without a warning, (C) a Conditional Diversion Agreement, (D) a reprimand, or (E) the

filing of a Petition for Disciplinary or Remedial Action;

(10) grant or deny any requests for extensions of time permitted under the Rules of this Chapter or delegate to the Chair of the Commission the authority to grant or deny such requests;

(11) authorize the issuance of subpoenas in accordance with these Rules;

(12) perform the duties required by Title 19, Chapter 400 (Attorney Trust Accounts);

(13) administer the Disciplinary Fund;

(14) submit not later than September 1 of each year a report to the Court of Appeals accounting for the Disciplinary Fund, evaluating the effectiveness of the disciplinary system, and recommending any changes; and

(15) submit annually to the State Court Administrator for review and approval by the Court of Appeals a proposed budget for the disciplinary system.

. . .

Rule 19-702 was accompanied by the following Reporter's note.

Proposed amendments to Rule 19-702 reflect the recommendation to retitle the Executive Secretary position as "Executive Counsel and Director."

The Attorneys & Judges Subcommittee was asked to consider changing the titles for three positions mentioned in the Maryland Rules: Executive Secretary (Attorney Grievance Commission), Executive Secretary (Commission on Judicial Disabilities), and Secretary (State Board of Law Examiners).

The current Executive Secretary to the Attorney Grievance Commission initially requested consideration of a title change due to confusion about her role by members of the public. The current title can be

perceived as clerical and not reflective of the administrative and other duties of the position.

The Executive Secretary to the Commission on Judicial Disabilities and the Secretary to the State Board of Law Examiners expressed support for amending their titles to more accurately reflect their roles and duties within their respective units.

The Subcommittee reviewed the titles of individuals with comparable positions in other jurisdictions and consulted with the Office of the Attorney General so that any title selected would not appear to conflict with the roles and duties of the assistant Attorney General assigned to the Judiciary.

Though the Attorney Grievance Commission uses its own personnel system, the Judiciary Human Resources Department was consulted to coordinate harmonious use of titles. Human Resources advised that it has eliminated the title of "Executive Director" from use but did not object to "Executive Counsel" or "Executive Counsel and Director." The attorney serving as Executive Secretary to the Commission on Judicial Disabilities requested that she not have "director" as part of her title because of the structure of the unit (Investigative Counsel is designated as a "director").

The three titleholders agreed to the following changes to their titles:

- "Executive Secretary" (Attorney Grievance Commission) would become "Executive Counsel and Director" (affected Rule: 19-702)
- "Executive Secretary" (Judicial Disabilities) would become "Executive Counsel" (affected Rules: 18-405, 18-409.1, 18-411, 18-433, 18-437, and 18-438)
  - "Secretary" (SBLE) would become "Secretary and Director" (affected Rule: 19-102)

The Subcommittee approved and recommends these changes.

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 1. GENERAL PROVISIONS

AMEND Rule 18-405 by retitling "Executive Secretary" as "Executive Counsel," as follows:

RULE 18-405. EX PARTE COMMUNICATION

(a) The Commission and Executive ~~Secretary~~ Counsel

Except as otherwise permitted by the Rules in this Chapter, directly or by necessary implication, members of the Commission and the Executive ~~Secretary~~ Counsel to the Commission shall not engage in *ex parte* communications with Investigative Counsel, members of the Board, a judge against whom a complaint has been filed, or an attorney for that judge that pertain to the substance of a complaint against that judge.

(b) The Board

Except as otherwise permitted by the Rules in this Chapter, directly or by necessary implication, members of the Board shall not engage in *ex parte* communications with members of the Commission, the Executive ~~Secretary~~ Counsel to the Commission, Investigative Counsel, a judge against whom a complaint has been filed, or an attorney for that judge that pertain to the substance of a complaint against that judge.

Committee note: The Rules in this Chapter give the Executive ~~Secretary~~ Counsel to the Commission and the Chairs of the Commission and the Board certain functions that anticipate some *ex parte* communications with each other or with Investigative Counsel, the judge, or the judge's attorney that are necessary for them to perform their duties. See, for example, Rules 18-409.1 and 18-434, regarding applications for a subpoena; Rule 18-422 (a) (3), regarding a request for immunity; Rule 18-422 (a) (6), regarding an extension

of time to complete an investigation; Rule 18-423 (b), permitting the Board to meet informally with the judge; and Rule 18-423 (d)(1)(B), allowing consultation between the Chair of the Commission and the Chair of the Board regarding the evidence to be produced before the Commission. The intent of this Rule is not to preclude those kinds of *ex parte* communications or any other *ex parte* communications permitted or anticipated by these Rules but only those that reasonably could leave the impression, intended or unintended, of an improper attempt to influence the nature, scope, or conduct of an investigation by Investigative Counsel, a recommendation by Investigative Counsel, or a proceeding or decision by the Commission or the Board. Commission and Board members should be guided by relevant provisions of Rule 18-202.9. This Rule also is not intended to preclude general supervision of Investigative Counsel, who is appointed by and serves at the pleasure of the Commission.

Source: This Rule is new and is based in part on ABA Model Rules for Judicial Disciplinary Enforcement, Rule 10.

Rule 18-405 was accompanied by the following Reporter's note.

Proposed amendments to Rule 18-405 reflect the recommendation to retitle the Executive Secretary position as "Executive Counsel." See the Reporter's note to Rule 19-702.

## MARYLAND RULES OF PROCEDURE

### TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

#### CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE

##### DIVISION 1. GENERAL PROVISIONS

AMEND Rule 18-409.1 by retitling "Executive Secretary" as "Executive Counsel," as follows:  
RULE 18-409.1. SUBPOENAS

. . .

(b) Subpoenas Issued Pursuant to Rule 18-433 or 18-434

The Chair of the Commission, on behalf of the Commission, may authorize the Executive ~~Secretary~~ Counsel to issue a subpoena to compel the attendance of witnesses and the production of documents or other tangible things at a time and place specified in the subpoena. To the extent otherwise relevant, the provisions of Rule 2-510 (c), (d), (e), (f), (g), (h), (i), (j), and (k) shall apply to subpoenas issued pursuant to this section. References to a court in those Rules shall mean the Chair of the Commission, on behalf of the Commission. Promptly after service of a subpoena on a person other than the subject judge, the party who requested the issuance of the subpoena shall serve a copy of it upon the other party electronically at an address furnished by the other party.

Committee note: The intent of section (b) is that the Executive ~~Secretary~~ Counsel issues an authorized subpoena and provides it to the party who requested it for service.

Source: This Rule is new and is derived, in part, from Rule 19-712 (2018).

Rule 18-409.1 was accompanied by the following Reporter's note.

Proposed amendments to Rule 18-409.1 reflect the recommendation to retitle the Executive Secretary position as "Executive Counsel." See the Reporter's note to Rule 19-702.

## MARYLAND RULES OF PROCEDURE

### TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

#### CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE

##### DIVISION 2. STRUCTURE

AMEND Rule 18-411 by retitling "Executive Secretary" as "Executive Counsel," as follows:

RULE 18-411. COMMISSION ON JUDICIAL DISABILITIES

. . .

(d) Executive ~~Secretary~~ Counsel

(1) Appointment; Compensation

The Commission may select an attorney as Executive ~~Secretary~~ Counsel. The Executive ~~Secretary~~ Counsel shall serve at the pleasure of the Commission and receive the compensation set forth in the budget of the Commission.

(2) Duties

The Executive ~~Secretary~~ Counsel shall: (A) receive documents that are filed with the Commission and maintain the records of the Commission; (B) prepare the agenda of meetings of the Commission and before each meeting send to each Commission member a copy of the agenda and meeting materials; (C) attend meetings of the Commission and the Inquiry Board, keep minutes of those meetings, and retain the minutes, subject to the retention schedule approved by the Chief Judge of the Court of Appeals; (D) serve as attorney to the Commission; (E) serve as liaison to the Board and to Investigative Counsel; and (F) have such other administrative powers and duties assigned by the Commission, other than duties committed to Investigative Counsel by these Rules.

Committee note: Keeping minutes of Board meetings is purely a secretarial service. Under Rule 18-407, proceedings before the Board are confidential, and those minutes therefore are not to be shared with members of the Commission.

(3) Assistants and Other Staff

As the need arises and to the extent funds are available in the Commission's budget, the Commission may employ additional persons to assist the Executive ~~Secretary~~ Counsel. The Executive ~~Secretary~~ Counsel shall keep an accurate record of the time and expenses



of additional persons employed and ensure that the cost does not exceed the amount allocated by the Commission.

(e) Investigative Counsel; Assistants

(1) Appointment; Compensation

Subject to approval by the Court of Appeals, the Commission shall appoint an attorney with substantial trial experience and familiarity with these Rules and the Code of Judicial Conduct as Investigative Counsel. Before appointing Investigative Counsel, the Commission shall notify bar associations and the general public of the vacancy and shall consider any recommendations that are timely submitted. Investigative Counsel shall serve at the pleasure of the Commission and shall receive the compensation set forth in the budget of the Commission.

(2) Powers and Duties

Investigative Counsel shall have the powers and duties set forth in the Rules in this Chapter and shall report and make recommendations to the Board and the Commission as required under these Rules or directed by the Commission. All reports and recommendations shall be in writing and maintained as a record of Investigative Counsel and the recipient.

(3) Additional Attorneys and Staff

As the need arises and to the extent funds are available in the Commission's budget, the Commission may appoint additional attorneys or other persons, other than its Executive ~~Secretary~~ Counsel and any persons employed pursuant to subsection (d)(3) of this Rule to assist Investigative Counsel. Investigative Counsel shall keep an accurate record of the time and expenses of additional persons employed and ensure that the cost does not exceed the amount allocated by the Commission.

. . .

Rule 18-411 was accompanied by the following Reporter's note.

Proposed amendments to Rule 18-411 reflect the recommendation to retitle the Executive Secretary position as "Executive Counsel." See the Reporter's note to Rule 19-702.

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 5. FILING OF CHARGES; PROCEEDINGS BEFORE COMMISSION

AMEND Rule 18-433 by retitling "Executive Secretary" as "Executive Counsel," as follows:

RULE 18-433. DISCOVERY

. . .

(b) Open File

Upon request by the judge or the judge's attorney, at any time after service of charges upon the judge (1) the Executive ~~Secretary~~ Counsel of the Commission shall allow the judge or attorney to inspect and copy the entire Commission record, (2) Investigative Counsel shall (A) allow the judge or attorney to inspect and copy all evidence accumulated during the investigation and all material, information, and statements as defined in Rule 2-402 (f), (B) provide summaries or reports of all oral statements for which contemporaneously recorded substantially verbatim recitals do not exist, and (C) certify to the judge in writing that, except for material that constitutes attorney work product or that is subject to a lawful privilege or protective order issued by the Commission, the material disclosed constitutes the complete record of Investigative Counsel as of the date of inspection.

. . .

Rule 18-433 was accompanied by the following Reporter's note.

A proposed amendment to Rule 18-433 reflects the recommendation to retitle the Executive Secretary position as "Executive Counsel." See the Reporter's note to Rule 19-702.

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 5. FILING OF CHARGES; PROCEEDINGS BEFORE COMMISSION

AMEND Rule 18-437 by retitling "Executive Secretary" as "Executive Counsel," as follows:

RULE 18-437. PROCEEDINGS IN COURT OF APPEALS

. . .

(c) Response

The Commission shall file a response **within 15 30 days** after service of the exceptions in accordance with Rule 20-405. The Commission shall be represented in the Court of Appeals by its Executive ~~Secretary~~ Counsel or such other attorney as the Commission may appoint. A copy of the response shall be served on the judge in accordance with Rules 1-321 and 1-323.

. . .

Rule 18-437 was accompanied by the following Reporter's note.

A proposed amendment to Rule 18-437 reflects the recommendation to retitle the Executive Secretary

position as "Executive Counsel." See the Reporter's note to Rule 19-702.

The bolded language reflects a proposed amendment currently pending before the Court of Appeals as a part of the 206<sup>th</sup> Report.

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 5. FILING OF CHARGES; PROCEEDINGS BEFORE COMMISSION

AMEND Rule 18-438 by retitling "Executive Secretary" as "Executive Counsel," as follows:

RULE 18-438. SUSPENSION OF EXECUTION OF DISCIPLINE

. . .

(c) Response; Hearing

Within fifteen days after the filing of the Commission's report, the judge may file a response with the Court. The judge shall serve a copy of any response on the Commission. The Court shall hold a hearing on the Commission's report and any timely response filed by the judge and may take whatever action it finds appropriate. The Commission may be represented in the proceeding by its Executive ~~Secretary~~ Counsel or any other attorney the Commission may appoint.

. . .

Rule 18-438 was accompanied by the following Reporter's note.

A proposed amendment to Rule 18-438 reflects the recommendation to retitle the Executive Secretary

position as "Executive Counsel." See the Reporter's note to Rule 19-702.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 100 - STATE BOARD OF LAW EXAMINERS AND  
CHARACTER COMMITTEES

AMEND Rule 19-102 by retitling "secretary" as "secretary and director" and by making stylistic changes, as follows:

RULE 19-102. STATE BOARD OF LAW EXAMINERS

. . .

(e) Professional Assistants

The Board may appoint the professional assistants necessary for the proper conduct of its business. Each professional assistant shall be an attorney admitted and in good standing to practice law in Maryland and shall serve at the pleasure of the Board.

Committee note: Professional assistants primarily assist grading the bar examination. Section (e) does not apply to the secretary and director or to administrative staff.

(f) Compensation of Board Members and Assistants

The members of the Board and assistants shall receive the compensation fixed by the Court.

(g) Secretary and Director to the Board

The Court may appoint a an individual to serve as the secretary and director to the Board, ~~to~~ The individual shall hold office at the pleasure of the Court. The secretary and director shall be a member of a Bar of a state. The secretary and director shall have the administrative powers and duties prescribed

by the Board and shall serve as the administrative director of the Office of the State Board of Law Examiners.

. . .

Rule 19-102 was accompanied by the following Reporter's note.

Proposed amendments to Rule 19-102 reflects a recommendation to retitle the secretary position as secretary and director. Stylistic changes are made to clarify that the "secretary and director" is one individual, rather than two. See the Reporter's note to Rule 19-702.

Mr. Frederick explained that several agencies have individuals titled as "Secretary" or "Executive Secretary." Those individuals requested changes to their titles to more accurately reflect their roles and avoid confusion from members of the public. He said that proposed amendments to Rule 19-702 retitle the Executive Secretary to the Attorney Grievance Commission as "Executive Counsel and Director." Proposed amendments to Rules 18-405, 18-409.1, 18-411, 18-433, 18-437, and 18-438 retitle the Executive Secretary to the Commission on Judicial Disabilities as "Executive Counsel." Proposed amendments to Rule 19-102 change the Secretary to the Board of Law Examiners as "Secretary and Director."

There being no motion to amend or reject the proposed Rules, they were approved as presented.

Agenda Item 5. Consideration of proposed amendments to the Rules in Title 19, Chapter 700 (Discipline, Inactive Status, Resignation) and conforming amendments to: Rule 18-428

(Retirement as a Disposition), Rule 19-305.4 (Professional Independence of an Attorney (5.4)), Rule 19-308.1 (Bar Admission and Disciplinary Matters (8.1)), Rule 19-308.5 (Disciplinary Authority; Choice of Law (8.5)), Rule 19-605 (Obligation of Attorneys), Rule 19-606 (Enforcement of Obligations), Rule 19-802 (Registration), and Rule 20-405 (Appellate Review).

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Mr. Frederick said that proposed amendments to Title 19, Chapter 700 were the result of multiple days of meetings by the Attorneys and Judges Subcommittee and there are a number of substantive changes, changes that conform the Rules to current practice, and style changes. The Rules include forms of non-discipline and resources for attorneys under disability.

Mr. Frederick presented Rule 19-701, Definitions, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 1. GENERAL PROVISIONS

AMEND Rule 19-701, as follows:

Rule 19-701. DEFINITIONS

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

(a) Address of Record

"Address of Record" means the address maintained by the attorney with the Attorney Information System in accordance with Rule 19-802.

~~(a)~~ (b) Attorney

"Attorney" means an individual admitted by the Court of Appeals to practice law in this State. For purposes of discipline or inactive status, the term also includes (1) an individual not admitted by the Court of Appeals but who engages in the practice of law in this State, holds himself or herself out as practicing law in this State, or who has the obligation of supervision or control over another attorney who engages in the practice of law in this State, and (2) an individual who is seeking reinstatement pursuant to Rules 19-751 or 19-752 following the imposition of discipline or inactive status.

Cross reference: See Rule 19-308.5 (8.5) of the Maryland Attorneys' Rules of Professional Conduct.

~~(b)~~ (c) Circuit

"Circuit" means Appellate Judicial Circuit.

~~(e)~~ (d) Client Protection Fund

"Client Protection Fund" means the Client Protection Fund of the Bar of Maryland created by Code, Business and Occupations and Professions Article, § 10-311 and administered pursuant to Rule 19-604.

~~(d)~~ (e) Commission

"Commission" means the Attorney Grievance Commission of Maryland.

~~(e)~~ (f) Conditional Diversion Agreement

"Conditional diversion agreement" means the agreement provided for in Rule 19-716.

(g) Complainant

"Complainant" means a person who has filed a written allegation of misconduct or incapacity.



(h) Disability

"Disability" means a mental or physical condition that seriously interferes with the performance of an attorney's duties, and is, or is likely to become, permanent.

(i) "Disability inactive status" means a status determined pursuant to Rule 19-739.

~~(f)~~ (j) Disbarment

"Disbarment" means the unconditional termination of any privilege to practice law in this State pursuant to Rule ~~19-742~~ 19-741 and, when applied to an attorney not admitted by the Court of Appeals to practice law, means the unconditional exclusion from the admission to or the exercise of any privilege to practice law in this State.

(k) Email Address of Record

"Email Address of Record" means the email address(es) maintained by the attorney with the Attorney Information System in accordance with Rule 19-802.

(l) Impairment; Impaired

"Impairment" or "Impaired" means a mental or physical disability, including an addiction, that seriously interferes with the performance of an attorney's duties but may be remediable and, if remedied, is not likely to become permanent.

~~(g)~~ (m) Incapacity

"Incapacity" means the inability to render adequate legal service by reason of ~~mental or physical illness or infirmity, or addiction to or dependence upon alcohol or one or more drugs or other intoxicants~~ a disability or impairment.

~~(h)~~ (n) Office for the Practice of Law

"Office for the practice of law" means ~~an~~ ~~office~~ a location in which an attorney usually devotes a substantial part of the attorney's time to the

practice of law during ordinary business hours in the traditional work week.

~~(i)~~ (o) Petition for Disciplinary or Remedial Action

"Petition for disciplinary or remedial action" means the petition filed by Bar Counsel pursuant to Rule 19-721.

~~(j)~~ (p) Professional Misconduct

"Professional misconduct" or "misconduct" has the meaning set forth in Rule 19-308.4 (8.4) of the Maryland Attorneys' Rules of Professional Conduct in Chapter 300 of this Title. The term includes the knowing failure to respond to a request for information authorized by this Chapter without asserting, in writing, a privilege or other basis for such failure.

~~(k)~~ (q) Reinstatement

"Reinstatement" means the termination of disbarment, resignation, suspension, inactive status, or any exclusion to practice law in this State pursuant to an Order entered under Rule 19-751 or 19-752.

~~(l)~~ (r) Serious Crime

"Serious crime" means (1) a felony under Maryland law; (2) a crime committed in another state or under federal law that would have been a felony under Maryland law had the crime been committed in Maryland or in violation of Maryland law, ~~and~~ (3) a crime under federal law or the law of any state that is punishable by imprisonment for three years or more, or (4) any crime, a necessary element of which, as determined by the statutory or common law definition of the crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or an attempt, conspiracy, or solicitation of another to commit a serious crime.

~~(m)~~ (s) State

"State" means (1) a state, possession, territory, or commonwealth of the United States or (2) the District of Columbia.

~~(n)~~ (t) Statement of Charges

"Statement of charges" means the document filed by Bar Counsel pursuant to Rule 19-718.

~~(o)~~ (u) Suspension

"Suspension" means the temporary termination of the privilege to practice law, either for a fixed period or indefinitely and, when applied to an attorney not admitted by the Court of Appeals to practice law, means the temporary or indefinite exclusion from the admission to or the exercise of any privilege to practice law in this State.

~~(p)~~ ~~Warning~~

~~"Warning" means a notice that warns an attorney about future misconduct.~~

Source: This Rule is derived from former Rule 16-701 (2016).

Mr. Frederick explained that the definition of "serious crime" in section (r) is the most substantive change. The Chair observed that a comment received on this Rule expressed concern that a lawyer held in criminal contempt could be viewed as having committed a serious crime. He said that Bar Counsel is unlikely to pursue disciplinary action in that situation but agreed that it is theoretically possible.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Mr. Frederick presented Rule 19-702, Attorney Grievance Commission, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 1. GENERAL PROVISIONS

AMEND Rule 19-702, as follows:

Rule 19-702. ATTORNEY GRIEVANCE COMMISSION

(a) Creation and Composition

There is an Attorney Grievance Commission which shall consist of 12 members appointed by the Court of Appeals. Nine members shall be attorneys and three members shall not be attorneys.

(b) Term

Subject to section (f) of this Rule, the term of each member is three years. The terms of the members shall be staggered so that the terms of three attorney members and one non-attorney member expire each year.

(c) Compensation

A member of the Commission may not receive compensation for serving in that capacity but is entitled to reimbursement for expenses reasonably incurred in the performance of official duties in accordance with standard State travel regulations.

(d) Chair and Vice Chair

The Court of Appeals shall designate one attorney member as the Chair of the Commission and one attorney member as the Vice Chair. In the absence or disability of the Chair or upon an express delegation of authority by the Chair, the Vice Chair shall have the authority and perform the duties of the Chair.

(e) **[Executive Secretary] or [Executive Counsel and Director]**

The Commission may select an attorney as **[Executive Secretary]** or **[Executive Counsel and Director]**. The **[Executive Secretary]** or **[Executive Counsel and Director]** shall serve at the pleasure of the Commission and receive the compensation set forth in the budget of the Commission. As directed by the Commission, the **[Executive Secretary]** or **[Executive Counsel and Director]** shall (1) receive documents that are filed with the Commission and maintain the records of the Commission, (2) prepare the agenda of meetings of the Commission and before each meeting send to each Commission member a copy of the agenda and meeting materials, (3) serve as in-house attorney to the Commission, (4) serve as liaison to the Chair of the Peer Review Committee, and (5) have such other administrative powers and duties assigned by the Commission.

(f) Removal of Commission Members

The Court of Appeals may remove a member of the Commission at any time.

(g) Quorum

The presence of seven members of the Commission constitutes a quorum for the transaction of business. The concurrence of seven members is required for all actions taken by the Commission other than adjournment of a meeting for lack of a quorum.

(h) Powers and Duties

The Commission has the powers and duties to:

(1) recommend to the Court of Appeals the adoption of procedural and administrative guidelines and policies consistent with these Rules;

(2) employ and prescribe the compensation of the **[Executive Secretary]** or **[Executive Counsel and Director]**;

(3) with the approval of the Court of Appeals, appoint Bar Counsel;

(4) supervise the activities of Bar Counsel;

(5) authorize Bar Counsel to employ attorneys, investigators, and staff personnel and to prescribe their compensation;

(6) appoint special counsel as the need arises, in a particular matter, or delegate to the Chair of the Commission the authority to appoint special counsel;

(7) appoint members of the Peer Review Committee, designate the Chair and one or more Vice Chairs, and remove any member ~~for cause~~ at any time;

(8) employ and prescribe the compensation of personnel to assist the Chair of the Peer Review Committee;

(9) exercise the authority granted in the Rules in this Chapter with respect to the approval or disapproval of (A) the dismissal of a complaint or Statement of Charges, (B) the termination of a complaint with or without ~~a warning~~ a letter of cautionary advice or a letter of admonition, (C) a Conditional Diversion Agreement, (D) a reprimand, or (E) the filing of a Petition for Disciplinary or Remedial Action;

(10) grant or deny any requests for extensions of time permitted under the Rules of this Chapter or delegate to the Chair of the Commission the authority to grant or deny such requests;

(11) authorize the issuance of subpoenas in accordance with these Rules or delegate to the Chair of the Commission the authority to grant or deny such authorizations;

(12) perform the duties required by Title 19, Chapter 400 (Attorney Trust Accounts);

(13) administer the Disciplinary Fund;

(14) submit not later than ~~September 1~~ October 15 of each year a report to the Court of Appeals accounting for the Disciplinary Fund, evaluating the effectiveness of the disciplinary system, and recommending any changes; and

(15) submit annually to the State Court Administrator for review and approval by the Court of Appeals a proposed budget for the disciplinary system.

(i) Effect of Chair's Decisions

When a request for action under this Chapter is subject to the approval of the Chair of the Commission, the Chair's approval of the request is final and shall be reported to the Commission. If the Chair denies the request or refers it to the Commission for action, the Commission shall act upon the request at its next meeting.

Source: This Rule is derived from former Rule 16-711 (2016).

Mr. Frederick said that proposed Rule 19-702 includes the proposed amendments from Item 4 regarding the title change for the Executive Secretary. The Rule also refers to a letter of cautionary advice or letter of admonition, which is explained further in other Rules.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Mr. Frederick presented Rule 19-703, Bar Counsel, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 1. GENERAL PROVISIONS

AMEND Rule 19-703, as follows:

Rule 19-703. BAR COUNSEL

(a) Appointment

Subject to approval by the Court of Appeals, the Commission shall appoint an attorney as Bar Counsel. Before appointing Bar Counsel, the Commission shall notify bar associations and the general public of the vacancy and consider any recommendations that are timely submitted. Bar Counsel shall serve at the pleasure of the Commission and shall receive the compensation set forth in the budget of the Commission.

(b) Powers and Duties

Subject to the supervision and approval, if required, of the Commission, Bar Counsel has the powers and duties to:

- (1) investigate professional misconduct or incapacity on the part of an attorney;
- (2) issue subpoenas as provided by Rule 19-712;
- (3) enter into and implement Conditional Diversion Agreements, issue notices, ~~and administer~~ recommend warnings letters of cautionary advice or letters of admonition, and propose reprimands;
- (4) file statements of charges, participate in proceedings before Peer Review Panels, and prosecute all disciplinary and remedial proceedings;
- (5) file and prosecute petitions for disciplinary and remedial actions in the name of the Commission;
- (6) monitor and enforce compliance with all disciplinary and remedial orders of the Court of Appeals;
- (7) investigate petitions for reinstatement and applications for resignation from the practice of law and represent the Commission in those proceedings;
- (8) initiate, intervene in, and prosecute actions to enjoin the unauthorized practice of law;



(9) employ attorneys, investigators, and staff personnel as authorized by the Commission at the compensation set forth in the Commission's budget;

(10) discharge any employee;

(11) maintain dockets and records of all papers filed in disciplinary or remedial proceedings;

(12) make reports to the Commission;

(13) Consult with the State and local bar associations, public and private support groups, and other appropriate persons in an effort to identify programs or services that can (A) serve as a resource to assist attorneys who may come before Bar Counsel, the Commission, or the Court of Appeals, and (B) be considered when recommending or determining an appropriate disposition of complaints or charges against those attorneys. Those resources may include (A) treatment for emotional distress, mental disorders or disability, or dependence on alcohol, drugs, or other intoxicants, (B) assistance in law office management, including mentoring, accounting, bookkeeping, financial, and other professional assistance relevant to the handling of client or third-party funds, calendaring events and time deadlines, and other professional or business requirements related to the practice of law, and (C) monitoring services when required by Bar Counsel, the Commission, or the Court of Appeals; and

Committee Note: Subsection (b)(13) does not require Bar Counsel or the Commission to create or fund any of these programs or services or to require or recommend their use in any particular case. The Rules Committee is advised that programs and services of this kind do exist or can be created. The Committee believes that identifying those that are reliable and available may permit a fairer and more effective disposition in particular cases by Bar Counsel, the Commission, and the Court of Appeals.

~~(13)~~ (14) perform other duties prescribed by the Commission, this Chapter, and the Rules in Title 19, Chapter 400 (Attorney Trust Accounts).

Source: This Rule is derived from former Rule 16-712 (2016).

Mr. Frederick explained that proposed Rule 19-703 also refers to letters of cautionary advice and admonition. The most significant change is in subsection (b)(13), which authorizes Bar Counsel to consult with State and local bar associations and other appropriate groups to identify programs and services to assist attorneys. Mr. Kramer commented that he believes there are significant problems with the disciplinary process not addressed by the revisions. He explained that he is concerned by Bar Counsel's exclusive power to determine if an attorney in crisis is eligible for diversion or intervention. He suggested that the Attorney Grievance Commission should determine when diversion is appropriate. The Chair suggested that Mr. Kramer's comment should be deferred to the Rule on conditional diversion agreements. Mr. Kramer said he has no specific objection to proposed Rule 19-703 but that the Rules overall create a statutory scheme that gives significant power exclusively to Bar Counsel.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Mr. Frederick presented Rule 19-704, Peer Review Committee, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 1. GENERAL PROVISIONS

AMEND Rule 19-704, as follows:

Rule 19-704. PEER REVIEW COMMITTEE

(a) Creation

There is a Peer Review Committee, the members of which are appointed to serve on Peer Review Panels pursuant to Rule 19-719.

(b) Composition

The Peer Review Committee consists of the number of individuals in each circuit that the Commission determines is necessary to conduct the volume of peer review proceedings. Of the number of members determined for each circuit, one-third shall be residents of that circuit who are not attorneys and the remainder shall be attorneys who maintain offices for the practice of law within that circuit.

(c) Individuals Ineligible for Appointment as an Attorney Member

The Commission may not appoint as an attorney member to the Peer Review Committee an individual who:

(1) is not admitted by the Court of Appeals to practice law in Maryland;

(2) has not actively and lawfully engaged in the practice of law in Maryland for at least five years;

(3) is a judge of a court of record;

(4) is the subject of a pending ~~statement of charges~~ docketed complaint or petition for disciplinary or remedial action; or

(5) was ever disbarred or suspended by the Court of Appeals or by a disciplinary body or court of the United States or any state.

(d) Individuals Ineligible for Appointment as a Non-attorney Member

The Commission may not appoint as a non-attorney member to the Peer Review Committee an individual who:

(1) has been convicted of a serious crime and the conviction has not been reversed or vacated; or

(2) is the complainant in a pending matter against an attorney under the Rules in this Chapter.

(e) Procedure for Appointment

Before appointing members of the Peer Review Committee, the Commission shall notify bar associations and the general public in the appropriate circuit and consider any applications and recommendations that are timely submitted. The Commission shall prepare a brief notice informing attorneys how they may apply to serve on the Peer Review Committee and ~~deliver the notice to the Trustees of the Client Protection Fund of the Bar of Maryland, who at least once a year shall send a copy of the notice to each attorney who is required to pay an annual fee to the Fund~~ post the notice on the Commission's website.

(f) Term

The term of each member is two years. The Commission may extend the term of any member assigned to a Peer Review Panel until the completion of a pending matter. A member may be reappointed by the Commission.

(g) Chair and Vice Chair

The Commission shall designate one attorney member of the Peer Review Committee as Chair and one or more attorney members as Vice Chairs. In the absence or disability of the Chair or upon express delegation of authority by the Chair, the Vice Chair

shall have the authority and perform the duties of the Chair.

(h) Compensation

A member of the Peer Review Committee may not receive compensation for serving in that capacity but is entitled to reimbursement for expenses reasonably incurred in the performance of official duties in accordance with standard State travel regulations.

(i) Removal

The Commission may remove a member of the Peer Review Committee ~~for cause~~ at any time.

Source: This Rule is derived from former Rule 16-713 (2016).

Mr. Frederick said that proposed Rule 19-704 makes certain changes to the Peer Review Committee.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Mr. Frederick presented Rule 19-705, Disciplinary Fund, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 1. GENERAL PROVISIONS

AMEND Rule 19-705, as follows:

Rule 19-705. DISCIPLINARY FUND

(a) Establishment; Nature

There is a Disciplinary Fund. The Fund is created and administered pursuant to the Constitutional authority of the Court of Appeals to regulate the practice of law in the State of Maryland and to implement and enforce the Maryland Attorneys' Rules of Professional Conduct adopted by the Court. The Fund consists ~~entirely~~ of contributions made by attorneys pursuant to section (b) of this Rule, and income from those contributions, and costs recovered pursuant to law or court order. It is dedicated entirely to the purposes established by the Rules in this Title.

(b) Payment by Attorneys

As a condition precedent to the practice of law, each attorney shall pay annually an amount prescribed by the Court of Appeals. The amount shall be in addition to and paid by the same date as other sums required to be paid to the Client Protection Fund pursuant to Rule 19-605.

(c) Collection and Disbursement

The treasurer of the Client Protection Fund of the Bar of Maryland shall collect and remit to the Commission the sums paid by attorneys to the Disciplinary Fund.

(d) Audit

The Commission shall direct annually an independent audit of the Disciplinary Fund. The expense of the audit shall be paid out of the Fund.

(e) Enforcement

Enforcement of payment of annual assessments of attorneys pursuant to this Rule is governed by the provisions of Rule 19-606.

Source: This Rule is derived from former Rule 16-714 (2016).

Mr. Frederick said that proposed Rule 19-705 contains minor changes.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Mr. Frederick presented Rule 19-706, Sanctions and Remedies, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 1. GENERAL PROVISIONS

AMEND Rule 19-706, as follows:

Rule 19-706. SANCTIONS AND REMEDIES

(a) For Professional Misconduct

An attorney who is found to have committed professional misconduct is subject to one or more of the following sanctions and remedies:

(1) disbarment by the Court of Appeals;

(2) suspension, for a fixed period or indefinitely, by the Court of Appeals;

(3) probation under terms and conditions as specified by the Court of Appeals;

~~(3)~~(4) reprimand by the Court of Appeals or, with the attorney's consent, by the Commission;

~~(4)~~(5) conditional diversion in accordance with a Conditional Diversion Agreement; ~~and~~

~~(5) (6) termination of a disciplinary proceeding with or without a warning dismissal of the complaint with or without a letter of cautionary advice or, with the attorney's consent, a letter of admonition; or~~

(7) placement on permanent retired status.

(b) For Incapacity

An attorney who is found to have an incapacity is subject to the following:

(1) ~~placement on transfer to disability inactive status,~~ subject to further order of the Court of Appeals;

(2) conditional diversion in accordance with a Conditional Diversion Agreement; or

(3) ~~termination of a remedial proceeding~~ placement on permanent retired status.

Source: This Rule is derived from former Rule 16-721 (2016).

Mr. Frederick explained that proposed Rule 19-706 refers to probation and letters of cautionary advice and admonition. A letter of cautionary device is a "lighter" warning which is not disclosed to the complaining person. A letter of admonition is more serious and can be rejected by a lawyer. He explained that if issued, the complaining individual is informed that the letter was issued though no details of the substance are disclosed. He said that this Rule contains the "menu" of disciplinary options.

There being no motion to amend or reject the proposed Rule, it was approved as presented.



Mr. Frederick presented Rule 19-707, Confidentiality, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 1. GENERAL PROVISIONS

AMEND Rule 19-707, as follows:

Rule 19-707. CONFIDENTIALITY

(a) Peer Review ~~Meetings~~ Proceedings

(1) ~~Confidentiality~~ Generally

All records and proceedings of a Peer Review Panel, including all communications, whether written or oral, and all non-criminal conduct, made or occurring at a meeting of a peer review panel, are confidential and not open to public disclosure or inspection. Except as otherwise expressly permitted in this Rule, individuals present at the meeting of the panel shall maintain that confidentiality and may not disclose or be compelled to disclose such communications or conduct in any judicial, administrative, or other proceeding.

(2) Privilege

Communications and conduct that are confidential under this Rule are privileged and are not subject to discovery, but information that is otherwise admissible or subject to discovery does not become inadmissible or protected from disclosure solely by reason of its use or occurrence at a peer review meeting.

(b) Other Confidential Material

Except as otherwise provided in this Rule, the following records and proceedings listed in this section and the contents of those records and proceedings are ~~(1)~~ confidential and not open to public inspection and ~~(2)~~ may not be disclosed by Bar Counsel, the staff and investigators of the Office of Bar Counsel, any member of the Commission, the staff of the Commission, any member of the Peer Review Committee, any attorney involved in the proceeding, or, in any civil action or proceeding, by the complainant or an attorney for or agent of the complainant:

~~(A)~~ (1) the records of an investigation by Bar Counsel, including the existence and content of any complaint or response, until Bar Counsel files a petition for disciplinary or remedial action pursuant to Rule 19-721;

~~(B)~~ the records and proceedings of a Peer Review Panel;

~~(C)~~ (2) information that is the subject of a protective order;

~~(D)~~ (3) the contents of a prior private reprimand or Bar Counsel reprimand pursuant to the Attorney Disciplinary Rules in effect prior to July 1, 2001, but the fact that a private or Bar Counsel reprimand was issued and the facts underlying the reprimand may be disclosed to a Peer Review Panel, a circuit court, and the Court of Appeals in a proceeding against the attorney alleging similar misconduct;

Committee note: Disclosure under subsection (b) (2) (D) of this Rule is not dependent upon a finding of relevance under Rule 19-720 (c) (1).

~~(E)~~ (4) the contents of a prior warning issued by the Commission pursuant to the Attorney Disciplinary Rules in effect prior to ~~October~~ January 1, 2020 2021, but the fact that a warning was issued and the facts underlying the warning may be disclosed to a Peer Review Panel, a circuit court, and the Court of Appeals in a subsequent proceeding against the attorney when relevant to a complaint alleging similar conduct by the attorney as provided in Rule 19-715 ~~(d);~~

(5) the contents of a letter of admonition issued by the Commission as provided in Rule 19-714;

(6) The contents of a letter of cautionary advice issued by the Commission as provided in Rule 19-714;

~~(F)~~ (7) the contents of a Conditional Diversion Agreement as provided in Rule 19-716 (j) (2), except that Bar Counsel may disclose to the complainant, when applicable, the fact that, upon successful completion of the Conditional Diversion Agreement, the Commission will issue a reprimand to the attorney as provided in Rule 19-716 (c) (3) (A) (ix);

~~(G)~~ (8) the records and proceedings of the Commission on matters that are confidential under this Rule;

(9) a motion filed pursuant to Rule 19-712 (f) or (i) and records and proceedings on that motion;

~~(H)~~ (10) a Petition for Disciplinary or Remedial Action based solely on the alleged incapacity of an attorney and records and proceedings, other than the final order in proceedings in the Court of Appeals, on that petition; and

~~(I)~~ (11) a petition for an audit of an attorney's accounts filed pursuant to Rule 19-731 and records and proceedings, other than proceedings in the Court of Appeals, on that petition.

(c) Public Proceedings and Records

The following records and proceedings are public and open to inspection:

(1) except as otherwise provided in subsection (b) (10) of this Rule, a Petition for Disciplinary or Remedial Action, all proceedings on that petition, and all documents or other items admitted into evidence at any hearing on the petition;

(2) an affidavit filed pursuant to Rule 19-736 that consents to discipline and an order that disbars, suspends, or reprimands the attorney by consent;

(3) a reprimand issued by the Commission pursuant to Rule 19-717 or Rule 19-716; and

(4) except as otherwise provided by order of the Court of Appeals, all filings and proceedings under this Chapter in the Court of Appeals.

(d) Required Disclosures by Bar Counsel

(1) Reprimand by Commission

If an attorney is reprimanded by the Commission, Bar Counsel shall notify the Clerk of the Court of Appeals.

(2) Conviction of a Serious Crime

If Bar Counsel has received and verified information that an attorney has been convicted of a serious crime, Bar Counsel shall notify the Commission ~~and the Clerk of the Court of Appeals.~~

(e) Required Disclosures by Clerk of the Court of Appeals

If an attorney resigns or is reprimanded, convicted of a serious crime, or, by order of the Court of Appeals, disbarred, suspended, reinstated, or transferred to disability inactive status, the Clerk of the Court of Appeals of Maryland shall notify the National Lawyer Regulatory Data Bank of the American Bar Association and the disciplinary authority of every other jurisdiction in which the attorney is admitted to practice. In addition, the Clerk shall comply with Rule 19-761 upon entry of each order of the Court by which an attorney is disbarred, suspended, reinstated, or transferred to disability inactive status.

(f) Permitted Disclosures

(1) Written Waiver of Attorney

If the attorney has signed a written waiver of confidentiality, the Commission or Bar Counsel may disclose information to the extent permitted by the waiver.

(2) To Investigate a Complaint; Prepare a Defense to a Complaint; Prepare for a Hearing

The parties to a disciplinary or remedial action may use confidential information other than the records and proceedings of a Peer Review Panel to the extent reasonably necessary to investigate a complaint, prepare a defense to a complaint, or prepare for a public hearing in the action but shall preserve the confidentiality of the information in all other respects.

(3) Communications With Complainant

Upon written request of a complainant, Bar Counsel may disclose to the complainant the status of an investigation and of any disciplinary or remedial proceedings resulting from information from the complainant.

(4) Requests by Authorities

(i) Upon receiving a request that complies with this subsection, the Commission or Bar Counsel may disclose the pendency, subject matter, status, and disposition of disciplinary or remedial proceedings involving an attorney or former attorney that did not result in dismissal of a complaint. The request must be made in writing by a judicial nominating commission, a bar admission authority, the President of the United States, the Governor of a state, or a committee of the General Assembly of Maryland or of the United States Congress. The requesting entity must represent that it is considering the nomination, appointment, confirmation, approval, or admission to practice of the attorney or former attorney, and that the information will be treated as confidential and without the consent of the attorney will not be copied or disclosed to anyone other than the ~~requesting~~ entity members or staff of the entity who require the information in order for the entity to perform its authorized function.

(ii) With the approval of the Chair of the Commission, Bar Counsel may disclose the pendency, subject matter, status, and disposition of disciplinary or remedial proceedings involving an attorney or former attorney that did not result in

dismissal of a complaint to a judicial nominating commission, a bar admission authority, the President of the United States, the Governor of a state, or a committee of the General Assembly of Maryland or of the United States Congress. Bar Counsel must obtain a statement from the entity that it is considering the nomination, appointment, confirmation, approval, or admission to practice of the attorney or former attorney, and that the information will be treated as confidential and without the consent of the attorney will not be copied or disclosed to anyone other than the members or staff of the entity who require the information in order for the entity to perform its authorized function.

(5) Request by Client Protection Fund

Upon written request by the Client Protection Fund, Bar Counsel or the Commission may permit an authorized officer of the Fund to review and copy specific records relating to an attorney that are relevant to a claim pending before the Fund. Unless the Court orders otherwise, the Fund shall maintain the confidentiality of any records it has reviewed or copied.

(6) Explanatory Statements

The Chair of the Commission may issue a brief explanatory statement necessary to correct any public misperception about actual or possible proceedings.

(7) Court Order or Grand Jury Subpoena

Bar Counsel shall comply with an order of a court or a subpoena issued by a duly constituted grand jury of this State or the United States to produce records and disclose confidential information concerning the attorney.

(8) Law Enforcement Officials

With the approval of the Chair of the Commission, Bar Counsel may provide to law enforcement and prosecuting officials information involving possible criminal activity.

(9) Other Disciplinary Authorities

With the approval of the Chair of the Commission, Bar Counsel may provide to the disciplinary authority of any other jurisdiction in which an attorney is admitted to practice, maintains a location for the practice of law, or engages in the unauthorized practice of law, records and other confidential information concerning the attorney.

(10) Lawyer Assistance; Adult Protective Services

Bar Counsel may disclose the existence of a complaint to a representative of a Lawyer Assistance Program sponsored by a state or local bar association or the appropriate Department of Human Services or department of social services regarding the lawyer's potential need for treatment for substance abuse or a mental health issue. Disclosure under this rule shall be limited to the existence of the complaint and the issues of concern and shall not reveal the nature or details of the complaint unless such disclosure is necessary.

Committee Note: This subsection is intended to allow Bar Counsel to disclose the existence of a complaint to a lawyer assistance program when necessary to assist the attorney in receiving appropriate services for substance abuse or mental health problems revealed or implicit from the complaint or through an investigation by Bar Counsel. It is not intended to permit Bar Counsel to act on confidential information reported by a lawyer assistance program to Bar Counsel absent a signed waiver or consent by the attorney. Bar Counsel may not act on any such information unless accompanied by a signed waiver or consent by the attorney. This does not preclude Bar Counsel from using or considering that kind of information lawfully obtained from other sources.

(11) Bar Counsel may disclose the pendency, subject matter, status, and disposition of disciplinary or remedial proceedings involving an attorney or former attorney that did not result in dismissal of a complaint in response to a Petition for Reinstatement or a Petition for Resignation filed by an attorney.

~~(10)~~ (12) Summarized Information

In order to improve the administration of justice, the Commission and Bar Counsel may publish reports and summaries of confidential investigations, charges, and disciplinary or remedial proceedings, provided that the identity of attorneys, complainants, and witnesses is not revealed.

Source: This Rule is derived from former Rule 16-723 (2016).

Mr. Frederick explained that proposed Rule 19-707 addresses confidentiality and provides that a letter of cautionary advice or admonition is not to be disclosed except under certain circumstances. He noted that subsection (f)(4)(B), which is mislabeled as (f)(4)(ii) in the materials, applies to situations where attorneys are appointed to state, federal, or local positions that require a background check. Subsection (f)(10) applies to attempting to obtain assistance for attorneys through a Lawyer Assistance Program or appropriate governmental department.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Mr. Frederick presented Rule 19-708, Service of Papers on Attorney, for consideration.

## MARYLAND RULES OF PROCEDURE

### TITLE 19 - ATTORNEYS

#### CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

#### DIVISION 1. GENERAL PROVISIONS



AMEND Rule 19-708, as follows:

Rule 19-708. SERVICE OF PAPERS ON ATTORNEY

(a) ~~Statement of Charges~~ Original Process

A copy of a Statement of Charges and petition filed pursuant to Rule 19-718 shall be served on an attorney in the manner prescribed by Rule 2-121. ~~If after reasonable efforts the attorney cannot be served personally, service may be made upon the employee designated by the Client Protection Fund pursuant to Rule 19-604 (a) (12), who shall be deemed the attorney's agent for receipt of service. The Fund's employee shall send, by both certified mail and ordinary mail, a copy of the papers so served to the attorney at the address maintained in the Fund's records and to any other address provided by Bar Counsel.~~

(b) Service of Other Papers

Except as otherwise provided in this Chapter, ~~other~~ notices and papers may be served on an attorney in the manner provided by Rule 1-321 for service of papers after an original pleading or by email to all email addresses of record maintained by the attorney with the Attorney Information System in accordance with Rule 19-802.

Committee note: ~~The attorney's address contained in the records of the Client Protection Fund of the Bar of Maryland may be the attorney's last known address.~~ Mailing address(es) and email address(es) maintained by AIS may be relied upon by Bar Counsel and the Commission as the attorney's current information in accordance with Rule 19-802 (e).

Cross reference: See Rule 19-718 concerning service of a Statement of Charges. See Rule 19-721 concerning service of a Petition for Disciplinary or Remedial Action.

Source: This Rule is derived from former Rule 16-724 (2016).

Mr. Frederick said that proposed Rule 19-708 allows for service by email. The Chair commented that there is a pending Rule change to make the Attorney Grievance Commission a constituent agency with access to the Attorney Information System.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Mr. Frederick presented Rule 19-711, Complaint; Investigation by Bar Counsel, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 2. ADMINISTRATIVE PROCEEDINGS

AMEND Rule 19-711, as follows:

Rule 19-711. COMPLAINT; INVESTIGATION BY BAR COUNSEL

(a) Who May Initiate

Bar Counsel may file a complaint on Bar Counsel's own initiative, based on information from any source. Any other ~~individual~~ person also may file a complaint with Bar Counsel. Any communication to Bar Counsel that (1) is in writing, (2) alleges that an attorney has engaged in professional misconduct or has an incapacity, (3) includes the name and ~~address~~ contact information of the ~~individual~~ person making the communication, and (4) states facts which, if true, would constitute professional misconduct by or demonstrate an incapacity of an attorney constitutes a complaint.

(b) Review of Complaint

(1) Bar Counsel shall make an inquiry concerning every complaint that is not facially frivolous, unfounded, or duplicative.

(2) If Bar Counsel concludes that a complaint is without merit, does not allege facts which, if true, would demonstrate either professional misconduct or incapacity, or is duplicative, Bar Counsel shall decline the complaint and notify the complainant. Bar Counsel also may decline a complaint submitted by an individual person who provides information about an attorney derived from published news reports or third-party sources where the complainant appears to have no personal knowledge of the information being submitted.

(3) Unless a complaint is declined for one of the reasons set forth in subsection (b) (2) of this Rule, Bar Counsel ordinarily shall obtain a written response from the attorney who is the subject of a complaint and consider other appropriate information to assist in evaluating the merits of the complaint. If Bar Counsel determines based upon such evaluation that an insufficient basis exists to demonstrate misconduct or incapacity or that the overall circumstances do not warrant investigation, Bar Counsel may close the file without approval of the Commission. Otherwise, subject to subsection ~~(b) (4)~~ (b) (5) of this Rule, Bar Counsel shall (A) docket the complaint, (B) notify the complainant and explain in writing the procedures for investigating and processing the complaint, (C) comply with the notice requirement of section (c) of this Rule, and (D) conduct an investigation to determine whether ~~reasonable grounds exist to support the allegations of the complaint~~ there exists a substantial basis to conclude the attorney committed professional misconduct or is incapacitated.

(4) If a complaint is declined or closed by Bar Counsel, allegations made in the complaint may not be used in any disciplinary proceeding against the attorney. If additional information becomes known to Bar Counsel regarding a complaint that was declined or closed before docketing, the earlier allegations may be reopened.

Committee note: In this Rule, "docket" refers to the process of listing a complaint on the docket of active investigations maintained by Bar Counsel, rather than on a docket maintained by the clerk of a court. Before determining whether a complaint is frivolous or unfounded, Bar Counsel may contact the attorney and obtain an informal response to the allegations.

~~(4)~~(5) If Bar Counsel concludes that a civil or criminal action involving material allegations against the attorney substantially similar or related to those alleged in the complaint is pending in any court of record in the United States, or that substantially similar or related allegations presently are under investigation by a law enforcement, regulatory, or disciplinary agency, Bar Counsel, with the approval of the Commission, may defer action on the complaint pending a determination of those allegations in the pending action or investigation. Bar Counsel shall notify the complainant of that decision and, during the period of the deferral, shall report to the Commission, at least every ~~six months~~ 90 days, the status of the other action or investigation. The Commission, at any time, may direct Bar Counsel to proceed in accordance with subsection (b) (1) or (3) of this Rule.

(c) Notice to Attorney

(1) Except as otherwise provided in this section, Bar Counsel shall notify the attorney who is the subject of the complaint that Bar Counsel is undertaking an investigation to determine whether the attorney has engaged in professional misconduct or is incapacitated. The notice shall be given before the conclusion of the investigation and shall include the name and ~~address~~ contact information of the complainant and the general nature of the professional misconduct or incapacity under investigation. As part of the notice, Bar Counsel may demand that the attorney provide information and records that Bar Counsel deems appropriate and relevant to the investigation. The notice shall state the time within which the attorney shall provide the information and any other information that the attorney may wish to present. The notice shall be served on the attorney in accordance with Rule 19-708 ~~(b)~~.

(2) Bar Counsel need not give notice of investigation to an attorney if, with the approval of the Commission, Bar Counsel proceeds under Rule 19-737, 19-738, or 19-739.

(d) Time for Completing Investigation

(1) Generally

Subject to subsection ~~(b)(4)~~(b)(5) of this Rule or unless the time is extended pursuant to subsection (d)(2) of this Rule, Bar Counsel shall complete an investigation within ~~90~~ 120 days after docketing the complaint.

(2) Extension

(A) Upon written request by Bar Counsel and a finding of good cause by the Commission, the Commission may grant an extension for a specified period. Upon a separate request by Bar Counsel and a finding of good cause, the Commission may renew an extension for a specified period.

(B) The Commission may not grant or renew an extension, at any one time, of more than 60 days unless it finds specific good cause for a longer extension.

(C) If an extension exceeding 60 days is granted, Bar Counsel shall provide the Commission with a status report at least every 60 days.

(3) Sanction

For failure to comply with the time requirements of section (d) of this Rule, the Commission may take any action appropriate under the circumstances, including dismissal of the complaint and termination of the investigation.

Source: This Rule is derived from former Rule 16-731 (2016).

Mr. Frederick said that proposed Rule 19-711 allows Bar Counsel to reopen and pursue a case if more information comes

out after the case is closed. The Chair pointed out that this is in line with the American Bar Association Model Rules.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Mr. Frederick presented Rule 19-712, Investigative Subpoena, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 2. ADMINISTRATIVE PROCEEDINGS

AMEND Rule 19-712, as follows:

Rule 19-712. INVESTIGATIVE SUBPOENA

(a) Approval and Issuance

(1) The Chair of the Commission may authorize Bar Counsel to issue a subpoena to (A) compel attendance of witnesses and the production of the person to whom it is directed to attend, give testimony, and produce designated documents, electronically stored information, or other tangible things at a time and place specified in the subpoena, or (B) to compel the attorney to submit to a mental or physical examination by a suitably licensed or certified examiner.

(2) The Chair of the Commission may authorize a subpoena if the Chair finds that (A) the subpoena is necessary to and in furtherance of an investigation being conducted by Bar Counsel pursuant to Rule 19-711, 19-735, 19-751, or 19-752 or (B) the subpoena has been requested by a disciplinary authority of another jurisdiction pursuant to the law of that jurisdiction for use in a disciplinary or remedial proceeding in

that jurisdiction to determine alleged professional misconduct or incapacity of an attorney subject to the jurisdiction of that disciplinary authority.

~~(2)~~(3) Upon approval, Bar Counsel may issue the subpoena.

(b) Contents

(1) A subpoena shall comply with the requirements of Rule 2-510 (c), except that to the extent practicable, a subpoena shall not identify the attorney under investigation. A subpoena to compel attendance of a witness shall include or be accompanied by a notice that the witness (1) has the right to consult with an attorney with respect to the assertion of a privilege or any other matter pertaining to the subpoena and (2) may file a motion for judicial relief under Rule 2-510.

(2) A subpoena to compel the attorney to submit to a mental or physical examination shall specify the time and place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(c) Service

~~Except for service upon an attorney in accordance with Rule 19-708 (b), a~~

(1) Generally

A subpoena shall be served in accordance with Rule 2-510 (d). Promptly after service of a subpoena on a person other than the attorney under investigation and in addition to giving any other notice required by law, Bar Counsel shall serve a copy of the subpoena on the attorney under investigation.

Cross reference: For examples of other notice required by law, see Code, Financial Institutions Article, § 1-304, concerning notice to depositors of subpoenas for financial records; Code, Health General Article, § 4-306 concerning disclosure of medical records, and Code, Health General Article, § 4-307, concerning notice of a request for issuance of compulsory process seeking medical records related to

mental health services. See also Rule 19-411 (b), concerning notices required in connection with IOLTA accounts.

(2) Alternative Service

If after reasonable efforts the attorney cannot be served personally, service may be made on the attorney by sending by email to all email addresses of record maintained by the attorney with the Attorney Information System in accordance with Rule 19-802.

~~(g)~~ (d) Recording of Statements

All ~~statements~~ testimony by the subpoenaed witness shall be under oath and shall be contemporaneously recorded stenographically or electronically by electronic audio or audio-video recording.

~~(d)~~ (e) Objection

The person served with the subpoena or the attorney under investigation may file a motion in the circuit court for the county in which the subpoena was served for any order permitted by Rule 2-510 (e). The motion shall be filed promptly and, whenever practicable, at or before the time specified in the subpoena for compliance.

~~(e)~~ (f) Enforcement

(1) Order enforcing compliance

(A) If (i) the person served with a subpoena fails to file a timely motion under section (e) or the court denies such a motion, and (ii) the person fails to comply with the subpoena, ~~on the motion of~~ Bar Counsel may file a motion in the circuit court for the county in which the subpoena was served for an order to, the court may enforce compliance with the subpoena.

(B) Papers filed in the circuit court pursuant to this subsection shall be sealed upon filing and shall be open to inspection only by order of the court. A hearing before the court shall be on the



record and shall be conducted outside of the presence of all individuals other than Bar Counsel, the attorney, the judge, and those individuals whose presence the court deems necessary.

(2) Petition for contempt

If a person willfully fails to comply with an order issued under subsection (f) (1), Bar Counsel may file a petition for contempt pursuant to Rule 15-206 or for a body attachment pursuant to Rule 2-510 (j).

(3) Other sanctions

If the person is the attorney who is the subject of the investigation, Bar Counsel may, in addition, (A) with the approval of the Chair of the Commission, file with the Court of Appeals a petition to suspend the attorney from practicing law pending compliance with the subpoena, and (B) file a statement of charges pursuant to Rule 19-718 for violation of Rule 19-308.1. The attorney may file a response to a petition for suspension within 15 days after service of the petition. The Court may decide the issue on the papers filed or shall hold an expedited hearing on the petition.

~~(f)~~ (g) Confidentiality

Any paper filed in the circuit court with respect to a subpoena shall be sealed upon filing and shall be open to inspection only by order of the court. A hearing before the court on any motion shall be on the record and shall be conducted out of the presence of all individuals other than Bar Counsel, the attorney, and those individuals whose presence the court deems necessary.

(h) Petition for Disciplinary or Remedial Action

(1) If the circuit court makes a finding of contempt pursuant to Rule 15-206, Bar Counsel, with the approval of the Chair of the Commission, may file a Petition for Disciplinary or Remedial Action in the Court of Appeals pursuant to Rule 19-721 (a) (1). A certified copy of the order of contempt shall be attached to the Petition, and a copy of the Petition

and order shall be served on the attorney in accordance with Rule 19-723.

(2) Show Cause Order

When a petition and certified copy of an order of contempt have been filed, the Court of Appeals shall order that the attorney, within 15 days from the date of the order, show cause in writing why the attorney should not be suspended immediately from the practice of law until the further order of the Court of Appeals.

(3) Action by the Court of Appeals

Upon consideration of the petition and any answer to the order to show cause, the Court of Appeals may enter an order (1) immediately suspending the attorney from the practice of law, (2) designating a judge pursuant to Rule 19-722 to hold a hearing in accordance with Rule 19-727, or (3) containing any other appropriate provisions. The provisions of Rules 19-741 and 19-743 apply to an order under this section that suspends an attorney.

(4) Presumptive Effect of Order of Contempt

A finding of contempt is presumptive evidence that the attorney is in contempt of court, but the introduction of such evidence does not preclude Bar Counsel or the attorney from introducing additional evidence or otherwise showing cause why no suspension should be imposed.

(5) Termination of Suspension

On notification by Bar Counsel that the attorney has purged the contempt, the Court of Appeals shall order the attorney reinstated to the practice of law, unless other grounds exists for the suspension to remain in effect.

(6) Other Disciplinary Proceedings

Proceedings under this Rule shall not preclude the use of the facts underlying the order of contempt when relevant to a pending or subsequent disciplinary proceeding against the attorney.

Source: This Rule is derived from former Rule 16-732 (2016).

Mr. Frederick explained that proposed Rule 19-712 allows for alternative service if traditional service is not successful and provides contempt options for failure to comply with an order. Judge Bryant inquired as to whether hearing transcripts should be sealed in addition to the papers. The Chair responded that a sentence could be added stating "any transcript of the hearing shall be sealed." Judge Bryant moved to amend the Rule to adopt the Chair's language. The motion was seconded and approved by majority vote.

There being no motion to further amend or reject the proposed Rule, it was approved as amended.

Mr. Frederick presented Rule 19-714, Action by Bar Counsel Upon Completion of Investigation, for consideration.

## MARYLAND RULES OF PROCEDURE

### TITLE 19 - ATTORNEYS

#### CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

##### DIVISION 2. ADMINISTRATIVE PROCEEDINGS

AMEND Rule 19-714, as follows:

Rule 19-714. ACTION BY BAR COUNSEL UPON COMPLETION OF INVESTIGATION

Upon completion of an investigation, Bar Counsel shall:

(a) recommend to the Commission dismissal of the complaint or termination of the proceeding without disciplinary or remedial action, with or without a ~~warning~~ a letter of cautionary advice or a letter of admonition, in accordance with Rule 19-715;

(b) recommend to the Commission approval of a Conditional Diversion Agreement in accordance with Rule 19-716;

(c) recommend to the Commission a reprimand in accordance with Rule 19-717;

(d) recommend to the Commission that the attorney be placed on permanent retired status in accordance with Rule 19-717.1;

~~(d)~~ (e) file with the Commission a Statement of Charges in accordance with Rule 19-718;

~~(e)~~ (f) recommend to the Commission the immediate filing of a Petition for Disciplinary or Remedial Action, with or without collateral remedial proceedings, in accordance with Rules 19-737, 19-738, ~~or 19-739~~, or 19-741.

Source: This Rule is derived from former Rule 16-734 (2016).

Mr. Frederick said that proposed Rule 19-714 adds references to letters of cautionary advice and admonition.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Mr. Frederick presented Rule 19-715, Dismissal of Complaint; Dismissal of Disciplinary or Remedial Proceeding, for consideration.

## MARYLAND RULES OF PROCEDURE

### TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 2. ADMINISTRATIVE PROCEEDINGS

AMEND Rule 19-715, as follows:

Rule 19-715. DISMISSAL OF COMPLAINT; ~~TERMINATION~~  
DISMISSAL OF DISCIPLINARY OR REMEDIAL PROCEEDING

(a) Recommendation by Bar Counsel or Peer Review Panel

Bar Counsel, upon completion of an investigation, or a Peer Review Panel, after a meeting of the Panel, may recommend to the Commission that:

(1) a complaint be dismissed because the evidence fails to show that the attorney has engaged in professional misconduct or is incapacitated; or

(2) a disciplinary or remedial proceeding be (A) ~~terminated~~ dismissed, with or without ~~a warning~~ a letter of cautionary advice or letter of admonition, because any professional misconduct on the part of the attorney was not sufficiently serious to warrant discipline and is not likely to be repeated, or (B) ~~terminated~~ dismissed, without ~~a warning~~ a letter of cautionary advice or letter of admonition, because any incapacity on the part of the attorney is not sufficiently serious or long-lasting to warrant remedial action or, if resolved, is not likely to recur.

(b) Action by Commission

If satisfied with the recommendation of Bar Counsel or the Peer Review Panel, the Commission shall dismiss the complaint or ~~terminate~~ dismiss the disciplinary or remedial proceeding, as appropriate. If the recommendation includes ~~a warning~~ a letter of cautionary advice or letter of admonition, the matter shall proceed as provided in section (c) of this Rule.

(c) ~~Termination~~ Dismissal Accompanied by ~~Warning~~  
Letter of Cautionary Advice or Letter of Admonition

(1) Letter of Cautionary Advice

(A) Recommendation by Bar Counsel or Peer Review Panel

Bar Counsel or the Peer Review Panel may recommend to the Commission that the ~~termination~~ dismissal of a disciplinary or remedial proceeding be accompanied by a ~~warning~~ letter of cautionary advice upon their respective conclusion that such a ~~warning letter~~ letter would be helpful to ensure that the conduct that led to the proceeding is not repeated, the attorney has no prior sanction, and the attorney has not received a prior warning, letter of cautionary advice, or letter of admonition for similar conduct by the attorney.

~~(2)~~ (B) Action by Commission

~~(A)(i)~~ If satisfied that ~~termination~~ dismissal of the disciplinary or remedial proceeding should be accompanied by a ~~warning~~ letter of cautionary advice, the Commission shall ~~mail to the attorney a notice that states (i) (1) that on or after 30 days from the date of the notice, the Commission intends to terminate~~ dismiss the disciplinary or remedial proceeding and accompany the ~~termination~~ dismissal with a ~~warning~~ letter of cautionary advice. ~~(ii) the content of the proposed warning, and (iii) that the attorney may reject the proposed warning by filing a written rejection with the Commission no later than 25 days after the date of the notice.~~

~~(B)~~ If the warning is not timely rejected, the Commission shall issue the warning when it dismisses the ~~disciplinary or remedial proceeding.~~

~~(C)~~ If the warning is timely rejected, the warning shall not be issued, but Bar Counsel or the Commission may take any other action permitted under this Chapter.

~~(3)~~ (C) Nature and Effect of ~~Warning~~ Letter of Cautionary Advice

A ~~warning~~ letter of cautionary advice ~~does~~ is not constitute discipline.

(2) Letter of Admonition

(A) Recommendation by Bar Counsel or Peer Review Panel

Bar Counsel or the Peer Review Panel may recommend to the Commission that the dismissal of a disciplinary or remedial proceeding be accompanied by a letter of admonition upon their respective conclusion that such a letter would be helpful to ensure that the conduct that led to the proceeding is not repeated.

(B) Action by Commission

(i) If satisfied that dismissal of the disciplinary or remedial proceeding should be accompanied by a letter of admonition, the Commission shall mail to the attorney a notice that states (1) that on or after 30 days from the date of the notice, the Commission intends to dismiss the disciplinary or remedial proceeding and accompany the dismissal with a letter of admonition, (2) the content of the proposed letter of admonition, and (3) that the attorney may reject the proposed letter of admonition by filing a written rejection with the Commission no later than 25 days after the date of the notice.

(ii) If the letter of admonition is not timely rejected, the Commission shall issue the letter when it dismisses the disciplinary or remedial proceeding.

(iii) If the letter of admonition is timely rejected, the letter shall not be issued, but Bar Counsel or the Commission may take any other action permitted under this Chapter.

(C) Nature and Effect of Letter of Admonition

A letter of admonition is not discipline.

(d) Disclosure of ~~Termination~~ Dismissal; ~~or Warning~~ Letter of Cautionary Advice; Letter of Admonition

(1) Disclosure of Dismissal ~~or Termination~~ of Complaint or Proceedings

(A) Except as provided in subsections (d) (2) and (d) (3) of this Rule, a dismissal ~~or a termination~~ of a complaint or proceedings under this Rule, with or

without a ~~warning~~ letter of cautionary advice or letter of admonition, shall not be disclosed by the Commission or Bar Counsel in response to any request for information as to whether an attorney has been the subject of a disciplinary or remedial proceeding.

(B) The nature and existence of a proceeding ~~terminated~~ dismissed under this Rule, including any investigation by Bar Counsel that led to the proceeding, need not be disclosed by an attorney in response to a request for information as to whether the attorney has been the subject of a disciplinary or remedial proceeding.

(2) Disclosure of ~~Warning~~ Letter of Cautionary Advice

(A) The fact that a ~~warning~~ letter of cautionary advice was issued in conjunction with the ~~termination~~ dismissal of a complaint shall not be disclosed to the complainant. The complainant shall only be notified that the complaint was dismissed.

(B) The fact that a ~~warning~~ letter of cautionary advice was issued and the facts underlying the ~~warning~~ letter may be disclosed in a subsequent proceeding against the attorney when relevant to a complaint alleging similar conduct by the attorney.

~~(C) Neither the fact that a warning was proposed or rejected nor the contents of a warning that was not issued is admissible into evidence in any judicial or administrative proceeding.~~

(3) Disclosure of Letter of Admonition

(A) The fact that a letter of admonition was issued in conjunction with the dismissal of a complaint shall be disclosed to the complainant.

(B) The fact that a letter of admonition was issued and the facts underlying the letter may be disclosed in a subsequent proceeding against the attorney when relevant to a complaint alleging similar conduct by the attorney.

(C) Neither the fact that a letter of admonition was proposed or rejected nor the contents of a letter



of admonition that was not issued is admissible into evidence in any judicial or administrative proceeding.

Source: This Rule is derived from former Rule 16-735 (2016).

Mr. Frederick said that proposed Rule 19-715 describes the details of letters of cautionary advice and admonition. A letter of cautionary advice is appropriate for a lawyer with no prior sanctions and no prior warnings or letters of cautionary advice or admonition for similar conduct. The lawyer cannot reject a letter of cautionary advice. A letter of admonition is for more serious conduct which does not rise to the level of a reprimand. The process for issuing these letters is contained in section (c). He pointed out that a letter of admonition is not considered discipline for the purposes of malpractice insurance. The Chair said that former Bar Counsel Glenn Grossman submitted a comment recommending that the Rule specify that if the Commission is not satisfied with the recommendation, it should not dismiss the complaint and asking if the Commission should be required to state its reasons. Mr. Kramer said that the peer review panel has no power other than to make a recommendation, which goes to the Commission. If the Commission rejects the recommendation, there is no explanation for why its members deviated from the panel. He proposed that if diversion is appropriate, the peer review panel should be able to recommend it without Bar Counsel's agreement.

The Chair suggested that the Committee take up the issue of conditional diversion agreements and asked for a motion to alter the current Rule and the proposed Rule that a conditional diversion agreement does not have to be agreed to by Bar Counsel. Mr. Kramer said that a proposed revision suggested by attorney Jeffrey Hines calls for diversionary plans, not ad hoc agreements, and requested a workgroup to study the issue. The Chair noted that this suggestion was rejected by the subcommittee. Mr. Kramer moved to remand proposed Rule 19-715 to the Subcommittee or to a workgroup for further discussion. Mr. Zollicoffer seconded the motion. Mr. Ucheomumu expressed his support for Mr. Kramer's position. He explained that as a minority, he tends to have the impression of "back room" deals, whether accurate or not, and would like to have a written explanation for why Bar Counsel rejects a peer review panel recommendation or doesn't recommend a conditional diversion agreement. The motion failed.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Mr. Frederick presented Rule 19-716, Conditional Diversion Agreement, for consideration.

## MARYLAND RULES OF PROCEDURE

### TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 2. ADMINISTRATIVE PROCEEDINGS

AMEND Rule 19-716, as follows:

Rule 19-716. CONDITIONAL DIVERSION AGREEMENT

(a) When Appropriate

A Conditional Diversion Agreement may be appropriate and may be approved by the Commission when there is an agreement between Bar Counsel and the attorney that:

(1) the attorney committed professional misconduct or is incapacitated;

(2) the professional misconduct or incapacity was not the result of any ~~wilful~~ willful or dishonest conduct and did not involve conduct that could be the basis for an immediate Petition for Disciplinary or Remedial Action pursuant to Rules 19-737, 19-738, or 19-739;

(3) the cause or basis of the professional misconduct or incapacity is subject to remediation or resolution through available alternative programs or mechanisms, including (A) medical, psychological, or other professional treatment, counseling, or assistance, (B) appropriate educational courses or programs, (C) mentoring or monitoring services, or (D) dispute resolution programs; and

(4) the public interest and the welfare of the attorney's clients and prospective clients will not be harmed if, instead of the matter proceeding immediately with a disciplinary or remedial proceeding, the attorney agrees to and complies with specific measures that, if pursued, will remedy the immediate problem and likely prevent any recurrence of it.

Committee note: Examples of conduct that may be susceptible to conditional diversion include conduct arising from (A) unfamiliarity with proper methods of

law office management, record-keeping, or accounting, (B) unfamiliarity with particular areas of law or legal procedure, (C) negligent management of attorney trust accounts or other financial matters, (D) negligent failure to maintain proper communication with clients, (E) negligent failure to provide proper supervision of employees, or (F) emotional stress or crisis or abuse of alcohol or other drugs.

(b) Voluntary Nature of Agreement; Effect of Rejection or Disapproval

(1) Voluntary Nature

Neither Bar Counsel nor the attorney is under any obligation to propose or enter into a Conditional Diversion Agreement.

(2) Effect of Rejection or Disapproval

If a Conditional Diversion Agreement is proposed and rejected or if a signed Agreement is not approved by the Commission, Bar Counsel may take any other action permitted under this Chapter. Neither the fact that an Agreement was proposed, rejected, or not approved nor the contents of the Agreement may be admitted into evidence.

(c) Terms of Agreement

(1) In Writing and Signed

A Conditional Diversion Agreement shall be in writing and signed by Bar Counsel, the attorney, and any monitor designated in the Agreement.

(2) Required Provisions

The agreement shall:

(A) recite the basis for it, as set forth in section (a) of this Rule;

(B) state that the attorney voluntarily consents to its terms and promises to pay all expenses reasonably incurred in connection with its performance and enforcement;

(C) contain an acknowledgment by the attorney that the attorney (i) has engaged in conduct that constitutes professional misconduct, or (ii) is currently incapacitated, and a warranty that the attorney has not concealed from or misrepresented to Bar Counsel any material fact pertaining to the attorney's conduct or status as incapacitated or to the Agreement;

(D) state the particular course of remedial action that the attorney agrees to follow and a time for performance or completion of that action;

(E) provide for a stay of any disciplinary or remedial proceeding pending satisfactory performance by the attorney; and

(F) state that it is expressly conditioned on (i) the attorney's not engaging in any further conduct that would constitute professional misconduct, or, (ii) non-recurrence of the nature or severity of the incapacity.

### (3) Permissive Provisions

The agreement may:

(A) provide for any program or corrective action appropriate under the circumstances, including:

(i) mediation or binding arbitration of a fee dispute;

(ii) restitution to persons financially injured by the attorney's professional misconduct, to a client of unearned or excessive fees, and to the Client Protection Fund for amounts paid on claims arising from the attorney's professional misconduct;  
~~in a stipulated amount;~~

(iii) a public apology to designated persons;

(iv) assistance in law office management, including temporary or continuing monitoring, mentoring, accounting, bookkeeping, financial, or other professional assistance, and completion of specific educational programs dealing with law office management;

(v) completion of specific legal education courses or curricula, including courses in legal ethics and professional responsibility;

(vi) an agreement not to practice in specific areas of the law (a) unless the attorney associates himself or herself with one or more other attorneys who are proficient in those areas, or (b) until the attorney has successfully completed a designated course of study to improve the attorney's proficiency in those areas;

(vii) one or more specific courses of treatment for emotional distress, mental disorder or disability, dependence on alcohol, drugs, or other intoxicants;

(viii) a stipulated number of hours of pro bono legal services; or

(ix) a reprimand to be issued upon the successful termination of a Conditional Diversion Agreement. If that provision is included, The the text of the reprimand shall be agreed upon and attached to the Agreement as a separate document; and

Committee note: The text of the Conditional Diversion Agreement must be separate from the text of the reprimand because the contents of the Agreement are confidential, whereas the contents of the reprimand are public. See Rules 19-716 (j) and 19-717.

(B) designate either a private monitor engaged at the attorney's expense or Bar Counsel to supervise performance and compliance with the terms and conditions of the agreement.

(4) If Monitor Designated

(A) If the agreement designates Bar Counsel or a private monitor pursuant to subsection (c) (3) (B) of this Rule, the agreement shall authorize Bar Counsel or the monitor to request and receive all information and inspect any records necessary to verify compliance.

(B) If a private monitor is designated, the agreement shall specify the fees of the monitor and

the method and frequency of payment of the fees and shall direct the monitor promptly to report any violation or noncompliance to Bar Counsel.

(d) Submission to Commission

A Conditional Diversion Agreement is not effective until approved by the Commission. Upon signing the Agreement, Bar Counsel and the attorney shall submit to the Commission the Agreement, any explanatory material they believe relevant, and any further information that the Commission requests.

(e) Action by Commission

(1) Generally

After consideration, the Commission may:

(A) approve the Agreement if satisfied that it is reasonable and in the public interest;

(B) disapprove the Agreement if not convinced that it is reasonable and in the public interest; or

(C) recommend amendments to the Agreement as a condition of approval.

(2) Upon Commission Recommendations

The parties may accept or reject the Commission's proposed amendments. If Bar Counsel and the attorney accept the proposed amendments, they shall notify the Commission of the acceptance, and the Commission shall approve the Agreement as amended. If either party rejects a proposed amendment, the ~~Agreement shall be deemed Commission may disapproved disapprove the Agreement by the Commission.~~

(f) Effect of Agreement

Approval by the Commission of a Conditional Diversion Agreement does not constitute discipline.

(g) Amendment of Agreement

A Conditional Diversion Agreement may be amended from time to time. An amendment shall be in a

writing signed by Bar Counsel and the attorney and approved by the Commission.

(h) Revocation of Agreement

(1) Declaration of Proposed Default

Bar Counsel may declare a proposed default on a Conditional Diversion Agreement if Bar Counsel determines that the attorney (A) engaged in further professional misconduct while subject to the agreement, (B) ~~wilfully~~ willfully misrepresented or concealed material facts during the negotiation of the Agreement that induced Bar Counsel to recommend approval of the Agreement, or (C) has failed in a material way to comply with the Agreement. Bar Counsel shall give written notice to the attorney of the proposed default and afford the attorney a reasonable opportunity to refute the determination.

(2) Petition

If the attorney fails to refute the charge or to offer an explanation or proposed remedy satisfactory to Bar Counsel, Bar Counsel shall file a petition with the Commission to revoke the Agreement and serve a copy of the petition on the attorney. The attorney may file a written response with the Commission within 15 days after service of the petition. The Commission may act upon the petition and response or may request the parties to supply additional information, in writing or in person.

(3) Action by Commission

If the Commission concludes that the attorney is in material default of the Agreement, it shall revoke the Agreement, revoke the stay of the disciplinary or remedial proceeding and any reprimand, and direct Bar Counsel to proceed in accordance with Rule 19-721, or as otherwise authorized by the Rules in this Chapter.

(i) Satisfaction of Agreement

If Bar Counsel determines that the attorney has complied in full with the requirements of the Agreement and that the disciplinary or remedial



proceeding should be terminated, Bar Counsel shall inform the Commission and request that the disciplinary or remedial proceeding be terminated. If satisfied with Bar Counsel's recommendation, the Commission shall terminate the disciplinary or remedial proceeding.

(j) Confidentiality

(1) Fact that Approved Agreement was Signed;  
Notice to Complainant

(A) The fact that an attorney has signed a Conditional Diversion Agreement approved by the Commission is public.

(B) Upon approval of an Agreement by the Commission, Bar Counsel shall inform the complainant (i) that such an Agreement has been entered into and approved, (ii) that the disciplinary or remedial proceeding has been stayed in favor of the Agreement, (iii) that, if the attorney complies with the Agreement, the proceeding will be terminated, and (iv) of the potential for and consequences to the attorney of noncompliance.

(2) Contents of Agreement

(A) Except as provided in subsections (j) (2) (B), (C), and (D) of this Rule, the contents of a Conditional Diversion Agreement are confidential and may not be disclosed.

(B) If the Agreement requires payment or the transfer of property to the complainant by the attorney or requires other communication with the complainant by the attorney, Bar Counsel shall inform the complainant of those requirements, but not of any other terms of the Agreement.

(C) Upon revocation of an Agreement pursuant to section (h) of this Rule, the contents of the Agreement may be disclosed in any ensuing disciplinary or remedial proceeding.

(D) The contents of a Conditional Diversion Agreement may be disclosed in a subsequent proceeding

against the attorney if relevant to a subsequent complaint based on similar misconduct or incapacity.

Source: This Rule is derived from former Rule 16-736 (2016).

Mr. Frederick said that proposed Rule 19-716 lays out the conditional diversion agreement process. He explained that a change provides for financial restitution, but the remaining changes are not significant.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Mr. Frederick presented Rule 19-717, Reprimand by Commission, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 2. ADMINISTRATIVE PROCEEDINGS

AMEND Rule 19-717, as follows:

Rule 19-717. REPRIMAND BY COMMISSION

(a) Scope

This Rule does not apply to a reprimand that is to be issued upon successful termination of a Conditional Diversion Agreement.

Cross reference: See Rule 19-716 (c) (3) (A) (ix).

(b) Offer

(1) Service on Attorney

If Bar Counsel determines after completion of an investigation, or the Peer Review Panel determines after a Panel meeting, that an attorney has engaged in professional misconduct and that the appropriate sanction for the misconduct is a reprimand, Bar Counsel or the Panel shall serve on the attorney a written offer of a reprimand and a waiver of further disciplinary or remedial proceedings that is contingent upon acceptance of the reprimand by the attorney and approval of the reprimand by the Commission.

(2) Content

The offer shall include the text of the proposed reprimand, the date when the offer will expire, a contingent waiver of further disciplinary or remedial proceedings, and advice that the offer, if accepted, is subject to approval by the Commission. The text of the proposed reprimand shall summarize the misconduct for which the reprimand is to be imposed and include a reference to any rule, statute, or other law allegedly violated by the attorney.

(c) Response

The attorney may accept the offer by signing the stipulation, endorsing the proposed reprimand, and delivering both documents to Bar Counsel or the Panel within the time stated in the notice or otherwise agreed to by Bar Counsel or the Panel. The attorney may (1) reject the offer expressly or by declining to return the documents timely, or (2) propose amendments to the proposed reprimand, which Bar Counsel or the Panel may accept, reject, or negotiate.

(d) Submission to Commission

If the attorney agrees to the proposed reprimand, Bar Counsel or the Panel shall submit the proposed reprimand to the Commission for approval, together with any explanatory material that the attorney or Bar Counsel believes relevant and any further information that the Commission requests.

(e) Action by Commission

(1) Generally

After consideration, the Commission may:

(A) approve the reprimand, if satisfied that it is appropriate under the circumstances, in which event ~~Bar Counsel~~ the Commission shall promptly ~~administer~~ serve the reprimand ~~to~~ on the attorney in accordance with Rule 19-708 and terminate the disciplinary or remedial proceeding;

(B) disapprove the reprimand, if not satisfied that it is appropriate under the circumstances and direct Bar Counsel to proceed in another manner; or

(C) recommend amendments to the reprimand as a condition of approval.

(2) Upon Commission Recommendations

The parties may accept or reject the Commission's proposed amendments. If the parties accept the amendments, they shall notify the Commission of the acceptance, and the Commission shall then approve the reprimand. If either party rejects a proposed amendment, the ~~reprimand shall be deemed disapproved by the Commission~~ may disapprove the reprimand.

(f) Effect of Rejection or Disapproval

If a reprimand is proposed and rejected or if a reprimand to which the parties have stipulated is not approved by the Commission, the proceeding shall resume as if no reprimand had been proposed, and neither the fact that a reprimand was proposed, rejected, or not approved nor the contents of the reprimand or stipulation may be admitted into evidence.

(g) Effect of Reprimand

A reprimand constitutes discipline.

Source: This Rule is derived from former Rule 16-737 (2016).

Mr. Frederick said that proposed Rule 19-717 contains a slight update.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Mr. Frederick presented Rule 19-717.1, Permanent Retired Status, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 4. SPECIAL PROCEEDINGS

AMEND Rule 19-740 as follows:

Rule ~~19-740~~ 19-717.1. PERMANENT RETIRED STATUS

(a) Purpose

Permanent retired status is intended to enable an attorney whose alleged conduct (1) meets the criteria set forth in section (b) of this Rule and (2) was predominantly the product of the attorney's ill health or decline, to retire permanently from the practice of law with dignity and to ensure the protection of the public. Permanent retired status is not a sanction, and no record of any investigation by Bar Counsel, documents associated therewith, or proceedings in connection with the determination that the attorney be placed on permanent retired status, shall be made public except with the written consent of the attorney, a duly authorized representative of the attorney, or, upon good cause shown, by the Court of Appeals.

(b) Criteria

Upon completing an investigation and upon agreement of the attorney, Bar Counsel may recommend to the Commission that the attorney be placed on

permanent retired status if Bar Counsel concludes that:

(1) the attorney is the subject of a complaint or allegation which if found meritorious, could lead to the attorney being disciplined or placed on inactive status;

(2) the alleged conduct was predominantly a result of the attorney's ill health or decline;

(3) the alleged conduct does not involve misconduct so serious that, if proven, would likely result in the suspension or disbarment of the attorney or placement of the attorney on inactive status;

(4) the alleged conduct does not reflect adversely on the attorney's honesty or involve conduct that could be the basis for an immediate Petition for Disciplinary or Remedial Action pursuant to Rules 19-737 or 19-738;

(5) the alleged conduct either did not result in actual loss or harm to a client or other person, or, if it did, full restitution has been made;

(6) because of the effect of the attorney's ill health or decline on the attorney's ability to comply fully with the Maryland Attorneys' Rules of Professional Conduct, the attorney should no longer engage in the practice of law; and

(7) the attorney has taken all appropriate actions to wind-up his or her practice or will do so within a time established by the Commission in any approval of permanent retired status.

(c) Action by Commission

If the attorney agrees to permanent retired status, Bar Counsel or the attorney may submit any explanatory materials that either believes relevant and shall submit any further material that the Commission requests. Upon submission, the Commission may take any of the following actions:

(1) the Commission may approve permanent retired status for the attorney, if satisfied that it is

appropriate under the circumstances, in which event the attorney, upon notice of the Commission's written approval and upon the date specified by the Commission, shall take the actions set forth in section (e) of this Rule, and Bar Counsel shall terminate the disciplinary or remedial proceeding; or

(2) the Commission may disapprove permanent retired status for the attorney if not satisfied that it is appropriate under the circumstances and direct Bar Counsel to proceed in another manner consistent with the Rules in this Chapter.

(d) Effect of Disapproval

If permanent retired status is not approved by the Commission, any investigation or proceeding shall resume as if permanent retired status had not been recommended, and the fact that permanent retired status was recommended or that it was not approved may not be entered into the record of any proceeding.

(e) Effect of Permanent Retired Status

An attorney who has been placed on permanent retired status:

(1) shall, upon receipt of the Commission's determination that the attorney be placed on permanent retired status, cease the practice of law in this State and in all other jurisdictions in which the attorney was admitted on or before the date specified by the Commission;

(2) shall, by such date, notify the Client Protection Fund, in writing, of the Commission's approval of permanent retired status, and shall include with such notice a copy of the Commission's approval;

(3) shall not apply for admission to the bar of this State or any other jurisdiction or for revocation of permanent retired status; and

(4) shall, by such date, comply with the provisions of Rule ~~19-742 (b)~~ 19-741 (b).

Committee note: The name of a permanently retired attorney must be removed from the letterhead of any law firm with which the attorney was associated, but if the attorney's last name was part of a firm name that consisted of two or more last names, the firm is not required to remove the last name of the attorney from the name of the firm.

(f) Extension

Upon a showing of good cause and consideration of any objection by Bar Counsel, the Commission may permit an extension of the period to complete one or more of the tasks itemized in section (e) of this Rule.

Source: This Rule is derived from former Rule 16-738 (2016).

Mr. Frederick said that proposed Rule 19-717.1 contains updated references.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Mr. Frederick presented Rule 19-718, Statement of Charges, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 2. ADMINISTRATIVE PROCEEDINGS

AMEND Rule 19-718, as follows:

Rule 19-718. STATEMENT OF CHARGES

(a) Filing



Upon completion of an investigation, Bar Counsel shall file with the Commission a Statement of Charges if Bar Counsel determines that:

(1) the attorney engaged in conduct constituting professional misconduct or is incapacitated; and

(2) the professional misconduct or incapacity does not warrant an immediate Petition for Disciplinary or Remedial Action; and.

~~(3) a Conditional Diversion Agreement is not appropriate under the circumstances; and~~

~~(4) a reprimand is not appropriate under the circumstances or a proposed reprimand (A) was offered and rejected by the attorney or (B) was disapproved by the Commission and Bar Counsel was directed to file a Statement of Charges.~~

(b) Content

The Statement of Charges shall be in writing and:

(1) in clear and specific language, inform the attorney of all professional misconduct charged;

(2) contain a reference to each Rule of the Maryland Attorneys' Rules of Professional Conduct allegedly violated; and

(3) include or be accompanied by a fair summary of the evidence developed through the investigation documentation and information, including any response that the attorney sent to Bar Counsel regarding the matter and any exculpatory material.

(c) Service; Peer Review

(1) Bar Counsel shall serve on the attorney a copy of a Statement of Charges, together with the documentation and information filed pursuant to section (b) of this Rule, on an attorney in the manner prescribed by Rule 2-121 (a). If after reasonable efforts the attorney cannot be served personally, service may be made by email to all email addresses

maintained by the attorney with the Attorney Information System in accordance with Rule 19-802.

Cross reference: See Rule 19-723 concerning service of a Petition for Disciplinary or Remedial Action.

(2) Bar Counsel shall ~~serve on the attorney and~~ send to the Chair of the Peer Review Committee a copy of the Statement of Charges, together with the supporting information and documentation filed pursuant to section (b) of this Rule. The matter shall then proceed in accordance with Rules 19-719 and 19-720.

~~Cross reference: See Rule 19-708 (a) concerning service of the Statement of Charges on the attorney.~~

Source: This Rule is derived from former Rule 16-741 (2016).

Mr. Frederick explained that proposed Rule 19-718 includes a significant change to means of service in section (c), permitting service by email if traditional service fails. The Chair noted that Mr. Rheinstein submitted a comment asking that the statement of charges be made under oath, but Committee staff researched the issue and found no precedent for the requirement in the judicial discipline rules or professional disciplinary statutes. Mr. Rheinstein commented that Washington D.C. requires ethics charges to be made under oath. Ms. Lawless said that complaints are not made under oath but the respondent can depose the person making the complaint under oath.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Mr. Frederick presented Rule 19-719, Peer Review Panel, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 2. ADMINISTRATIVE PROCEEDINGS

AMEND Rule 19-719, as follows:

Rule 19-719. PEER REVIEW PANEL

(a) Appointment

Within 30 days after receiving a copy of a Statement of Charges filed with the Commission, the Chair of the Peer Review Committee shall (1) appoint a Peer Review Panel, (2) notify the Commission, Bar Counsel, and the attorney of the appointment of the Panel and the names and addresses of its members, (3) ~~send to the members of the Panel a copy of the Statement of Charges and the supporting material filed by Bar Counsel with the Commission~~ cause a copy of the statement of charges and documentation and information filed by Bar Counsel to be sent to the members of the Panel, and (4) in accordance with Rule 19-720 (b), schedule a meeting of the Peer Review Panel.

(b) Composition of Panel

(1) The Peer Review Panel shall consist of at least three members of the Peer Review Committee.

(2) A majority of the members of the Panel shall be attorneys, but at least one member shall not be an attorney.

(3) If practicable, the Chair shall appoint to the Panel members from the circuit in which the attorney who is the subject of the charges has an office for the practice of law or, if there is no such office,

the circuit in which the last known address of the attorney, as reflected on the records of the Client Protection Fund, is located.

(c) Panel Chair

The Chair of the Peer Review Committee shall appoint an attorney member of the Panel as the Panel Chair.

(d) Removal and Recusal of Members

The Chair of the Peer Review Committee may remove a member of the Peer Review Panel for cause. A member of a Peer Review Panel shall not participate in any proceeding in which the member's impartiality might reasonably be questioned. A member who is required to recuse or who cannot attend the Peer Review meeting shall immediately notify the Chair of the Peer Review Committee, who shall promptly appoint another member.

(e) Quorum

The presence of any three members of the Peer Review Panel constitutes a quorum, whether or not a non-attorney member is present. With the consent of the Panel members who are present, Bar Counsel and the attorney may waive the quorum requirement. The concurrence of a majority of the members present is necessary to a recommendation to the Commission.

Source: This Rule is derived from former Rule 16-742 (2016).

Mr. Frederick said that proposed Rule 19-719 makes minor changes.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Mr. Frederick presented Rule 19-720, Peer Review Process, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 2. ADMINISTRATIVE PROCEEDINGS

AMEND Rule 19-720, as follows:

Rule 19-720. PEER REVIEW PROCESS

(a) Purpose

The purpose of the peer review process is for the Peer Review Panel to consider the Statement of Charges and all relevant information offered by Bar Counsel and the attorney concerning it and to determine (1) whether the Statement of Charges has a substantial basis and there is reason to believe that the attorney has committed professional misconduct or is incapacitated, and, if so, (2) whether a Petition for Disciplinary or Remedial Action should be filed or some other disposition is appropriate. The peer review process is not intended to be an adversarial one and it is not the function of Peer Review Panels to hold evidentiary hearings, adjudicate facts, or write full opinions or reports.

Committee note: If a Peer Review Panel concludes that the complaint has a substantial basis indicating the need for some remedy, some behavioral or operational changes on the part of the attorney, or some discipline short of suspension or disbarment, part of the peer review process can be an attempt through both evaluative and facilitative dialogue, (a) to effectuate directly or suggest a mechanism for effecting an amicable resolution of the existing dispute between the attorney and the complainant, and (b) to encourage the attorney to recognize any deficiencies on his or her part that led to the problem and take appropriate remedial steps to address those deficiencies. The goal, in this setting, is not to punish or stigmatize the attorney or to create a fear that any admission of deficiency will result in substantial harm, but rather to create an ambience for

a constructive solution. The objective views of two fellow attorneys and a lay person, expressed in the form of advice and opinion rather than in the form of adjudication, may assist the attorney (and the complainant) to retreat from confrontational positions and look at the problem more realistically.

(b) Scheduling of Meeting; Notice to Attorney

(1) The Chair of the Peer Review Committee, after consultation with the members of the Peer Review Panel, Bar Counsel, and the attorney, shall schedule a meeting of the Panel.

(2) If, without substantial justification, the attorney does not agree to schedule a meeting within the time provided in subsection (b) (5) of this Rule, the Chair may recommend to the Commission that the peer review process be terminated. If the Commission terminates the peer review process pursuant to this subsection, the Commission may take any action that could be recommended by the Peer Review Panel under section (e) of this Rule.

(3) The Chair shall notify Bar Counsel, the attorney, and each complainant of the time, place, and purpose of the meeting and invite their attendance.

(4) The notice to the attorney shall inform the attorney of the attorney's right to respond in writing to the Statement of Charges by filing a written response with the Commission and sending a copy of it to Bar Counsel and each member of the Peer Review Panel at least ten days before the scheduled meeting.

(5) Unless the time is extended by the Commission, the meeting shall occur within 60 days after appointment of the Panel.

(c) Meeting

(1) The Peer Review Panel shall conduct the meeting in an informal manner. It shall allow Bar Counsel, the attorney, and each complainant to explain their positions and offer such supporting information as the Panel finds relevant. Upon request of Bar Counsel or the attorney, the Panel may, but need not, hear from any other individual. The Panel is not

bound by any rules of evidence, but shall respect lawful privileges. The Panel may exclude a complainant after listening to the complainant's statement and, as a mediative technique, may consult separately with Bar Counsel or the attorney. The Panel may meet in private to deliberate.

(2) If the Panel determines that the Statement of Charges has a substantial basis and that there is reason to believe that the attorney has committed professional misconduct or is incapacitated, the Panel may (A) conclude the meeting and make an appropriate recommendation to the Commission or (B) inform the parties of its determination and allow the attorney an opportunity to consider a reprimand or a Conditional Diversion Agreement.

(3) The Panel may schedule one or more further meetings, but, unless the time is extended by the Commission, it shall make a recommendation to the Commission within ~~90~~ 30 days after ~~appointment of the Panel~~ conclusion of the meeting. If a recommendation is not made within that time or any extension granted by the Commission, the peer review process shall be ~~terminated~~ dismissed and the Commission may take any action that could be recommended by the Peer Review Panel under section (e) of this Rule.

(d) Ex Parte Communications

Except for administrative communications with the Chair of the Peer Review Committee and as allowed under subsection (c)(1) of this Rule as part of the peer review meeting process, no member of the Panel shall participate in an ex parte communication concerning the substance of the Statement of Charges with Bar Counsel, the attorney, the complainant, or any other person.

(e) Recommendation of Panel

(1) Agreed Upon Recommendation

(A) If Bar Counsel, the attorney, and the Panel agree upon a recommended disposition, the Panel shall transmit the recommendation to the Commission.

(B) If the Panel determines that the attorney committed professional misconduct or is incapacitated and that the parties should consider a Conditional Diversion Agreement, the Panel shall orally advise the parties of that determination and afford them the opportunity to consider and enter into such an Agreement in accordance with Rule 19-716. If an Agreement is reached, the Conditional Diversion Agreement shall be the Panel's recommended disposition.

(2) If No Agreement

If there is no agreed-upon recommendation under subsection (e) (1) of this Rule, the Panel shall transmit to the Commission an independent recommendation, not subject to the approval of Bar Counsel, and shall accompany its recommendation with a brief explanatory statement. The Panel's recommendation shall be one of the following:

(A) the filing of a Petition for Disciplinary or Remedial Action;

(B) a reprimand in accordance with Rule 19-717;

(C) dismissal of the complaint or ~~termination~~ of the proceeding without discipline, but with ~~a warning~~ a letter of cautionary advice or letter of admonition, in accordance with Rule 19-715 (c); or

(D) dismissal of the complaint or ~~termination~~ of the proceeding without discipline and without ~~a warning~~ a letter of cautionary advice or letter of admonition, in accordance with Rule 19-715.

(f) Action by Commission

The Commission may:

(1) direct Bar Counsel to file a Petition for Disciplinary or Remedial Action;

(2) take any action on the Panel's recommendation that the Commission could take on a similar recommendation made by Bar Counsel under Rule 19-714; or



(3) dismiss the ~~Statement of Charges~~ complaint and ~~terminate~~ the proceeding.

Source: This Rule is derived from former Rule 16-743 (2016).

Mr. Frederick said that proposed Rule 19-720 conforms the Rule to previous amendments. Mr. Kramer requested that subsection (e)(1)(B) allow the panel to recommend intervention for the attorney even though only Bar Counsel can make the determination that intervention or diversion is appropriate. Ms. Lawless said that the panel is free to tell the attorney that it recommends treatment, but the recommendation to the Commission must be something the Commission has the power to recommend. Mr. Kramer moved to amend the Rule to add, "If there is no agreement, the panel may express its opinion regarding the propriety of diversion or intervention." There was no second to the motion.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Mr. Frederick presented Rule 19-722, Order Designating Judge and Clerk, for consideration.

## MARYLAND RULES OF PROCEDURE

### TITLE 19 - ATTORNEYS

#### CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

#### DIVISION 3. PROCEEDINGS ON PETITION FOR

DISCIPLINARY OR REMEDIAL ACTION

AMEND Rule 19-722, as follows:

Rule 19-722. ORDER DESIGNATING JUDGE AND CLERK

(a) Order

Upon the filing of a Petition for Disciplinary or Remedial Action, the Court of Appeals may enter an order designating (1) a judge of any circuit court to hear the action, and (2) the clerk responsible for maintaining the record. The order of designation shall require the judge, not later than 15 days after the date on which an answer is due, and after consultation with Bar Counsel and the attorney, to enter a scheduling order. The scheduling order shall ~~define the extent of discovery and~~ set dates for the completion of discovery, designation of experts, the filing of motions, and a hearing on the petition. Subject to Rule 19-727 (a) and (e) and for good cause, the judge may amend the scheduling order.

(b) ~~Service~~ Transmittal of the Record; Summons

(1) Transmittal of the Record

Upon entry of an order under section (a) of this Rule, the clerk of the Court of Appeals shall send an electronic copy ~~two copies of the order~~ to Bar Counsel and transmit the file to the designated clerk of the circuit court. ~~Bar Counsel shall serve a copy of the order and a copy of the petition on the respondent. The copies shall be served in accordance with Rule 19-723 or as otherwise ordered by the Court of Appeals.~~

(2) Summons

Upon receipt of the record from the Court of Appeals, the clerk of the circuit court shall issue forthwith a summons for the respondent and shall deliver it, together with a copy of each paper filed, including the Order entered under subsection (a) (1), to Bar Counsel for service on the attorney.

(c) Motion to Amend Order Designating Judge

Within 15 days after the respondent has been served, either party may file a motion in accordance with Rule 8-431 requesting that the Court of Appeals designate another judge. The motion shall not stay the time for filing an answer to the petition.

Source: This Rule is derived from former Rule 16-752 (2016).

Mr. Frederick said that proposed Rule 19-722 conforms the Rule to practice.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Mr. Frederick presented Rule 19-723, Service of Petition and Order, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 3. PROCEEDINGS ON PETITION FOR

DISCIPLINARY OR REMEDIAL ACTION

AMEND Rule 19-723, as follows:

Rule 19-723. SERVICE OF PETITION AND ORDER

~~(a) Generally~~

A copy of a Petition for Disciplinary or Remedial Action filed pursuant to Rule 19-721, ~~and~~ the order of the Court of Appeals entered pursuant to Rule 19-722 (a), and the summons issued by the circuit court pursuant to Rule 19-722 (b) shall be served on the attorney in the manner prescribed in Rule 2-121, or in

any other manner directed by the Court of Appeals or  
the circuit court.

~~(b) Alternative Service~~

~~—If after reasonable efforts the attorney cannot be served personally, service may be made on the attorney by serving the employee designated by the Client Protection Fund pursuant to Rule 19-604, who shall be deemed the attorney's agent for receipt of service. The employee promptly shall (1) send, by certified and first class mail, a copy of the papers so served to the attorney at the attorney's address maintained in the Fund's records and to any other address provided by Bar Counsel, and (2) file a certificate of the mailing with the clerk and send a copy of the certificate to Bar Counsel.~~

Source: This Rule is in part derived from former Rule 16-753 (2016).

Mr. Frederick said that proposed Rule 19-723 contains minor changes.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Mr. Frederick presented Rule 19-724, Answer, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 3. PROCEEDINGS ON PETITION FOR

DISCIPLINARY OR REMEDIAL ACTION

AMEND Rule 19-724, as follows:

Rule 19-724. ANSWER

(a) Timing

The attorney shall file with the designated clerk and serve on Bar Counsel an answer to the petition:

~~(1) if the petition and order were served pursuant to Rule 19-723 (a),~~ within 15 days after service; or

~~(2) if the petition and order were served pursuant to Rule 19-723 (b), within 15 days after a copy of the petition and order was mailed to the attorney by the employee of the Client Protection Fund; or~~

~~(3)~~ (2) by such other time specified by the Court of Appeals.

(b) Content and Scope

(1) Generally

Defenses and objections to the petition, including insufficiency of service, shall be stated in the answer and not by preliminary motion.

(2) Limited Scope

It is not a defense or ground for objection to a petition that procedural defects may have occurred during disciplinary or remedial proceedings prior to the filing of the petition.

(c) Failure to Answer

If the time for filing an answer has expired and the attorney has failed to file an answer in accordance with section (a) of this Rule, the court shall treat the failure as a default, and the provisions of Rule 2-613 shall apply.

Source: This Rule is derived from former Rule 16-754 (2016).

Mr. Frederick said that proposed Rule 19-724 contains minor changes.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Mr. Frederick presented Rule 19-725, Pleadings; Motions; Amendments, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 3. PROCEEDINGS ON PETITION FOR

DISCIPLINARY OR REMEDIAL ACTION

AMEND Rule 19-725, as follows:

Rule 19-725. PLEADINGS; MOTIONS; AMENDMENTS

(a) Pleadings

Except as provided in section (b) of this Rule or otherwise expressly permitted by these Rules or ordered by the Court of Appeals, the only pleadings permitted in an action for Disciplinary or Remedial Action are the petition and an answer.

(b) Amendments

Bar Counsel may amend a petition and the attorney may amend an answer in accordance with the applicable provisions of Rule 2-341.

(c) Motions

Motions dealing with discovery, pre-hearing procedural matters, or matters arising at the hearing conducted pursuant to Rule 19-727 are permissible and shall comply with applicable provisions of Rule 2-311. Motions to dismiss the proceeding and motions for summary judgment are not permitted.

Committee note: Proceedings on a Petition for Disciplinary or Remedial Action are conducted pursuant to the original jurisdiction of the Court of Appeals to regulate the practice of law and are not the place for collateral actions or such things as counterclaims. Moreover, because the authority of the circuit court judge designated by the Court of Appeals pursuant to Rule 19-722 is limited to taking evidence and making findings of fact and proposed conclusions of law, that judge is not empowered to dismiss a petition. Defenses to the petition may be raised in the answer and may be addressed by the designated judge, but only the Court of Appeals has authority to dismiss all or part of a petition.

Source: Sections (a) and (c) of this Rule are new. Section (b) is derived from former Rule 16-755 (2016).

Mr. Frederick stated that the proposed amendment to Rule 19-725 prohibits the filing of a motion for summary judgment. Mr. Jason Rheinstein commented that the process needs an outlet for narrowing issues prior to trial. The Chair said that the Court of Appeals has original jurisdiction in attorney grievance matters and the circuit court judge performs a limited function by taking testimony and making proposed findings of fact and conclusions of law. The circuit court judge has no jurisdiction to dismiss the case or enter summary judgment, constitutionally. Mr. Rheinstein said that the Dyer case (*Attorney Grievance v. Dyer & Gray*, 453 Md. 585 (2017)) highlighted the problem with not offering a meaningful check on Bar Counsel until arguments in the Court of Appeals. In that case, the Court of Appeals dismissed most of the charges against one respondent, issuing a reprimand on the remaining charge, and

all of the charges against the second. The Chair reiterated that the circuit court has no jurisdiction to enter summary judgment or dismiss charges. Mr. Kramer commented that the *Dyer* case is troubling. He pointed out that in Maryland, every attorney grievance case is a "supreme court case" with no process to dismiss charges or entire cases sooner. He suggested allowing the circuit court to recommend dismissal. The Chair responded that the Court of Appeals does not ask or want the circuit court judge to make any recommendations. The Chair called for a motion to amend Rule 19-720. No motion was made.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Mr. Frederick presented Rule 19-726, Discovery, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 3. PROCEEDINGS ON PETITION FOR

DISCIPLINARY OR REMEDIAL ACTION

AMEND Rule 19-726, as follows:

Rule 19-726. DISCOVERY

After a Petition for Disciplinary or Remedial Action has been filed, discovery is permitted as



follows governed by Title 2, Chapter 400, subject to any scheduling order entered pursuant to Rule 19-722.

(a) Discovery from Bar Counsel

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

(b) Exculpatory Information

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

(c) Witnesses

(1) Fact Witnesses

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

(2) Expert Witnesses

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

(d) Other Discovery from the Attorney

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

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

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

(e) Depositions

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

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

(f) Continuing Duty to Disclose

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

(g) Motions

All discovery motions are governed by Title 2, Chapter 400.

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

Mr. Frederick said that proposed Rule 19-726 makes substantive changes to the discovery requirements. Section (a) requires Bar Counsel to provide complete discovery, including exonerating material, in response to a written request. Section (e) prohibits the deposition of the Attorney Grievance Commission as an entity but does not preclude the deposition of individuals. Mr. Frederick explained that if Bar Counsel discloses all that a respondent could conceivably want and has an affirmative duty to disclose exculpatory material, the playing field is more level. He noted that this concept was considered previously and submitted to the Court of Appeals, but the court did not take any action. The Chair commented that there was a robust discussion at the Court of Appeals but no final decision the last time the issue was presented. Mr. Rheinstein said that he opposes the change. He suggested that Bar Counsel can designate the proper investigator with knowledge of the case to be deposed. Mr. Dyer also objected to the proposed change and said that as a solo practitioner, he feels that once charges are filed, the attorney has lost the case but must marshal resources to mount a defense. Senator Cassilly asked for an example of when a respondent would want to bind the Commission through a deposition. Mr. Frederick responded that

it was not clear what a representative for the Commission could say in a deposition that would bind the body, which obtains information from other sources. Mr. Kramer suggested that a rare situation could occur where the Commission does not follow its own procedures and a respondent would seek to depose a designee for information.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Mr. Frederick presented Rule 19-727, Judicial Hearing, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 3. PROCEEDINGS ON PETITION FOR

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AMEND Rule 19-727, as follows:

Rule 19-727. JUDICIAL HEARING

(a) Evidence and Procedure Generally

Except as otherwise provided by the Rules in this Chapter, the hearing of a disciplinary or remedial action is governed by the rules of evidence and procedure applicable to a non-jury trial in a civil action in a circuit court.

(b) Certain Evidence Allowed

(1) Before the conclusion of the hearing, the judge may permit any complainant to testify, subject to cross-examination, regarding the effect of the alleged misconduct or incapacity.

(2) The attorney may offer, or the judge may inquire regarding, evidence otherwise admissible of any remedial action undertaken by the attorney relevant to the allegations of misconduct or incapacity. Bar Counsel may respond to any evidence of remedial action.

(c) Burdens of Proof

Bar Counsel has the burden of proving the averments of the petition by clear and convincing evidence. If the attorney asserts an affirmative defense or a matter of mitigation or extenuation, the attorney has the burden of proving the defense or matter by a preponderance of the evidence.

(d) Time for Completion

Unless extended by the Court of Appeals, the hearing shall be completed within 120 days after service on the attorney of the order entered under Rule 19-722.

~~(d)~~ (e) Findings and Conclusions

The judge shall prepare and file a written statement which shall contain: (1) findings of fact and conclusions of law as to each charge; (2) findings as to any remedial action taken by the attorney; and (3) findings as to any aggravating or mitigating circumstances that exist. Unless the time is extended by the Court of Appeals, the statement shall be filed with the clerk responsible for the record no later than 45 days after the conclusion of the hearing. The ~~clerks~~ clerk shall mail a copy of the statement to each party.

~~(e)~~ ~~Time for Completion~~

~~Unless extended by the Court of Appeals, the hearing shall be completed within 120 days after service on the attorney of the order entered under Rule 19-722.~~

(f) Transcript

Bar Counsel shall cause a transcript of the hearing to be prepared and included in the record and provide an electronic copy of the transcript of the hearing to the attorney.

(g) Transmittal of Record

Unless a different time is ordered by the Court of Appeals, the clerk shall transmit the record to the Court of Appeals within 15 days after the statement of findings and conclusions is filed.

Source: This Rule is derived from former Rule 16-757 (2016).

Mr. Frederick said that proposed Rule 19-727 references the time to complete proceedings.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Mr. Frederick presented Rule 19-728, Post-Hearing Proceedings, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 3. PROCEEDINGS ON PETITION FOR

DISCIPLINARY OR REMEDIAL ACTION

AMEND Rule 19-728, as follows:

Rule 19-728. POST-HEARING PROCEEDINGS

(a) Notice of the Filing of the Record

Upon receiving the record, the Clerk of the Court of Appeals shall notify the parties that the record has been filed.

(b) Exceptions; Recommendations; Statement of Costs

Within ~~15~~ 30 days after service of the notice required by section (a) of this Rule, each party may file (1) exceptions to the findings and conclusions of the hearing judge, (2) recommendations concerning the appropriate disposition under Rule ~~19-741~~ 19-740 (c), and (3) a statement of costs to which the party may be entitled under Rule 19-709.

(c) Response

Within 15 days after service of exceptions, recommendations, or a statement of costs, the adverse party may file a response.

(d) Form

The parties shall file eight copies of any exceptions, recommendations, and responses. The copies shall conform to the requirements of Rule 8-112.

(e) Proceedings in Court of Appeals

Review in and disposition by the Court of Appeals are governed by Rule ~~19-741~~ 19-740.

Source: This Rule is derived from former Rule 16-758 (2016).

Mr. Frederick said that proposed Rule 19-728 makes changes to numbering. Judge Bryant raised the question of sealing the transcript of proceedings in addition to papers and moved to amend the Rule to parallel the amendments made to Rule 19-712. The motion was seconded and approved by a majority vote.

There being no motion to further amend or reject the proposed Rule, it was approved as presented.

Mr. Frederick presented Rule 19-731, Audit of Attorney Accounts and Records, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 4. SPECIAL PROCEEDINGS

AMEND Rule 19-731, as follows:

Rule 19-731. AUDIT OF ATTORNEY ACCOUNTS AND RECORDS

(a) Action for Audit

Bar Counsel or the Trustees of the Client Protection Fund may file a petition requesting an audit of the accounts and records that an attorney is required by law or Rule to maintain. The petition may be filed in the circuit court in any county where the attorney resides or has an office for the practice of law. If the attorney has no established office and the attorney's residence is unknown, the petition may be filed in any circuit court.

(b) Petition

The petition shall state the facts showing that an audit is necessary and shall request the appointment of a Certified Public Accountant to conduct the audit.

(c) Caption

The petition and all subsequent pleadings and papers filed in the action shall contain a caption, "In re: Application for Audit of an Attorney's Accounts and Records."

(d) Show Cause Order; Service

(1) Show Cause Order



The circuit court shall enter an order giving the attorney notice of the action and directing the attorney to show cause on or before a stated date why an audit should not be conducted as requested. ~~The order and the petition shall be served in the manner that the court directs so as to preserve the confidentiality of the action.~~

(2) Service

A copy of a petition and the show cause order shall be served on the attorney in the manner prescribed in Rule 2-121, or in any other manner directed by the circuit court.

(3) Alternative Service

If after reasonable efforts the attorney cannot be served personally, service may be made on the attorney by sending by email to all email addresses maintained by the attorney with the Attorney Information System in accordance with Rule 19-802.

(e) Response to Petition

The attorney may file a response to the petition and show cause order not later than the date stated in the order or, if no date is stated, within five days after being served.

(f) Order Directing Audit

After considering the petition and any response and upon a finding of good cause, the circuit court may order any of the accounts and records required by law or Rule to be maintained by the attorney to be audited by a Certified Public Accountant designated in the order. The order directing the audit shall (1) expressly require that the audit be conducted and a report be made in a manner that preserves the confidentiality of the proceedings and the attorney's confidential relation with the attorney's clients, and (2) direct the attorney to produce promptly all accounts and records required by the auditor.

(g) Finality of Order

An order granting or denying a petition for an audit is a final order for purposes of appeal.

(h) ~~Duty of Clerk to Preserve Confidentiality~~

~~The clerk shall maintain a separate docket with an index for proceedings under this Rule. The docket entries shall not identify the attorney against whom the petition is filed. Pleadings and other papers filed in the proceedings shall be stamped "confidential" and sealed in accordance with Rule 19-707 (b) (2) (I) at the time they are filed. The docket, index, and papers in the proceedings shall not be open to inspection by any person, including the parties, except upon order of court after reasonable notice and for good cause shown.~~

Any paper filed in the circuit court with respect to an audit shall be sealed upon filing and shall be open to inspection only by order of the court. A hearing before the court on any petition or motion shall be on the record but shall be conducted out of the presence of all individuals other than Bar Counsel, the attorney, and those individuals whose presence the court deems necessary.

(i) Cost of Audit

Upon completion of the audit, the court may order all or part of the costs of the audit and of the proceeding to be paid by any party to the proceeding, except that costs shall not be assessed against the attorney if the audit fails to disclose any irregularity.

(j) Remedy Not Exclusive

Neither this Rule nor any proceeding under this Rule precludes any other remedy or cause of action while the audit is pending or thereafter.

(k) Sanctions for Violations

(1) Contempt

If the attorney violates the order of the circuit court entered pursuant to section (f) of this

Rule, Bar Counsel may institute a proceeding for contempt pursuant to Rule 15-206.

(2) Petition for Disciplinary or Remedial Action

(A) If the circuit court makes a finding of contempt pursuant to Rule 15-206, Bar Counsel, with the approval of the Chair of the Commission, may file a Petition for Disciplinary or Remedial Action in the Court of Appeals pursuant to Rule 19-721 (a) (1). A certified copy of the order of contempt shall be attached to the Petition, and a copy of the Petition and order shall be served on the attorney in accordance with Rule 19-723.

(B) Show Cause Order

When a petition and certified copy of an order of contempt have been filed, the Court of Appeals shall order that the attorney, within 15 days from the date of the order, show cause in writing why the attorney should not be suspended immediately from the practice of law until the further order of the Court of Appeals. A copy of the Petition and show cause order shall be served on the attorney in accordance with Rule 19-723.

(C) Action by the Court of Appeals

Upon consideration of the petition and any answer to the order to show cause, the Court of Appeals may enter an order: (1) immediately suspending the attorney from the practice of law, pending further order of the Court, (2) designating a judge pursuant to Rule 19-722 to hold a hearing in accordance with Rule 19-727, or (3) containing any other appropriate provisions. The provisions of Rules 19-741 and 19-743 apply to an order under this section.

(D) Presumptive Effect of Order of Contempt

A finding of contempt is presumptive evidence that the attorney is in contempt of court, but the introduction of such evidence does not preclude Bar Counsel or the attorney from introducing additional evidence or otherwise showing cause why no suspension should be imposed.

(E) Termination of Suspension

On notification by Bar Counsel that the attorney has purged the contempt, the Court of Appeals shall order the attorney reinstated to the practice of law, unless other grounds exists for the suspension to remain in effect.

(1) Other Disciplinary Proceedings

Proceedings under this Rule shall not preclude the use of the facts underlying the order of contempt when relevant to a pending or subsequent disciplinary proceeding against the attorney.

Source: This Rule is derived from former Rule 16-722 (2016).

Mr. Frederick said that proposed Rule 19-731 applies to an audit of an attorney trust account. If the lawyer fails to comply, he or she may be cited for contempt.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Mr. Frederick presented Rule 19-732, Injunction; Expedited Action, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 4. SPECIAL PROCEEDINGS

AMEND Rule 19-732, as follows:

Rule 19-732. INJUNCTION; EXPEDITED ACTION

(a) Authority to Seek Injunction

Upon receiving information that an attorney is engaging in professional misconduct or has an incapacity and poses an immediate threat of causing (1) death or substantial bodily harm to another, (2) substantial injury to the financial interest or property of another, or (3) substantial harm to the administration of justice, Bar Counsel, with the approval of the Chair of the Commission, may apply in accordance with the provisions of Title 15, Chapter 500 for appropriate injunctive relief against the attorney. The relief sought may include restricting the attorney's practice of law, limiting or prohibiting withdrawals from any account in any financial institution, and limiting or prohibiting transfers of funds or property.

Committee note: Except as otherwise provided in this Rule, Rules 15-501 through 15-505, the rules relating to temporary restraining orders and injunctions, apply. The appealability of injunctions under this Rule is governed by Code, Courts Article, § 12-303.

Cross reference: See Rule 19-734 for the right of Bar Counsel to request the appointment of a conservator when an attorney no longer can practice.

(b) Parties

The action for injunction shall be brought in the name of the Commission against the attorney whose conduct is alleged to be causing or threatening the harm and against any other person alleged to be assisting or acting in concert with the attorney.

(c) Service

A copy of any petition filed or order issued pursuant to Title 15, Chapter 500 shall be served on the attorney in accordance with Rule 19-723.

(d) Inability to Defend

Upon a credible allegation by the attorney or other evidence that the attorney, by reason of physical or mental disability or impairment, is unable to assist in a defense to a petition filed pursuant to

section (a) of this Rule, the circuit court may (1) appoint counsel for the attorney if the attorney is not otherwise represented by counsel, (2) appoint a guardian ad litem, or (3) both.

~~(e)~~ (e) Effect of Investigation or Disciplinary or Remedial Proceeding

A court may not delay or deny an injunction solely because misconduct is or may become the subject of an investigation under Rule 19-711 or the basis for a Statement of Charges under Rule 19-718.

~~(d)~~ (f) Order Granting Injunction

In addition to meeting the requirements of Rule 15-502 (e), an order granting a preliminary or permanent injunction under this section shall include specific findings by a preponderance of the evidence that the attorney has engaged in the alleged professional misconduct or has the incapacity alleged and poses the threat alleged in the complaint. A bond shall not be required except in exceptional circumstances.

~~(e)~~ (g) Service on Financial Institution

An order granting an injunction under this section that limits or prohibits withdrawals from any account or that limits or prohibits a transfer of funds or property is effective against any financial institution upon which it is served from the time of service.

~~(f)~~ (h) Expedited Disciplinary or Remedial Action

(1) Filing of Petition

When an injunction is issued pursuant to this Rule, notwithstanding any pending appeal or motion to modify or dissolve the injunction, Bar Counsel shall immediately file a Petition for Disciplinary or Remedial Action pursuant to Rule 19-721. A certified copy of the order granting the injunction shall be attached to the petition.

(2) Action on Petition

The action shall proceed in accordance with Rules 19-721 through 19-729 and Rules 19-741 through 19-744, to the extent applicable. The Court of Appeals may assign the petition for hearing to the judge who granted the injunction.

Source: This Rule is derived from former Rule 16-776 (2016).

Mr. Frederick said that proposed Rule 19-732 allows for engagement of an attorney to defend a respondent who is under a disability.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Mr. Frederick presented Rule 19-733, Referral from Child Support Administration, for consideration.

## MARYLAND RULES OF PROCEDURE

### TITLE 19 - ATTORNEYS

#### CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

#### DIVISION 4. SPECIAL PROCEEDINGS

AMEND Rule 19-733, as follows:

Rule 19-733. REFERRAL FROM CHILD SUPPORT ADMINISTRATION

(a) Referral

The Commission promptly shall transmit to Bar Counsel a referral from the Child Support Administration pursuant to Code, Family Law Article, § 10-119.3 (e) (3) and direct Bar Counsel to investigate, and if the attorney has violated the law, file a Petition for Disciplinary or Remedial Action in the

Court of Appeals pursuant to Rule 19-721 (a) (1). A copy of the Administration's referral shall be attached to the Petition, and a copy of the Petition and notice shall be served on the attorney in accordance with Rule 19-723.

Committee note: The procedures set out in Code, Family Law Article, § 10-119.3 (f) (1), (2), and (3) are completed before the referral to the Attorney Grievance Commission.

(b) Show Cause Order

When a petition and notice of referral have been filed, the Court of Appeals shall order that ~~Bar Counsel and~~ the attorney, within 15 days from the date of the order, show cause in writing why the attorney should not be suspended from the practice of law until the further order of the Court.

(c) Action by the Court of Appeals

Upon consideration of the petition and any answer to the order to show cause, the Court of Appeals may enter an order: (1) immediately ~~and indefinitely~~ suspending the attorney from the practice of law, pending further order of the Court, (2) designating a judge pursuant to Rule 19-722 to hold a hearing in accordance with Rule 19-727, or (3) containing any other appropriate provisions. The provisions of Rules ~~19-741~~ 19-740 through ~~19-744~~ 19-743, as applicable, apply to an order under this section that suspends an attorney.

(d) Presumptive Effect of Referral

A referral from the Child Support Administration to the Attorney Grievance Commission is presumptive evidence that the attorney falls within the criteria specified in Code, Family Law Article, § 10-119.3 (e) (1), but the introduction of such evidence does not preclude Bar Counsel or the attorney from introducing additional evidence or otherwise showing cause why no suspension should be imposed.

(e) Termination of Suspension



(1) On Notification by the Child Support Administration

Upon notification by the Child Support Administration that the attorney has complied with the provisions of Code, Family Law Article, § 10-119.3 (j), the Court of Appeals shall order the attorney reinstated to the practice of law, unless other grounds exist for the suspension to remain in effect.

(2) On Verified Petition by Attorney

In the absence of a notification by the Child Support Administration pursuant to subsection (e) (1) of this Rule, the attorney may file with the Court of Appeals a verified petition for reinstatement. The petition shall allege under oath that (A) the attorney is in compliance with the provisions of Code, Family Law Article, § 10-119.3 (j) and is not currently in arrears in the payment of child support, (B) at least 15 days prior to filing the verified petition, the attorney gave written notice of those facts to the Child Support Administration and requested that the Child Support Administration notify the Court, (C) the Child Support Administration has failed or refused to file such a notification, and (D) the attorney is entitled to be reinstated. All relevant documents shall be attached to the petition as exhibits. A copy of the petition and exhibits shall be served on Bar Counsel, who shall file an answer within 15 days after service. Upon consideration of the petition and answer, the Court of Appeals may enter an order reinstating the attorney, an order denying the petition, or any other appropriate order.

(f) Other Disciplinary Proceedings

Proceedings under this Rule shall not preclude (1) the use of the facts underlying the referral from the Child Support Administration when relevant to a pending or subsequent disciplinary proceeding against the attorney or (2) prosecution of a disciplinary action based upon a pattern of conduct adverse to the administration of justice.

Source: This Rule is derived from former Rule 16-778 (2016).

Mr. Frederick said that proposed Rule 19-733 addresses a statute regarding nonpayment of child support by an attorney.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Mr. Frederick presented Rule 19-734, Conservation of Client Matters, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 4. SPECIAL PROCEEDINGS

AMEND Rule 19-734, as follows:

Rule 19-734. CONSERVATOR OF CLIENT MATTERS

(a) Appointment; When Authorized

If (1) an attorney dies, disappears, has been disbarred, suspended, or placed on inactive status, or is incapacitated or has abandoned the practice of law, (2) there are open client matters, and (3) and there is not known to exist any personal representative, partner, or other individual who is willing to conduct and capable of conducting the attorney's client affairs, Bar Counsel may file a petition requesting the appointment of a conservator to inventory the attorney's files and to take other appropriate action to protect the attorney's clients. A conservatorship may coexist with the administration of the attorney's general estate by a personal representative or guardian.

Committee note: The conservator will be responsible for dealing with the attorney's trust accounts and client matters over which a guardian or personal

representative, even if one exists, ordinarily should have no authority. A guardian or personal representative who has been appointed should be served with the petition and order, however, to avoid the prospect of conflicts.

(b) Petition; Service; Order

(1) Filing

The petition to appoint a conservator may be filed in the circuit court for any county in which the attorney resided or maintained an office for the practice of law, and may include a request for emergency relief in accordance with subsection ~~(b)-(3)~~(4) of this Rule. If the attorney has no established office and the attorney's residence is unknown, the petition may be filed in any circuit court.

(2) Service

The petition shall be served on the attorney, the guardian of the attorney, or the personal representative of the attorney, as appropriate, and on any other person the court may require to be served. Service shall be made in the manner described in Rule 2-121.

(3) Alternative Service

If, after reasonable efforts, the attorney cannot be served personally, service may be made on the attorney by sending the petition by email to all email addresses maintained by the attorney with the Attorney Information System in accordance with Rule 19-802.

~~(3)~~(4) Emergency Appointment

Upon sufficient allegations in the petition and a showing by affidavit or other evidence that immediate, substantial, and irreparable harm may result from the attorney's disappearance or inability or unwillingness to deal properly with the attorney's trust accounts or client matters, the court may enter an order (A) appointing an attorney approved by Bar Counsel to serve as a temporary emergency conservator

with authority to take control of the trust accounts and client files and (B) enjoining the financial institutions holding the trust accounts from transferring any funds except upon the order of the temporary conservator, all pending further order of the court.

~~(4)~~(5) Order Appointing Conservator

Upon such proof of the facts as the court may require, the court may enter an order appointing an attorney approved by Bar Counsel to serve as conservator subject to further order of the court.

(c) Inventory

Promptly upon accepting the appointment, the conservator shall take possession and prepare an inventory of the attorney's files, take control of the attorney's trust and business accounts, review the files and accounts, identify open matters, and note the matters requiring action.

(d) Disposition of Files

With the consent of the client or the approval of the court, the conservator may assist the client in finding a new attorney, assume responsibility for specific matters, or refer the client's open matters to attorneys willing to handle them.

(e) Sale of Law Practice

With the approval of the court, the conservator may sell the attorney's law practice in accordance with Rule 19-301.17 (1.17) of the Maryland Attorneys' Rules of Professional Conduct.

(f) Compensation

(1) Entitlement

The conservator is entitled to periodic payment from the attorney's assets or estate for reasonable hourly ~~attorney's~~ attorneys' fees and reimbursement for expenditures reasonably incurred in carrying out the order of appointment.

(2) ~~Motion~~ Petition for Judgment Attorneys' Fees and Expenses

Upon verified ~~motion~~ petition served on the attorney at the attorney's last known address or, if the attorney is deceased, on the personal representative of the attorney, the court may order payment to the conservator and enter judgment against the attorney or personal representative for the reasonable fees and expenses of the conservator. A copy of the verified petition also shall be served on Bar Counsel.

Committee note: If the attorney is deceased, the conservator may file a timely claim, which may be a contingent claim, in the estate of the attorney prior to filing a petition under subsection (f)(2) of this Rule. See Code, Estates & Trusts Article, §§ 8-104 (Claims) and 8-112 (Contingent Claims).

(3) Payment from Disciplinary Fund

If the conservator is unable to obtain full payment within one year after entry of judgment, the Commission may authorize payment from the Disciplinary Fund in an amount not exceeding the amount of the judgment that remains unsatisfied. If payment is made from the Disciplinary Fund, the conservator shall assign the judgment to the Commission for the benefit of the Disciplinary Fund.

(g) Confidentiality

A conservator shall not disclose any information contained in a client's file without the consent of the client, except as necessary to carry out the order of appointment.

Source: This Rule is derived from former Rule 16-777 (2016).

Mr. Frederick said that proposed Rule 19-734 deals with appointment of a conservator when a lawyer is unable to wrap up his or her practice. He explained that Bar Counsel is responsible for overseeing the resolution of pending matters.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Mr. Frederick presented Rule 19-735, Resignation of Attorney, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 4. SPECIAL PROCEEDINGS

AMEND Rule 19-735, as follows:

Rule 19-735. RESIGNATION OF ATTORNEY

(a) Application

An application to resign from the practice of law in this State shall be submitted in writing under oath to the Court of Appeals, with a copy to Bar Counsel. The application shall state that the resignation is not being offered to avoid disciplinary action and that the attorney has no knowledge of any pending investigation, action, or proceedings in any jurisdiction involving allegations of professional misconduct by the attorney.

(b) When Attorney May Not Resign

An attorney may not resign while the attorney is the subject of a disciplinary investigation, action, or proceeding involving allegations of professional misconduct. An application to resign does not prevent or stay any disciplinary action or proceeding against the attorney.

(c) Procedure

Upon receiving a copy of the application submitted in accordance with section (a) of this Rule,

Bar Counsel shall investigate the application and file a response with the Clerk of the Court.

(d) Order of the Court of Appeals

~~The Court of Appeals shall~~ Upon consideration of the petition and response, the Court of Appeals may enter an order, signed by the Chief Judge, or a judge of the Court designated by the Chief Judge, enter an order accepting or denying the resignation. A resignation is effective only upon entry of an order accepting it. The provisions of Rule 19-741 apply to an order under this section.

(e) Duty of Clerk

When the Court enters an order accepting an attorney's resignation, the Clerk of the Court of Appeals shall strike the name of the attorney from the register of attorneys in that Court and shall certify that fact to the Trustees of the Client Protection Fund of the Bar of Maryland and the clerks of all courts in this State. The Clerk shall give any notice required by Rule 19-707 (e).

(f) Effect of Resignation

An attorney may not practice law in this State after entry of an order accepting the attorney's resignation.

(g) Motion to Vacate

On motion of Bar Counsel, the Court may vacate or modify the order if there has been intrinsic or extrinsic fraud.

Source: This Rule is derived from former Rule 16-775 (2016).

Mr. Frederick said that proposed Rule 19-735 makes minor changes.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Mr. Frederick presented Rule 19-736, Consent to Discipline or Transfer to Disability Inactive Status, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 4. SPECIAL PROCEEDINGS

AMEND Rule 19-736, as follows:

Rule 19-736. CONSENT TO DISCIPLINE OR TRANSFER TO DISABILITY INACTIVE STATUS

(a) General Requirement

An attorney may consent to discipline or ~~placement on~~ transfer to disability inactive status in accordance with this Rule.

(b) Consent to Discipline for Misconduct

(1) Joint Petition

An attorney may consent to disbarment or other discipline by joining with Bar Counsel in a petition for an order disbarring the attorney, suspending the attorney from the practice of law, or reprimanding the attorney. The petition shall be signed by the attorney and Bar Counsel and filed in the Court of Appeals. If a suspension is requested, the petition shall state whether the suspension should be indefinite or for a stated period and shall set forth any conditions that the parties agree should be imposed. If a reprimand is requested, the petition shall state the proposed text of the reprimand and any conditions.

(2) Affidavit Required



A joint petition filed under subsection (b) (1) of this Rule shall be accompanied by an affidavit by the attorney that certifies that the attorney:

(A) ~~is aware~~ acknowledges that an investigation or proceeding is currently pending involving allegations of professional misconduct, the nature of which shall be specifically set forth;

(B) ~~knows~~ acknowledges that if a hearing were to be held, sufficient evidence could be produced to sustain the allegations of misconduct;

(C) consents to the disbarment or other discipline stated in the petition;

(D) gives the consent freely and voluntarily without coercion or duress;

(E) ~~is aware~~ understands of the effects of the disbarment or other discipline to which the attorney is consenting; and

(F) agrees to comply with Rule 19-741 and any conditions stated in the petition that the Court of Appeals may impose.

(3) Order of the Court of Appeals

Upon the filing of the joint petition and the affidavit, the Court of Appeals may enter an order, signed by the Chief Judge or a judge designated by the Chief Judge, disbarring the attorney by consent from the practice of law in the State, suspending the attorney by consent from the practice of law, or reprimanding the attorney by consent and imposing any conditions stated in the petition. The provisions of Rule ~~19-742~~ 19-741 apply to an order entered under subsection (b) (3) of this Rule.

(c) Consent to ~~Placement on~~ Transfer to Disability Inactive Status

(1) Joint Petition

If competent to do so, an attorney may consent to ~~placement on~~ transfer to disability inactive status by joining with Bar Counsel in a petition for an order

~~placing~~ transferring the attorney ~~on~~ to disability inactive status. The petition shall be signed by the attorney and Bar Counsel and filed in the Court of Appeals. The petition shall state whether the disability inactive status should be indefinite or until the occurrence of a one or more specified ~~event~~ events and shall set forth any conditions that the parties agree should be imposed.

(2) Affidavit Required

A joint petition filed under subsection (c)(1) of this Rule shall be accompanied by an affidavit by the attorney that certifies that the attorney:

(A) understands and is competent to make the other certifications in subsection (c)(2) of this Rule;

(B) consents to the ~~placement on~~ transfer to disability inactive status;

(C) gives the consent freely and voluntarily without coercion or duress;

(D) is currently incapacitated and unable to render adequate legal service;

(E) ~~knows~~ acknowledges that if a hearing were to be held, Bar Counsel would have the burden of proving by clear and convincing evidence that the attorney is so incapacitated as to require the attorney to be ~~placed on~~ transferred to disability inactive status;

(F) understands that being ~~placed on~~ transferred to disability inactive status, if ordered by the Court of Appeals, terminates the attorney's privilege to practice law in this State until otherwise ordered by the Court;

(G) agrees to comply with Rule 19-744 and any conditions stated in the petition that the Court of Appeals may impose;

(H) understands that the attorney may not be reinstated to practice law unless the attorney is able to prove by a preponderance of the evidence that the attorney has regained the ability to render adequate

legal services, that inactive status should be terminated, and that the attorney should be reinstated to active practice;

(I) has disclosed to Bar Counsel, to Bar Counsel's satisfaction, the name of every physician, other health care provider, and health care facility by whom or at which the attorney has been examined, evaluated, or treated; and

(J) has furnished Bar Counsel with written consent to the release of such health care information and records as Bar Counsel has requested and waived any privilege as to such information and records.

(3) Order of the Court of Appeals

Upon the filing of the joint petition and affidavit, the Court of Appeals may enter an order, signed by the Chief Judge or a judge designated by the Chief Judge, ~~placing~~ transferring the attorney ~~on~~ to disability inactive status by consent pending further order of the Court and imposing any conditions stated in the petition. The provisions of Rule 19-744 apply to an order entered under subsection (c) (3) of this Rule.

(4) Effect on Disciplinary or Remedial Proceeding

If a disciplinary or remedial proceeding for alleged misconduct is pending against the attorney, the entry of an order under this section shall stay the proceeding subject to further order of the Court.

(d) Duty of Clerk

When an attorney has been disbarred, suspended, or ~~placed on~~ transferred to disability inactive status under this Rule, the Clerk of the Court of Appeals shall comply with Rule 19-761.

(e) Effect of Denial

If the Court of Appeals denies a joint petition for discipline or disability inactive status, the investigation or disciplinary or remedial proceeding shall resume as if no consent had been given. Neither

the joint petition nor the affidavit may be admitted in evidence.

Source: This Rule is derived from former Rule 16-772 (2016).

Mr. Frederick said that proposed Rule 19-736 makes minor changes.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Mr. Frederick presented Rule 19-737, Reciprocal Discipline or Inactive Status, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 4. SPECIAL PROCEEDINGS

AMEND Rule 19-737, as follows:

Rule 19-737. RECIPROCAL DISCIPLINE OR INACTIVE STATUS

(a) Duty of Attorney

An attorney who in another jurisdiction (1) is disbarred, suspended, or otherwise disciplined, (2) resigns from the bar while disciplinary or remedial action is threatened or pending in that jurisdiction, ~~or~~ (3) is ~~placed on~~ transferred to disability inactive status based on incapacity or an equivalent status in that jurisdiction, or (4) is subject to a remedial order entered in that jurisdiction shall inform Bar Counsel promptly of the discipline, resignation, ~~or~~ inactive status, or remedial order.

(b) Petition in Court of Appeals

Upon receiving and verifying information from any source that in another jurisdiction an attorney has been disciplined, ~~or placed on~~ transferred to disability inactive status based on incapacity or an equivalent status, or is subject to a remedial order entered in that jurisdiction, Bar Counsel may file a Petition for Disciplinary or Remedial Action in the Court of Appeals pursuant to Rule 19-721 (a) (2). A certified copy of the disciplinary or remedial order shall be attached to the Petition.

(c) Show Cause Order

When a petition and certified copy of a disciplinary or remedial order have been filed, the Court of Appeals shall order that Bar Counsel and the attorney, within the time specified in the order, show cause in writing based upon any of the grounds set forth in section (e) of this Rule why corresponding discipline, ~~or inactive status, or remedial order~~ should or should not be imposed. A copy of the petition and show cause order shall be served in accordance with Rule 19-723.

(d) Temporary Suspension of Attorney

(1) When the petition and disciplinary or remedial order demonstrate that an attorney has been disbarred or suspended, or is currently suspended from practice by pending a final order of a court in another jurisdiction, or has been placed on inactive status based on incapacity in another jurisdiction, the Court of Appeals may enter an order, effective immediately, suspending the attorney from the practice of law, pending further order of Court shall order that the attorney, within 15 days from the date of the order, show cause in writing why the attorney should not be suspended from the practice of law or transferred to disability inactive status immediately until the further order of the Court of Appeals. The show cause order shall be served in accordance with Rule 19-723.

(2) Upon consideration of the petition and any answer to the order to show cause, the Court of Appeals may enter an order: (1) immediately suspending the attorney from the practice of law, pending further order of the Court, (2) immediately transferring the attorney to disability inactive

status, pending further order of the Court, or (3) containing any other appropriate provisions. The provisions of Rules ~~19-742~~ 19-741 or ~~19-744~~ 19-743, as applicable, apply to an order ~~suspending an attorney under this section~~ under this section.

(3) Termination of Temporary Suspension or Inactive Status. On notification by Bar Counsel that the disciplinary or remedial order has been reversed or vacated in the other jurisdiction, the Court of Appeals shall vacate the order of temporary suspension or inactive status, unless other grounds exist for the suspension to remain in effect.

(e) Exceptional Circumstances

Reciprocal discipline shall not be ordered if Bar Counsel or the attorney demonstrates by clear and convincing evidence that:

(1) the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(2) there was such infirmity of proof establishing the misconduct as to give rise to a clear conviction that the Court, consistent with its duty, cannot accept as final the determination of misconduct;

(3) the imposition of corresponding discipline would result in grave injustice;

(4) the conduct established does not constitute misconduct in this State or it warrants substantially different discipline in this State; or

(5) the reason for inactive status no longer exists.

(f) Action by Court of Appeals

Upon consideration of the petition and any answer to the order to show cause, the Court of Appeals may: (1) immediately impose corresponding discipline, ~~or~~ inactive status, or a corresponding remedial order; (2) enter an order designating a judge pursuant to Rule 19-722 to hold a hearing in accordance with Rule 19-727; or (3) enter any other

appropriate order. The provisions of Rules ~~19-742~~ 19-741 or ~~19-744~~ 19-743, as applicable, apply to an order under this section that disbars or suspends an attorney or that ~~places~~ transfers the attorney ~~on~~ to disability inactive status.

(g) Conclusive Effect of Adjudication

Except as provided in subsections (e) (1) and (e) (2) of this Rule, a final adjudication in a disciplinary or remedial proceeding by another court, agency, or tribunal that an attorney has been guilty of professional misconduct or is incapacitated is conclusive evidence of that misconduct or incapacity in any proceeding under this Chapter. The introduction of such evidence does not preclude the Commission or Bar Counsel from introducing additional evidence or preclude the attorney from introducing evidence or otherwise showing cause why no discipline or lesser discipline should be imposed.

(h) Effect of Stay in Other Jurisdiction

If the other jurisdiction has stayed the discipline, ~~on~~ inactive status, or remedial order, any proceedings under this Rule shall be deferred until the stay is no longer operative and the discipline or inactive status becomes effective.

(i) Duties of Clerk of Court of Appeals

The applicable provisions of Rule 19-761 apply when an order is entered under this Rule.

Source: This Rule is derived from former Rule 16-773 (2016).

Mr. Frederick said that proposed Rule 19-737 addresses reciprocal discipline after investigation.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Mr. Frederick presented Rule 19-738, Discipline on Conviction of Crime, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 4. SPECIAL PROCEEDINGS

AMEND Rule 19-738, as follows:

Rule 19-738. DISCIPLINE ON CONVICTION OF CRIME

(a) Definition

In this Rule, "conviction" includes (1) a judgment entered upon acceptance by the court of a plea of guilty, conditional plea of guilty, or nolo contendere and (2) a criminal matter in which a probation before judgment is entered by the trial court, regardless of whether the probation before judgment is predicated upon a plea of guilty, a conditional plea of guilty, or plea of nolo contendere or upon a finding of guilt by a trier of fact after a trial on the merits.

(b) Duty of Attorney

An attorney charged with a serious crime in this State or any other jurisdiction shall promptly inform Bar Counsel in writing of (1) the filing of the charge, (2) any finding or verdict of guilty on such charge, (3) the entry of a judgment of conviction or a probation before judgment on such charge, and (4) the final disposition of the charge in each court that exercised jurisdiction over the charge.

Cross reference: Rule 19-701 ~~(1)~~(r).

(c) ~~Petition Upon Conviction in Court of Appeals for Disciplinary or Remedial Action~~

(1) ~~Generally~~ Petition Upon Conviction

(A) Upon receiving and verifying information from any source that an attorney has been convicted of a serious crime, Bar Counsel may file a Petition for Disciplinary or Remedial Action pursuant to Rule 19-



721 (a) (2). The petition may be filed whether an appeal or any other post-conviction proceeding is pending.

~~(2)~~ (B) Contents

The petition shall allege the fact of the conviction and include a request that the attorney be suspended immediately from the practice of law. A certified copy of the judgment of conviction or a certified copy of the transcript reflecting the conviction shall be attached to the petition and shall be prima facie evidence of the fact that the attorney was convicted of the crime charged.

(2) ~~(e)~~ Petition When Imposition of Sentence is Delayed

~~(1)~~ (A) Generally

Upon receiving and verifying information from any source that an attorney has been found guilty of a serious crime but that sentencing has been delayed for a period of more than 30 days, Bar Counsel may file a ~~Petition for Interim Disciplinary or Remedial Action~~ Petition for Disciplinary or Remedial Action pursuant to Rule 19-721 (a) (2). The petition may be filed whether or not a motion for new trial or other relief is pending.

~~(2)~~ (B) Contents

The petition shall allege the finding of guilt and the delay in sentencing and request that the attorney be suspended immediately from the practice of law pending the imposition of sentence and entry of a judgment of conviction. Bar Counsel shall attach to the petition a certified copy of the docket reflecting the finding of guilt or a certified copy of the transcript reflecting the finding of guilt, which shall be prima facie evidence that the attorney was found guilty of the crime charged.

~~(4) Entry of Judgment of Conviction or Order for New Trial~~

(C) Upon the imposition of sentence and entry of a judgment of conviction ~~or upon the granting of a new~~

~~trial by the trial court, Bar Counsel shall inform the Court of Appeals and attach a certified copy of the judgment of conviction or a certified copy of the transcript reflecting the conviction or order granting a new trial. If a judgment of conviction was entered, Bar Counsel may file a petition under section (c) of this Rule.~~

~~(d) Temporary Suspension Show Cause Order~~

~~Upon filing of the petition pursuant to section (c) of this Rule, When the petition demonstrates that an attorney has been found guilty or convicted of a serious crime, the Court of Appeals shall issue an order requiring that the attorney, to show cause within 15 days from the date of the order, show cause in writing why the attorney should not be suspended immediately from the practice of law until the further order of the Court of Appeals.~~

~~(e) Temporary Suspension of Attorney~~

~~If, after Upon consideration of the petition and the answer to the order to show cause, the Court of Appeals determines that the attorney has been convicted of a serious crime, the Court may enter an order immediately suspending the attorney from the practice of law until final disposition of the disciplinary or remedial action, pending further order of the Court, or enter an order containing any other appropriate provisions. The provisions of Rules 19-741 and 19-743, as applicable, apply to an order suspending an attorney under this section. The Court of Appeals shall vacate the order and terminate the suspension if the conviction is reversed or vacated.~~

~~Cross reference: Rule 19-741.~~

~~(f) Termination of Temporary Suspension~~

~~(1) On notification by Bar Counsel or the attorney that the conviction was reversed, the Court of Appeals shall vacate the order of temporary suspension, unless other grounds exist for the suspension to remain in effect.~~

~~(3) Interim Temporary Suspension~~

~~Upon the filing of the petition, the Court of Appeals shall issue an order requiring the attorney to show cause within the time specified in the order why the attorney should not be suspended immediately from the practice of law, on an interim basis, until further order of the Court of Appeals. If, after consideration of the petition and any answer to the order to show cause, the Court of Appeals determines that the attorney was found guilty of a serious crime but that sentencing has been delayed for a period of more than 30 days, the Court may enter an order suspending the attorney from the practice of law on an interim basis pending further action by the trial court and further order of the Court of Appeals.~~

~~(4) Entry of Judgment of Conviction or Order for New Trial~~

~~Upon the imposition of sentence and entry of a judgment of conviction or upon the granting of a new trial by the trial court, Bar Counsel shall inform the Court of Appeals and attach a certified copy of the judgment of conviction or order granting a new trial. If a judgment of conviction was entered, Bar Counsel may file a petition under section (c) of this Rule. The Court shall then proceed in accordance with section (d) of this Rule but may order that any interim suspension remain in effect pending disposition of the new petition. If the trial court has vacated the finding of guilt and granted a new trial, or if the attorney received probation before judgment, the Court of Appeals shall dismiss the petition for interim suspension and terminate any interim suspension that has been ordered.~~

~~(g) Further Proceedings Action by the Court of Appeals~~

~~When a petition filed pursuant to section (c) of this Rule alleges the conviction of a serious crime and the attorney denies the conviction or intends to present evidence in support of a disposition other than disbarment, the Court of Appeals may (1) immediately suspend the attorney; (2) enter an order designating a judge pursuant to Rule 19-722 to hold a hearing in accordance with Rule 19-727, or (3) enter any other appropriate order. The provisions of Rules 19-741 and 19-743 apply to an order under this section~~

that disbars or suspends an attorney or that places the attorney on inactive status.

(h) Time for Holding a Hearing

If, pursuant to section (g) of this Rule, the Court designates a judge to hold a hearing, the hearing shall be scheduled as follows:

(1) No Appeal of Conviction

If the attorney does not appeal the conviction, the hearing shall be held within a reasonable time after the time for appeal has expired.

(2) Appeal of Conviction

If the attorney appeals the conviction, the hearing shall be delayed, except as provided in section (h)(4) of this Rule, until the completion of appellate review.

(A) If, after completion of appellate review, the conviction is reversed or vacated, the judge to whom the action is assigned shall either dismiss the petition or hear the action on the basis of evidence other than the conviction.

(B) If, after the completion of appellate review, the conviction is not reversed or vacated, the hearing shall be held within a reasonable time after the mandate is issued.

(3) Effect of Incarceration

If the attorney is incarcerated as a result of the conviction, the hearing shall be delayed until the termination of incarceration unless the attorney requests an earlier hearing and makes all arrangements (including financial arrangements) to attend the hearing or waives the right to attend.

~~(h)~~ (4) Right to Earlier Hearing

If the hearing on the petition has been delayed under subsection (h)(2) of this Rule and the attorney has been suspended from the practice of law under section (e) of this Rule, the attorney may request that the judge to whom the action is assigned

hold an earlier hearing, at which the conviction shall be considered a final judgment.

(i) Conclusive Effect of Final Conviction

In any proceeding under this Chapter, a final judgment of any court of record convicting an attorney of a crime, whether the conviction resulted from acceptance by the court of a plea of guilty or nolo contendere, or a verdict after trial, is conclusive evidence of the attorney's guilt of that crime. As used in this Rule, "final judgment" means a judgment as to which all rights to direct appellate review have been exhausted. The introduction of the judgment does not preclude the Commission or Bar Counsel from introducing additional evidence or the attorney from introducing evidence or otherwise showing cause why a disposition other than disbarment should be entered.

~~(f)~~ (j) Statement of Charges

If the Court of Appeals denies or dismisses a petition filed under section (c) of this Rule, Bar Counsel may file a Statement of Charges under Rule 19-718.

~~(j)~~ (k) Duties of Clerk of Court of Appeals

The applicable provisions of Rule 19-761 apply when an order is entered under this Rule.

Source: This Rule is derived from former Rule 16-771 (2016).

Mr. Frederick said that proposed Rule 19-738 deals with discipline after conviction for a crime. The changes conform it to changes made earlier in the Rules.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Mr. Frederick presented Rule 19-739, Transfer to Disability Inactive Status, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 4. SPECIAL PROCEEDINGS

AMEND Rule 19-739, as follows:

Rule 19-739. ~~SUMMARY PLACEMENT ON~~ TRANSFER TO  
DISABILITY INACTIVE STATUS

(a) Purpose

On information that an attorney has a physical or mental disability or impairment that adversely affects the attorney's ability to practice law, Bar Counsel may conduct an investigation to determine whether the attorney should be transferred to disability inactive status. Transfer to disability inactive status is not a form of discipline but is designed to ensure the protection of the public and, to the extent possible, rehabilitation of the attorney.

~~(a)~~ (b) Grounds for Transfer

An attorney may be transferred to disability inactive status for any of the following reasons:

~~An attorney may be placed summarily on inactive status for an indefinite period if the~~

(1) The attorney has been judicially determined to be mentally incompetent or to require a guardian of the person for any of the reasons stated in Code, Estates and Trusts Article, § 13-705 (b), or, in accordance with law, has been involuntarily admitted to a facility for inpatient care treatment of a mental disorder;

(2) A physician licensed to practice medicine in the United States with special knowledge or training relating to the nature and causes of the disability or impairment has examined the attorney and determined

the attorney is incapacitated as defined by Rule 19-701 (m); or

(3) A circuit court has entered an order appointing a conservator pursuant to Rule 19-734.

~~(b)~~ (c) Procedure

(1) Petition ~~for Summary Placement~~ to Transfer to Disability Inactive Status; Confidentiality

With the approval of the Chair of the Commission, Bar Counsel may file a petition to ~~summarily place~~ transfer an attorney ~~on~~ to disability inactive status. The petition shall be supported by (A) a certified copy of the judicial determination or involuntary admission; (B) certification of a suitably licensed or certified examiner or medical doctor that the attorney is incapacitated; or (C) a certified copy of the order appointing a conservator pursuant to Rule 19-734. The petition and all other papers filed in the Court of Appeals shall be sealed and stamped "confidential" in accordance with Rule 19-707 (b) (2) (H).

Committee Note: The Order of Transfer to Disability Inactive Status is the only document that should be open to inspection by the public.

(2) Show Cause Order; Service

Upon filing of the petition pursuant to section (c) (1) of this Rule, the Court of Appeals shall order that the attorney show cause, within 15 days of the date of the order, why the attorney should not be immediately transferred to disability inactive status.

~~The A copy of the show cause order and petition and all papers filed with the petition shall be served upon~~ on the attorney in accordance with Rule 19-723 and, in addition, upon any guardian of the person of the attorney and the director of any facility to which the attorney has been admitted. ~~Proof of service shall be made in accordance with Rule 2-126.~~

~~(e)~~ (d) Order of the Court of Appeals

Upon consideration of the petition and any answer to the order to show cause, the Court of Appeals may enter an order: (1) immediately place transferring the attorney ~~on~~ to disability inactive status, ~~for an indefinite period~~ pending further order of the Court; (2) ~~enter an order~~ pursuant to Rule 19-722 to hold a hearing in accordance with Rule 19-727; or (3) ~~enter~~ containing any other appropriate ~~order~~ provisions. The provisions of ~~Rule~~ Rules 19-741 and ~~19-744~~ 19-743, as applicable, apply to an order that ~~places the~~ transfers an attorney ~~on~~ to disability inactive status. Copies of the order shall be served upon Bar Counsel and each person named in the proof of service of the petition.

(e) Effect of Denial

If the Court of Appeals denies a petition filed under section (c) of this Rule, Bar Counsel may file a Statement of Charges under Rule 19-718.

~~(d)~~ (f) Effect on Disciplinary or Remedial Proceeding

If a disciplinary or remedial proceeding for alleged misconduct is pending against the attorney, the entry of an order under this section shall stay the proceeding until the further order of the Court.

~~(e)~~ (g) Termination of Disability Inactive Status

~~When an~~ On notification by Bar Counsel that the attorney who has been placed on inactive status under section (c) of this Rule is judicially determined to be competent, is judicially released after involuntary admission, or is no longer incapacitated as defined by Rule 19-701 (m), the Court of Appeals shall terminate may enter an order: (1) terminating the disability inactive status and ~~either dismiss~~ dismissing the petition, (2) ~~or enter an order~~ designating a judge in accordance with Rule 19-722 to hold a hearing in accordance with Rule 19-727, or (3) containing any other appropriate provisions.

~~(f)~~ (h) Inability to Defend



Upon a credible allegation by the attorney or other evidence that the attorney, by reason of physical or mental disability or impairment, is unable to assist in a defense to a petition filed pursuant to section (c)(1) of this Rule, the Court of Appeals may (1) appoint counsel for the attorney if the attorney is not otherwise represented by counsel, (2) appoint a guardian ad litem for the attorney, (3) appoint both counsel for the attorney and a guardian ad litem, (4) enter an order designating a circuit court judge to hold a hearing to determine, by clear and convincing evidence, whether the attorney is unable to assist in a defense and, if the attorney is found to be unable to assist in a defense, appoint counsel for the attorney if the attorney is not otherwise represented by counsel, appoint a guardian ad litem, or both, or (5) enter any other appropriate order.

(i) Costs

(1) Allocation of Costs

The Court of Appeals may order all or part of the costs, as defined in Rule 19-709, be allocated among the parties.

(2) Compensation for Appointed Counsel and Guardians ad Litem

(A) Entitlement

An individual appointed pursuant to section (h) of this Rule is entitled to payment from the attorney's assets or the Disciplinary Fund for reasonable and necessary fees incurred in carrying out the order of appointment.

**ALTERNATIVE 1**

**(subsections (i) (2) (B) - (E))**

**(B) Petition for Fees**

**An individual appointed pursuant to section (h) of this Rule may file a verified petition for reasonable and necessary fees in the Court of Appeals. The petition shall be supported by time records and**

invoices and request judgment be entered against the attorney and the Commission.

(C) Show Cause Order; Service

Upon filing of the petition pursuant to subsection (i) (2) (B) of this Rule, the Court of Appeals shall order that the attorney and the Commission show cause, within 15 days of the date of the order, why the petitioner is not entitled to the fees and costs requested.

A copy of the show cause order and petition shall be served on the attorney and Bar Counsel.

(D) Order of the Court of Appeals

Upon consideration of the petition and any answer to the order to show cause, the Court of Appeals may enter an order: (1) granting the verified petition for fees, in whole, or in part; (2) denying the verified petition; (3) designating a circuit court judge to hold a hearing on the reasonableness and necessity of fees and costs, and to make recommendations to the Court of Appeals, to which exceptions may be filed and considered by the Court in accordance with the procedures set forth in Rule 19-728; or (4) containing any other appropriate provisions.

(E) Payment from Disciplinary Fund

If the petitioner is unable to obtain full payment from the attorney within one year after entry of judgment, the Commission may authorize payment from the Disciplinary Fund in an amount not exceeding the amount of the judgment that remains unsatisfied. If payment is made from the Disciplinary Fund, the petitioner shall assign the judgment to the Commission for the benefit of the Disciplinary Fund.

ALTERNATIVE 2

(subsections (i) (2) (B) - (D))

(B) Petition for Fees

Upon verified petition served on the attorney at the attorney's last known address, the Court may order payment to an individual appointed pursuant to section (h) of this Rule and enter judgment against the attorney.

(C) Order of the Court of Appeals

Upon consideration of the petition and any answer, the Court of Appeals may enter an order: (1) granting the verified petition for fees, in whole, or in part; (2) denying the verified petition; (3) designating a circuit court judge to hold a hearing on the reasonableness and necessity of fees and costs, and to make recommendations to the Court of Appeals, to which exceptions may be filed and considered by the Court in accordance with the procedures set forth in Rule 19-728; or (4) containing any other appropriate provisions.

(D) Payment from Disciplinary Fund

If an individual appointed pursuant to section (h) of this Rule is unable to obtain full payment within one year after entry of judgment, the Commission may authorize payment from the Disciplinary Fund in an amount not exceeding the amount of the judgment that remains unsatisfied. If payment is made from the Disciplinary Fund, the individual appointed pursuant to section (h) of this Rule shall assign the judgment to the Commission for the benefit of the Disciplinary Fund.

. . .

~~(f)~~(j) Duties of Clerk of Court of Appeals

The applicable provisions of Rule 19-761 apply when an order is entered under this Rule.

Source: This Rule is derived from former Rule 16-774 (2016).

Mr. Frederick explained that proposed Rule 19-739 applies to disability or inactive status and contains alternatives for how an attorney engaged to assist a respondent lawyer may be

compensated. The Chair commented that the difference between the two alternatives is who a judgment is against. The first option allows the Court of Appeals to enter a judgment against the respondent. If the judgment is not paid within a year, the attorney can seek payment from the Disciplinary Fund controlled by the Attorney Grievance Commission. The second option allows the Court to enter the judgment against the respondent and the Attorney Grievance Commission. Mr. Frederick moved to adopt the first alternative. The motion was seconded. Ms. Lawless said that the first alternative is consistent with the current scheme for third-party conservators. Judge Price asked if the proposed language will make it difficult to find attorneys to serve in this capacity. Ms. Lawless responded that appointing counsel for an attorney is rare and the Commission seeks a volunteer first as a service to the bar. The motion was approved by majority vote. Mr. Laws moved to allow a petition to be served on a guardian of the person or property and any known agent of the attorney. The motion was seconded and approved by majority vote.

There being no motion to further amend or reject the proposed Rule, it was approved as presented.

Mr. Frederick presented Rule 19-740, Disposition - Generally, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 5. DISPOSITIONS BY COURT OF APPEALS

AMEND Rule 19-741, by renumbering it as Rule 19-740, as follows:

Rule ~~19-741~~ 19-740. DISPOSITION - GENERALLY

(a) Oral Argument

Unless oral argument is waived by the parties, the Court shall set a date for oral argument. Oral argument shall be conducted in accordance with Rule 8-522. An attorney is deemed to have waived oral argument where: (1) the attorney failed to file an answer pursuant to Rule 19-724 and the Judge entered an order of default pursuant to Rule 19-724 (c), (2) the order of default was not vacated, (3) the attorney failed to appear at the hearing held pursuant to Rule 19-727; and (4) the attorney failed to file any exceptions or recommendation for sanction pursuant to Rule 19-728 (b).

(b) Review by Court of Appeals

(1) Conclusions of Law

The Court of Appeals shall review de novo the circuit court judge's conclusions of law.

(2) Findings of Fact

(A) If No Exceptions are Filed

If no exceptions are filed, the Court may treat the findings of fact as established.

(B) If Exceptions are Filed

If exceptions are filed, the Court of Appeals shall determine whether the findings of fact have been proved by the requisite standard of proof

set out in Rule 19-727 (c). The Court may confine its review to the findings of fact challenged by the exceptions. The Court shall give due regard to the opportunity of the hearing judge to assess the credibility of witnesses.

(c) Disposition

(1) Generally

The Court of Appeals may order (A) disbarment, (B) suspension, (C) Probation under specified terms and conditions, ~~(C)(D)~~ a reprimand, ~~(D)(E)~~ placement ~~on~~ transfer to disability inactive status, ~~(E)(F)~~ dismissal of the disciplinary or remedial action, or ~~(F)(G)~~ a remand for further proceedings.

Cross reference: Rule 19-706 and Rule 19-305.3 (d).

(2) If Suspension Ordered

(A) The ~~court~~ Court may order a suspension for a fixed period of time or indefinitely. An order for indefinite suspension may provide that the attorney may not seek reinstatement until the expiration of a specified period and may include preset conditions for reinstatement.

~~Cross reference: For reinstatement, including reinstatement following a suspension for a fixed period, see Rules 19-751 and 19-752. Cross reference: Rule 19-752 sets forth conditions to and the procedure for applying for reinstatement. Subsection (c) (2) (A) of this Rule is not intended to conflict with that Rule but allows the Court, in its Order of suspension, to include conditions for reinstatement as a guide to the attorney based on facts apparent at the time of suspension. That does not preclude the Court from requiring other or different conditions pursuant to Rule 19-752 based on circumstances apparent when the attorney petitions for reinstatement.~~

(B) Upon a request by Bar Counsel or the attorney or on its own initiative and for good cause, the Court may stay execution of a suspension and place the attorney on probation upon terms and conditions the Court finds appropriate, which may include any terms or conditions permitted in a Conditional

Diversion Agreement. The Order staying execution of a suspension may include provisions for monitoring compliance with the terms and conditions and for prompt reporting to Bar Counsel, the attorney, and the Court of any material noncompliance.

Committee note: In determining whether to enter a stay of execution and place the attorney on probation, the Court should consider, among any other relevant factors, whether (1) the attorney had been the subject of prior discipline or the dismissal of a complaint with a letter of cautionary advice or admonition; (2) the misconduct was repetitive in nature; (3) the misconduct was likely to have been episodic and out of character; (4) upon the attorney's satisfaction of conditions attached to the stay, misconduct was not likely to recur; (5) the attorney recognizes the misconduct and the severity of it and has shown genuine remorse; and (6) the attorney has provided or will provide adequate recompense for anyone harmed by his or her misconduct.

(C) Upon Bar Counsel's receipt of a report of material non-compliance, Bar Counsel shall petition the Court to request that the Court take such action as it finds appropriate, which may include an immediate lifting of the probation and stay of execution and a referral of the matter to a circuit court judge to conduct an evidentiary hearing and file with the Court of Appeals the judge's findings of fact and conclusions of law relating to the alleged non-compliance.

(D) In the event of such a referral, the judge shall send a copy of the judge's findings and conclusions to Bar Counsel, and the attorney. Within 30 days after the sending of such notice, Bar Counsel, the Commission, and the attorney may file exceptions with the Court of Appeals. The excepting party shall serve the exceptions on the other parties.

(E) If no exceptions are timely filed, the Court may treat the findings of fact as established. If exceptions are timely filed, the Court shall proceed in accordance with Rule 19-740(b)(2)(B). The Court may enter any further Order it finds appropriate.

(d) Decision

The decision of the Court of Appeals is final. The decision shall be evidenced by an order which the clerk shall certify under the seal of the Court. The order may be accompanied by an opinion.

(e) Effective Date of Order

Unless otherwise stated in the order, an order providing for the disbarment, suspension, or reprimand of an attorney or the ~~placement~~ transfer of an attorney ~~on~~ to disability inactive status shall take effect upon its filing with the Clerk of the Court.

Cross reference: For duties of the Clerk of Court of Appeals upon entry of certain orders, see Rule 19-761.

Source: This Rule is derived from former Rule 16-759 (2016).

Mr. Frederick said that proposed Rule 19-740 specifies that an attorney waives the right to be heard if he or she does not respond to the charges, an order of default is entered and not vacated, and the attorney fails to appear for oral argument. New subsection (c)(2)(B) creates a "stay of execution" for a suspension and placement on probation under certain circumstances. A Committee note outlines the considerations to be made in deciding to stay execution.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Mr. Frederick presented Rule 19-741, Order of Disbarment or Suspension, Order Accepting Resignation, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS



CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 5. DISPOSITIONS BY COURT OF APPEALS

AMEND Rule 19-742, by renumbering it as Rule 19-741, as follows:

Rule ~~19-742~~ 19-741. ORDER OF DISBARMENT OR  
SUSPENSION; ORDER ACCEPTING RESIGNATION

(a) Duties of Clerk

Upon the filing of an order of disbarment or suspension, or order accepting resignation under Rule 19-735, the Clerk of the Court of Appeals shall (1) notify the attorney ~~in writing~~ by MDEC and first-class mail, ~~and, if practicable, by electronic mail~~, and (2) comply with Rule 19-761.

(b) Effect of Order

Except as provided in section (c) of this Rule, after the effective date of an order of disbarment or suspension, or an order accepting resignation, an attorney may not:

(1) practice law or offer to practice law in this State, either directly or through any other person;

(2) undertake any new representation of existing clients or any representation of new clients;

(3) solicit or procure any legal business or retainer for an attorney, whether or not for personal gain;

Cross reference: See Rule 19-305.3 (d) (B) (i)-(vii) and Code, Business Occupations and Professions Article, § 10-101.

(4) share in any fees for legal services performed by another attorney, but may be compensated for the reasonable value of services rendered prior to the effective date of the order;

(5) use any business card, sign, advertisement, social networking media, website, or other form of

communication suggesting that the attorney is entitled to practice law or maintain, alone or with another, an office for the practice of law; or

Committee note: Examples of social networking media include Facebook, LinkedIn, ~~MySpace~~ Instagram, YouTube, and Twitter.

(6) except for the limited purpose of complying with the requirements of section (c) of this Rule:

(A) occupy, share, or use office space in which an attorney practices law unless under circumstances clearly indicating to clients, prospective clients, and individuals who may visit the office that the attorney is not an attorney and is not permitted to practice law; or

(B) use any stationery, bank account, checks, or labels on which the attorney's name appears as an attorney or in connection with any office for the practice of law.

Cross reference: For the applicability of the provisions of section (b) of this Rule to an attorney who is placed on permanent retired status, see Rule ~~19-740~~ 19-717.1(e) (4).

(7) engage in any law-related activities while employed or retained by an attorney, except as permitted by Rule 19-305.3 (d).

(c) Affirmative Duties of Attorney

Unless the Court orders otherwise, an attorney who has been disbarred or suspended shall take the following actions:

(1) Requirements to be Completed Within 15 Days

Within 15 days after the effective date of the order, the attorney shall:

(A) conclude all client matters that can be concluded within that period;

(B) supply to Bar Counsel or an attorney designated by Bar Counsel pursuant to section (e) of this Rule (i) the names, addresses, and telephone

numbers of all of the attorney's current clients and (ii) identify, by client name, tribunal, and docket reference, all client matters pending in any court or other tribunal or agency; and

(C) mail a letter giving notice of the order and of the effective date of the attorney's disbarment or suspension to (i) all of the attorney's current clients, (ii) counsel for each party and any self-represented party in all pending actions, proceedings, negotiations, or transactions, and (iii) each attorney with whom the attorney is associated in the practice of law.

Committee note: An attorney's current clients include persons who have hired the attorney on retainer. A person may be a current client even if the attorney was not actively performing any legal work for that person on the date of disbarment or suspension.

(2) Requirements to be Completed Promptly and Within 30 Days

As soon as practicable but within 30 days after the effective date of the order, the attorney shall:

(A) take or cause to be taken, without charging any additional fee, any action immediately necessary to protect the interests of current clients which, as a practical matter, cannot otherwise be protected;

Committee note: The intent of subsection (c) (2) (A) of this Rule is to assure that existing clients are not unduly harmed by the attorney's immediate disbarment or suspension by requiring the attorney, during a brief grace period and without any additional fee, to deal with urgent matters necessary to protect the clients' interests, such things as requesting a postponement of closely impending hearings or trials or filing a paper in a pending case which, if not done prior to the client's practical ability to obtain another attorney, would result in significant harm to the client. See *Attorney Grievance v. Maignan*, 402 Md. 39 (2007). This is intended as a very narrow and time-limited exception to the prohibition against practicing law. Because the need for such action arises solely from the attorney's disbarment or

suspension, the Rule prohibits the charging of a fee for those services.

(B) inform current clients, in writing, that the client may obtain another attorney, and that it may be necessary for the client to obtain another attorney depending upon the status of the client's case or legal matter.

(C) deliver to clients with pending matters all papers and other property to which the clients are entitled or notify the clients and any co-counsel of a suitable time and place to obtain the papers and property and call attention to any urgent need to obtain them;

(D) notify the disciplinary authority in each jurisdiction in which the attorney is admitted to practice of the disciplinary sanction imposed by the Court of Appeals; and

(E) unless the attorney is suspended for a fixed period of time not exceeding one year, request the publisher of each telephone directory or law listing to remove each listing or reference that suggests that the attorney is eligible to practice law; request the attorney's name be removed from the law firm's website and letterhead; and remove any reference that the attorney is eligible to practice law from any website or social networking profile, regardless of whether the website or profile is that of the attorney individually or of a law firm or other group or entity.

(3) Requirements to be Completed Within 30 Days

Within 30 days after the effective date of the order, the attorney shall:

(A) withdraw from all client matters; and

(B) file with Bar Counsel an affidavit that states or is accompanied by:

(i) the manner and extent to which the attorney has complied with the order and this Rule;

(ii) all actions taken by the attorney pursuant to subsection (c) (2) (A) and (B) of this Rule;

(iii) the names of all State and Federal jurisdictions in which and administrative agencies before which the attorney has been admitted to practice;

(iv) the residence and other addresses of the attorney to which future communications may be directed;

(v) the name and address of each insurer that provided malpractice insurance coverage to the attorney during the past five years, the policy number of each policy, and the inclusive dates of coverage; and

(vi) a copy of each letter sent pursuant to subsection (c) (2) (B) of this Rule; and

(vii) in all cases in which the attorney is then acting, or thereafter attempts to act, in any specified fiduciary capacity, including, but not limited to, power of attorney, personal representative, trustee, administrator, guardian, receiver or conservator, promptly notify in writing all (1) co-fiduciaries, (2) beneficiaries, and (3) courts out of which the matter arose, of the attorney's disbarment, suspension, or transfer to disability inactive status. Such notice shall clearly state the name of the matter, any caption and docket number, and, if applicable, the name and date of death or current residence of the decedent, settlor, individual or entity with respect to whose assets the attorney is acting as a fiduciary.

(d) Duties of Bar Counsel

Bar Counsel shall enforce the order and the provisions of this Rule. Bar Counsel may designate an attorney to monitor compliance by the disbarred or suspended attorney and to receive the lists and copies of letters required by subsections (c) (1) (B) and (c) (2) (B) of this Rule.

(e) Conditions on Reinstatement

(1) Time for Application

In an order that suspends an attorney for an indefinite period, the Court may permit the attorney to apply for reinstatement after a minimum period of time specified in the Order.

(2) Other Conditions to or Upon Reinstatement

In an order of suspension for an indefinite or fixed period entered under this Rule, the Court may require, as a condition precedent to reinstatement or as a condition of probation after reinstatement, one or more of the requirements set forth in Rule 19-752.

Cross reference: For reinstatement, including reinstatement following a suspension for a fixed period, see Rules 19-751 and 19-752.

(f) Responsibility of Affiliated Attorneys

After the effective date of an order that disbars or suspends an attorney or places an attorney on inactive status, no attorney may assist the disbarred or suspended attorney in any activity that constitutes the practice of law or in any activity prohibited under section (a) of this Rule. Upon notice of the order, an attorney associated with the disbarred or suspended attorney as a partner, or member or shareholder of a law firm, shall take reasonable action to ensure compliance with this Rule. The law firm may give written notice to any client of the disbarred or suspended attorney of that attorney's inability to practice law and of its willingness to represent the client with the client's consent.

(g) Non-Admitted Attorney

(1) Duties of Clerk

On the effective date of an order by the Court of Appeals that disbars or suspends a non-admitted attorney, the Clerk of the Court of Appeals shall place the name of that attorney on a list maintained in that Court of non-admitted attorneys who are excluded from exercising in any manner the privilege of practicing law in the State. The Clerk also shall forward a copy of the order to the clerks of all

courts in this State, including the U.S. District Court for the District of Maryland, the U.S. Court of Appeals for the 4th Circuit, and the U.S. Supreme Court, and to the State Court Administrator and the Board of Law Examiners to be maintained with the docket of out-of-state attorneys who are denied special admission to practice under the Rules Governing Admission to the Bar of Maryland. The Clerk shall give the notice required by Rule 19-707 (e).

(2) Effect of Order

After the effective date of an order entered under this section, the attorney may not practice law in this State and is disqualified from admission to the practice of law in this State.

(h) Modification of Order

Upon joint stipulation or verified motion filed by the attorney, the Court of Appeals may reduce a period of suspension, waive a requirement or condition imposed by this Rule or by order, or otherwise modify an order entered under this Rule. Relief may be denied without a hearing unless it appears from the stipulation or from clear and convincing evidence submitted with the motion that the respondent is attempting in good faith to comply with the order but that full and exact compliance has become impossible or will result in unreasonable hardship. If necessary to resolve a genuine issue of material fact, the Court may enter an order designating a judge in accordance with Rule 19-722 to hold a hearing in accordance with Rule 19-727.

(i) Sanctions for Violations

(1) Disciplinary or Remedial Action

Upon receiving information from any source that the attorney has violated section (b) or (c) of this Rule or the order of the Court of Appeals, Bar Counsel shall investigate the matter. In addition to any other remedy, Bar Counsel may file a Petition for Disciplinary or Remedial Action pursuant to Rule 19-721 based on the violation.

(2) Injunction

Upon receiving information from any source that the attorney is violating sections (b) or (c) of this Rule, Bar Counsel may institute or intervene in an action in any court with jurisdiction to enjoin the respondent from further violations.

(3) Contempt

If the attorney violates an order of the Court of Appeals, Bar Counsel may request the initiation of a proceeding for constructive criminal contempt pursuant to Rule 15-205 and may institute a proceeding for constructive civil contempt pursuant to Rule 15-206.

Source: This Rule is derived, in part, from former Rule 16-760 (2016).

Mr. Frederick said that proposed Rule 19-741 makes minor changes. The Reporter commented that she confirmed with Chief Judge Morrissey that the use of MDEC is correct for notice under this Rule. She said that the Rule can also be amended to require notice to all email addresses for an attorney in the Attorney Information System. Del. Dumais moved to adopt the change. The motion was seconded and approved by majority vote. The Reporter also noted the typo in the Rule caption.

There being no motion to further amend or reject the proposed Rule, it was approved as presented.

Mr. Frederick presented Rule 19-742, Order of Reprimand, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS



CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 5. DISPOSITIONS BY COURT OF APPEALS

RENUMBER Rule 19-743 as Rule 19-742, as follows:

Rule ~~19-743~~ 19-742. ORDER OF REPRIMAND

(a) Accompanying Requirements

As part of a reprimand, the Court may require the attorney:

(1) to reimburse a client for any part of fees paid in advance for legal services that were not completed;

(2) to make restitution to a client for any other sum found to be due to the client;

(3) to pay all costs assessed by the order of reprimand;

(4) to issue a public apology to designated persons; and

(5) to take any other corrective action that the Court finds reasonable and appropriate.

(b) Content of Order

Unless accompanied by a reported opinion, an order that reprimands an attorney shall (1) summarize the misconduct for which the reprimand is imposed, (2) include specific reference to any rule or statute violated by the attorney, and (3) state any requirements imposed on the attorney pursuant to section (a) of this Rule. Upon the entry of an order that reprimands an attorney, the Clerk of the Court of Appeals shall give the notice required by Rule 19-707 (e).

Source: This Rule is derived from former Rule 16-760 (b) (2016).

Mr. Frederick said that proposed Rule 19-742 contains minor changes.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Mr. Frederick presented Rule 19-743, Order of Transfer to Disability Inactive Status, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 5. DISPOSITIONS BY COURT OF APPEALS

AMEND Rule 19-744 as follows:

Rule ~~19-744~~ 19-743. ~~PLACEMENT ON ORDER OF TRANSFER TO DISABILITY INACTIVE STATUS~~

(a) Effect of Order

(1) Generally

After the effective date of an order ~~placing~~ transferring an attorney ~~on~~ to disability inactive status, the attorney (A) may not engage in any conduct prohibited to a disbarred or suspended attorney under Rule ~~19-742~~ 19-741 (a), and (B) except as provided in subsection (a)(2) of this Rule, must perform the duties required by Rule ~~19-742~~ 19-741 (c).

(2) If Attorney Unable to Comply With Rule ~~19-742~~ 19-741 (c)

If, due to the nature or severity of the attorney's incapacity, the attorney is unable to perform the duties required by Rule ~~19-742~~ 19-741 (c) and satisfactory arrangements have not been made for

the performance of those duties, ~~the Court of Appeals may (A) direct Bar Counsel to~~ may seek (A) the appointment of a conservator pursuant to Rule 19-734, and (B) direct that the incapacitated attorney cooperate to the best of the attorney's ability with the conservator or other attorney (B) the appointment of counsel pursuant to Rule 19-739 (i), or (C) both.

Committee note: Because placement of an attorney on inactive status arises only from a finding of incapacity, as defined in Rule 19-701 ~~(g)~~ (m), there may be a legitimate question of whether the attorney is competent to fulfill the winding up obligations set forth in Rule ~~19-742~~ 19-741 (c). Unless another attorney capable of performing those duties has agreed to do so, Bar Counsel and the Court should give consideration to whether a conservator may need to be appointed to perform those duties.

(b) Duties of Clerk

Upon the filing of the order, the Clerk of the Court of Appeals shall take the actions specified in Rule ~~19-742~~ 19-741 (a).

(c) Duties of Bar Counsel

Bar Counsel shall perform the duties specified in Rule ~~19-742~~ 19-741 (d).

(d) Conditions on Reinstatement

In an order that places an attorney on inactive status, the Court may permit the attorney to apply for reinstatement after a minimum period of time and upon conditions specified in Rule 19-753.

(e) Other Provisions of Rule ~~19-742~~ 19-741

The provisions of Rule ~~19-742~~ 19-741 (f), (g), (h), and (i) shall apply with respect to an order entered under this Rule.

Source: This Rule is derived in part from former Rule 16-760 (2016).

Mr. Frederick said that proposed Rule 19-743 contains minor changes.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Mr. Frederick presented Rule 19-751, Reinstatement - Suspension Six Months or Less, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 6. REINSTATEMENT

AMEND Rule 19-751, as follows:

Rule 19-751. REINSTATEMENT - SUSPENSION SIX MONTHS OR LESS

(a) Scope of Rule

This Rule applies to an attorney who has been suspended for a fixed period of time not exceeding six months.

(b) Reinstatement Not Automatic

An attorney subject to this Rule is not automatically reinstated upon expiration of the period of suspension. An attorney is not reinstated until the Court of Appeals enters an Order of Reinstatement.

(c) Petition for Reinstatement

(1) Requirement

An attorney who seeks reinstatement shall file a verified petition for reinstatement with the Clerk of the Court of Appeals and serve a copy on Bar

Counsel. The attorney shall be the petitioner and Bar Counsel shall be the respondent.

(2) Timing

The petition may not be filed earlier than ten days prior to the end of the period of suspension.

(3) Content

The petition shall be captioned "In the Matter of the Petition for Reinstatement of XXXX to the Bar of Maryland" and shall state the effective date of the suspension and the asserted date of its completion, certify that (A) the attorney has complied with Rule ~~19-742~~ 19-741 and all requirements and conditions specified in the suspension order and (B) to the best of the attorney's knowledge, information, and belief, no complaints or disciplinary proceedings are currently pending against the attorney. The petition shall be accompanied by (i) a copy of the Court's order imposing the suspension, (ii) any opinion that accompanied that order, and (iii) any filing fee prescribed by law.

(d) Review by Bar Counsel

Bar Counsel shall promptly review the petition and, within five days after service, shall file with the Clerk of the Court of Appeals and serve on the attorney any objection to the reinstatement. The basis of the objection shall be stated with particularity.

(e) Action by Court of Appeals

(1) If No Timely Objection Filed

If Bar Counsel has not filed a timely objection, the Clerk shall promptly forward to the Chief Judge or a judge of the Court designated by the Chief Judge the petition, a certificate that no objection had been filed, and a proposed Order of Reinstatement. The Chief Judge or the designee may sign and file the order on behalf of the Court.

(2) If Timely Objection Filed

If Bar Counsel files a timely objection, the Clerk shall refer the matter to the full Court for its consideration. The Court may overrule Bar Counsel's objections and enter an Order of Reinstatement or set the matter for hearing.

(f) Effective Date of Reinstatement Order

An order that reinstates the petitioner may provide that it shall become effective immediately or on a date stated in the order.

(g) Duties of Clerk

(1) Attorney Admitted to Practice

Promptly after the effective date of an order that reinstates a petitioner, the Clerk of the Court of Appeals shall comply with Rule 19-761.

(2) Attorney Not Admitted to Practice

Upon receiving a reinstatement notice authorized by section (e) of this Rule, or on the effective date of an order or notice that reinstates a petitioner not admitted by the Court of Appeals to practice law, the Clerk of the Court of Appeals shall remove the petitioner's name from the list maintained in that Court of non-admitted attorneys who are ineligible to practice law in this State, and shall certify that fact to the Board of Law Examiners and the clerks of all courts in the State.

(h) Motion to Vacate Reinstatement

Bar Counsel may file a motion to vacate an order that reinstates the petitioner if (1) the petitioner has failed to demonstrate substantial compliance with the order, including any condition of reinstatement imposed under Rule 19-752 (i) or (2) the petition filed under section (a) of this Rule contains a false statement or omits a material fact, the petitioner knew the statement was false or the fact was omitted, and the true facts were not disclosed to Bar Counsel prior to entry of the order. The petitioner may file a verified response within 15 days after service of the motion, unless a different time is ordered. If there is a factual dispute to be

resolved, the court may enter an order designating a judge in accordance with Rule 19-722 to hold a hearing. The judge shall allow reasonable time for the parties to prepare for the hearing and may authorize discovery pursuant to Rule 19-726. The applicable provisions of Rule 19-727 shall govern the hearing. The applicable provisions of Rules 19-728 and 19-729, except section (c) of Rule 19-729, shall govern any subsequent proceedings in the Court of Appeals. The Court may reimpose the discipline that was in effect when the order was entered or may impose additional or different discipline.

Source: This Rule is new.

Mr. Frederick said that proposed Rule 19-751 contains minor changes.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Mr. Frederick presented Rule 19-752, Reinstatement - Other Suspension; Disbarment; Disability Inactive Status; Resignation, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 6. REINSTATEMENT

AMEND Rule 19-752, as follows:

Rule 19-752. REINSTATEMENT - OTHER SUSPENSION;  
DISBARMENT; DISABILITY INACTIVE STATUS; RESIGNATION

(a) Scope of Rule

This Rule applies to an attorney who has been disbarred, suspended indefinitely, suspended for a fixed period longer than six months, or ~~placed on~~ transferred to disability inactive status or who has resigned from the practice of law.

(b) Reinstatement Not Automatic

An attorney subject to this Rule is not automatically reinstated upon expiration of the period of suspension. An attorney is not reinstated until the Court of Appeals enters an Order of Reinstatement.

(c) Petition for Reinstatement

(1) Requirement

An attorney who seeks reinstatement under this Rule shall file a verified petition for reinstatement with the Clerk of the Court of Appeals and serve a copy on Bar Counsel. The attorney shall be the petitioner. Bar Counsel shall be the respondent.

(2) Timing Following Order of Suspension or Disbarment

(A) If the attorney was suspended for a fixed period, the petition may not be filed earlier than 30 days prior to the end of the period of suspension.

(B) If the attorney was suspended for an indefinite period or disbarred, the petition may not be filed earlier than (i) the time specified in the order of suspension or disbarment.

(3) Content

The petition shall be captioned "In the Matter of the Petition for Reinstatement of XXXXX to the bar of Maryland" and state or be accompanied by the following:

(A) docket references to all prior disciplinary or remedial actions, including all actions pending as of the date of the attorney's disbarment or suspension, to which the attorney was a party;

(B) a copy of the order that disbarred or suspended the attorney, placed the attorney on



inactive status, or accepted the resignation of the attorney and any opinion of the Court that accompanied the order;

(C) that the attorney has complied in all respects with the provisions of Rule ~~19-742~~ 19-741 or, if applicable, Rule 19-744, and with any terms or conditions stated in the disciplinary or remedial order;

(D) a description of the conduct or circumstances leading to the order of disbarment, suspension, placement on inactive status, or acceptance of resignation; and

(E) facts establishing the attorney's subsequent conduct and reformation, present character, present qualifications and competence to practice law, and ability to satisfy the criteria set forth in section (h) of this Rule.

(F) a statement that, to the best of the attorney's knowledge, information, and belief, no complaints or disciplinary proceedings are currently pending against the attorney.

(d) Information for Bar Counsel

(1) Generally

Upon the filing of the petition, the attorney shall separately supply to Bar Counsel, in writing, the following information:

(A) the attorney's current address, e-mail address, if any, and telephone number;

(B) the information specified in subsection (c) (2) or (c) (3) of this Rule, as applicable;

(C) evidence establishing compliance with all applicable requirements set forth in section (h) of this Rule;

(D) a statement of whether the attorney has applied for reinstatement in any other jurisdiction and the current status of each such application; and

(E) any other information that the attorney believes is relevant to determining whether the attorney possesses the character and fitness necessary for reinstatement; and

(2) If Disbarred or Suspended

If the attorney has been disbarred or suspended, the information supplied to Bar Counsel shall include:

(A) the address of each residence of the attorney during the period of discipline, with inclusive dates of each residence;

(B) the name, address, e-mail address, if any, and telephone number of each employer, associate, and partner of the attorney during the period of discipline, together with (i) the inclusive dates of each employment, association, and partnership, (ii) the positions held, (iii) the names of all immediate supervisors, and (iv) if applicable, the reasons for termination of the employment, association, or partnership;

(C) the case caption, general nature, and disposition of each civil and criminal action pending during the period of discipline to which the attorney was a party or in which the attorney claimed an interest;

(D) a statement of monthly earnings and all other income during the period of discipline, including the source;

(E) copies of the attorney's state and federal income tax returns for the three years preceding the effective date of the order of disbarment or suspension and each year thereafter;

(F) a statement of the attorney's assets and financial obligations;

(G) the names and addresses of all creditors;

(H) a statement identifying all other business or occupational licenses or certificates applied for

or held during the period of discipline and the current status of each application; and

(I) the name and address of each financial institution at which the attorney maintained or was signatory on any account, safe deposit box, deposit, or loan during the period of discipline and written authorization for Bar Counsel to obtain financial records pertaining to such accounts, safe deposit boxes, deposits, or loans.

(3) If Placed on Inactive Status

If the attorney was placed on inactive status, the information supplied to Bar Counsel shall include:

(A) the name, address, and telephone number of each health care provider or addiction care provider and institution that examined or treated the attorney for incapacity during the period of inactive status; and

(B) a written waiver of any physician-patient privilege with respect to each psychiatrist, psychologist, or psychiatric-mental health nursing specialist named subsection (d)(3)(A) of this Rule.

(e) Response to Petition

(1) Generally

Within 30 days after service of the petition, Bar Counsel shall file and serve on the attorney a response. Except as provided in subsection (d)(2) of this Rule, the response shall admit or deny the averments in the petition in accordance with Rule 2-323 (c). The response may include Bar Counsel's recommendations in support of or opposition to the petition and with respect to any conditions to reinstatement.

(2) Consent

If Bar Counsel is satisfied that the attorney has complied fully with the provisions of Rule ~~19-742~~ 19-741 and any requirements or conditions in the order of suspension or disbarment, and there are no known complaints or disciplinary proceedings pending against

the attorney, the response may be in the form of a consent to the reinstatement.

(f) Disposition

(1) Consent by Bar Counsel

If, pursuant to subsection (e) (2) of this Rule, Bar Counsel has filed a consent to reinstatement, the Clerk shall proceed in accordance with Rule 19-751 (e) (1).

(2) Other Cases

In other cases, upon review of the petition and Bar Counsel's response, the Court may (A) without a hearing, dismiss the petition or grant the petition and enter an order of reinstatement with such conditions as the Court deems appropriate, or (B) order further proceedings in accordance with section (g) of this Rule.

(g) Further Proceedings

(1) Order Designating Judge

If the Court orders further proceedings pursuant to subsection (f) (2) (B) of this Rule, it shall enter an order designating a judge of any circuit court to hold a hearing.

(2) Discovery

The judge shall allow reasonable time for Bar Counsel to investigate the petition and, subject to Rule 19-726, to take depositions and complete discovery.

(3) Hearing

The applicable provisions of Rule 19-727 shall govern the hearing and the findings and conclusions of the judge, except that the attorney shall have the burden of proving the averments of the petition by clear and convincing evidence.

(4) Proceedings in Court of Appeals

The applicable provisions of Rules 19-728 and 19-729 (a), (b), and (d) shall govern subsequent proceedings in the Court of Appeals. The Court may (A) dismiss the petition, (B) order reinstatement, with such conditions as the Court deems appropriate, or (C) remand for further proceedings.

(h) Criteria for Reinstatement

(1) Generally

In determining whether to grant a petition for reinstatement, the Court of Appeals shall consider the nature and circumstances of the attorney's conduct that led to the disciplinary or remedial order and the attorney's (A) subsequent conduct, (B) current character, and (C) current qualifications and competence to practice law.

(2) Specific Criteria

The Court may order reinstatement if the attorney meets each of the following criteria or presents sufficient reasons why reinstatement should be ordered in the absence of satisfaction of one or more of those criteria:

(A) the attorney has complied in all respects with the provisions of Rule ~~19-742~~ 19-741 or, if applicable, ~~19-744~~ 19-743 and with the terms and conditions of prior disciplinary or remedial orders;

(B) the attorney has not engaged in or attempted or offered to engage in the unauthorized practice of law during the period of disbarment, suspension, or inactive status;

(C) if the attorney was placed on inactive status, the incapacity or infirmity, including alcohol or drug abuse no longer exists and is not likely to recur in the future;

(D) if the attorney was disbarred or suspended, the petitioner recognizes the wrongfulness and seriousness of the professional misconduct for which discipline was imposed;

(E) the attorney has not engaged in any professional misconduct or, other than minor traffic or municipal infractions, any unlawful activity since the imposition of discipline;

(F) the attorney currently has the requisite honesty and integrity to practice law;

(G) the attorney has kept informed about recent developments in the law and is competent to practice law; and

(H) the attorney has complied with all financial obligations required by these Rules or by court order, including (i) reimbursement of all amounts due to the attorney's former clients, (ii) payment of restitution which, by court order, is due to the attorney's former clients or any other person, (iii) reimbursement of the Client Protection Fund for all claims that arose out of the attorney's practice of law and satisfaction of all judgments arising out of such claims, and (iv) payment of all costs assessed by court order or otherwise required by law.

(i) Subsequent Petitions

Except upon order of the Court of Appeals, an attorney may not file a petition for reinstatement sooner than one year after the Court denied a prior petition for reinstatement. Absent leave of Court or the consent of Bar Counsel, an attorney may not file more than three petitions for reinstatement.

(j) Conditions to Reinstatement

An order that reinstates an attorney may include, as a condition precedent to reinstatement or as a condition of probation after reinstatement that the attorney:

(1) take the oath of attorneys required by Code, Business Occupations and Professions Article, § 10-212;

(2) pass either the comprehensive ~~Maryland Bar~~ Uniform Bar examination, ~~or~~ an attorney examination administered by the Board of Law Examiners, or the Multistate Professional Responsibility Examination;

(3) attend a bar review course approved by Bar Counsel and submit to Bar Counsel satisfactory evidence of attendance;

(4) submit to Bar Counsel evidence of successful completion of a professional ethics course at an accredited law school;

(5) submit to Bar Counsel evidence of attendance at the professionalism course required for newly-admitted attorneys;

(6) engage an attorney satisfactory to Bar Counsel to monitor the attorney's legal practice for a period stated in the order of reinstatement;

(7) limit the nature or extent of the attorney's future practice of law in the manner set forth in the order of reinstatement;

(8) participate in a program tailored to individual circumstances that provides the attorney with law office management assistance, attorney assistance or counseling, treatment for substance or gambling abuse, or psychological counseling;

(9) demonstrate, by a report of a health care professional or other evidence, that the attorney is mentally and physically competent to resume the practice of law;

(10) issue an apology to one or more persons; or

(11) take any other corrective action that the Court deems appropriate.

(k) Effective Date of Reinstatement Order

An order that reinstates the petitioner may provide that it shall become effective immediately or on a date stated in the order.

(l) Duties of Clerk

(1) Attorney Admitted to Practice

Promptly after the effective date of an order that reinstates a petitioner, the Clerk of the Court of Appeals shall comply with Rule 19-761.

(2) Attorney Not Admitted to Practice

Upon receiving a reinstatement notice authorized by section (e) of this Rule, or on the effective date of an order or notice that reinstates a petitioner not admitted by the Court of Appeals to practice law, the Clerk of the Court of Appeals shall remove the petitioner's name from the list maintained in that Court of non-admitted attorneys who are ineligible to practice law in this State, and shall certify that fact to the Board of Law Examiners and the clerks of all courts in the State.

(m) Motion to Vacate Reinstatement

Bar Counsel may file a motion to vacate an order that reinstates the petitioner if (1) the petitioner has failed to demonstrate substantial compliance with the order, including any condition of reinstatement imposed under Rule 19-752 (h) or section (j) of this Rule or (2) the petition filed under section (a) of this Rule contains a false statement or omits a material fact, the petitioner knew the statement was false or the fact was omitted, and the true facts were not disclosed to Bar Counsel prior to entry of the order. The petitioner may file a verified response within 15 days after service of the motion, unless a different time is ordered. If there is a factual dispute to be resolved, the court may enter an order designating a judge in accordance with Rule 19-722 to hold a hearing. The judge shall allow reasonable time for the parties to prepare for the hearing and may authorize discovery pursuant to Rule 19-726. The applicable provisions of Rule 19-727 shall govern the hearing. The applicable provisions of Rules 19-728 and ~~19-741~~ 19-740, except section (c) of Rule ~~19-741~~ 19-740, shall govern any subsequent proceedings in the Court of Appeals. The Court may reimpose the discipline that was in effect when the order was entered or may impose additional or different discipline.

Source: This Rule is derived from former Rule 16-781 (2016).

Mr. Frederick explained that proposed Rule 19-752 limits the number of times a former attorney can apply for



reinstatement to three times. He said that each application requires a lot of Bar Counsel's resources. The Court of Appeals can allow an additional application for reinstatement for good cause. Mr. Ucheomumu objected to the limitation.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Mr. Frederick presented Rule 18-428, Retirement as a Disposition; Rule 19-305.4, Professional Independence of an Attorney (5.4); Rule 19-308.1, Bar Admission and Disciplinary Matters (8.1); Rule 19-308.5, Disciplinary Authority; Choice of Law (8.5); Rule 19-605, Obligation of Attorneys; Rule 19-606, Enforcement of Obligations; Rule 19-802, Registration; and Rule 20-405, Appellate Review for consideration.

## MARYLAND RULES OF PROCEDURE

### TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

#### CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE

#### DIVISION 4. DISPOSITION OTHER THAN FILING OF CHARGES

AMEND Rule 18-428 by revising the citation to Rule 19-740 in the cross reference after subsection (c) (2), as follows:

Rule 18-428. RETIREMENT AS A DISPOSITION

. . .

(c) Effect

(1) Retirement under this Rule is permanent. A judge who is retired under this Rule may not be recalled to sit on any court, but the judge shall lose no other retirement benefit to which he or she is entitled by law.

(2) Retirement under this Rule does not constitute discipline.

Cross reference: See Rule 18-441 dealing with special procedures in disability cases. See also Md. Const., Art. IV, § 4B(a)(2), authorizing the Commission to recommend to the Court of Appeals retirement of a judge "in an appropriate case" and Rule ~~19-740~~ 19-717.1 authorizing a comparable disposition for attorneys who have a disability.

Source: This Rule is new.

Rule 18-428 was accompanied by the following Reporter's note.

The cross reference to Rule 19-740 after Rule 18-428 (c)(2) is amended to conform to the renumbering of Rule 19-740 as 19-717.1 in the proposed revisions to Title 19, Chapter 700.

## MARYLAND RULES OF PROCEDURE

### TITLE 19 - ATTORNEYS

#### CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-305.4 by revising the citation in the cross reference after section (d), as follows:

Rule 19-305.4. PROFESSIONAL INDEPENDENCE OF AN ATTORNEY (5.4)

. . .

(d) An attorney shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) a non-attorney owns any interest therein, except that a fiduciary representative of the estate of an attorney may hold the stock or interest of the attorney for a reasonable time during administration;

(2) a non-attorney is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or

(3) a non-attorney has the right to direct or control the professional judgment of an attorney.

Cross reference: Md. Rule ~~19-742~~ 19-741.

Rule 19-305.4 was accompanied by the following Reporter's note.

The cross reference to Rule 19-742 after Rule 19-305.4 (d) is amended to conform to the renumbering of Rule 19-742 as 19-741 in the proposed revisions to Title 19, Chapter 700.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-308.1 by revising the citation in the cross reference, as follows:

Rule 19-308.1. BAR ADMISSION AND DISCIPLINARY MATTERS (8.1)

. . .

COMMENT

[1] The duty imposed by this Rule extends to persons seeking admission or reinstatement to the bar as well as to attorneys. Hence, if a person makes a material false statement in connection with an application for admission or for reinstatement, the statement may be the basis for subsequent disciplinary action if the person is admitted or reinstated, and in any event may be relevant in a subsequent admission application. The duty imposed by this Rule applies to an attorney's own admission or discipline as well as that of others. Thus, it is a separate professional offense for an attorney to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the attorney's own conduct. This Rule also requires affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware.

[2] The Court of Appeals has considered this Rule applicable when information is sought by the Attorney Grievance Commission from any attorney on any matter, whether or not the attorney is personally involved. See Attorney Grievance Commission v. Oswinkle, 364 Md. 182 (2001).

[3] This Rule is subject to the provisions of the Fifth Amendment of the United States Constitution and corresponding provisions of state constitutions. A person relying on such a provision in response to a question, however, should do so openly and not use the right of nondisclosure as a justification for failure to comply with this Rule.

[4] An attorney representing an applicant for admission to the bar, or representing an attorney who is the subject of a disciplinary inquiry or proceeding, is governed by the rules applicable to the client-attorney relationship.

Cross reference: Md. Rule ~~19-701(k)~~ 19-701(q) (defining "Reinstatement").

. . .

Rule 19-308.1 was accompanied by the following Reporter's note.

In Rule 19-308.1, the cross reference to the Rule 19-701 (k) definition of "Reinstatement" is amended to conform to the revision and renumbering of this definition as Rule 19-701 (q) in the proposed revisions to Title 19, Chapter 700.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-308.5 by revising the citation in the cross reference, as follows:

Rule 19-308.5. DISCIPLINARY AUTHORITY; CHOICE OF LAW (8.5)

(a) Disciplinary Authority

(1) An attorney admitted by the Court of Appeals to practice in this State is subject to the disciplinary authority of this State, regardless of where the attorney's conduct occurs.

(2) An attorney not admitted to practice in this State is also subject to the disciplinary authority of this State if the attorney:

(A) provides or offers to provide any legal services in this State,

(B) holds himself or herself out as practicing law in this State, or

(C) has an obligation to supervise or control another attorney practicing law in this State whose conduct constitutes a violation of these Rules.

Cross reference: Md. Rule ~~19-701 (a)~~ 19-701 (b).

. . .

Rule 19-308.5 was accompanied by the following Reporter's note.

In Rule 19-308.5, the cross reference to the Rule 19-701 (a) definition of "Attorney" is amended to conform to the revision and renumbering of this definition as Rule 19-701 (b) in the proposed revisions to Title 19, Chapter 700.

MARYLAND RULES OF PROCEDURE  
TITLE 19 - ATTORNEYS  
CHAPTER 600 - CLIENT PROTECTION FUND

AMEND Rule 19-605 by revising the citation in section (b), as follows:

Rule 19-605. OBLIGATION OF ATTORNEYS

. . .

(b) Attorneys on Inactive/Retired Status

(1) The trustees of the Fund may approve attorneys, other than attorneys on permanent retired status pursuant to Rule ~~19-740~~ 19-717.1, for inactive/retired status, and, by regulation, may provide a uniform deadline date for seeking approval of inactive/retired status.

. . .

Source: This Rule is derived in part from former Rule 16-811.5 (2016), and is in part new.

Rule 19-605 was accompanied by the following Reporter's note.

The citation to Rule 19-740 in section (b) of Rule 19-605 is amended to conform to the renumbering of Rule 19-740 as Rule 19-717.1 in the proposed revisions to Title 19, Chapter 700.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 600 - CLIENT PROTECTION FUND

AMEND Rule 19-606 by revising the citations in section (b), as follows:

Rule 19-606. ENFORCEMENT OF OBLIGATIONS

. . .

(b) Temporary Suspension

. . .

(3) Effect of Order

An attorney who has been served with a copy of the Temporary Suspension Order and has not been restored to good standing may not practice law in Maryland and shall comply with the requirements of Rule ~~19-742~~ 19-741 (c) and (d). In addition to any other remedy or sanction allowed by law, an action for contempt may be brought against an attorney who practices law in violation of a Temporary Suspension Order.

An attorney who has been served with a copy of the Temporary Suspension Order and has not been restored to good standing may not practice law in Maryland and shall comply with the requirements of Rule ~~19-742~~ 19-741 (c) and (d). In addition to any other remedy or sanction allowed by law, an action for contempt may be brought against an attorney who practices law in violation of a Temporary Suspension Order.

. . .

Source: This Rule is derived from former Rule 16-811.6 (2016).

Rule 19-606 was accompanied by the following Reporter's note.

The citations to Rule 19-742 in Rule 19-606 (b) (3) are amended to conform to the renumbering of Rule 19-742 as Rule 19-741 in the proposed revisions to Title 19, Chapter 700.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 800 - ATTORNEY INFORMATION SYSTEM

AMEND Rule 19-802 by revising certain citations in section (b), as follows:

Rule 19-802. REGISTRATION

. . .

(b) Exceptions

Attorneys in the following categories need not register so long as they remain in one of those categories:

(1) attorneys who have been placed and remain on inactive status pursuant to Rule 19-739 or permanent retired status pursuant to Rule ~~19-740~~ 19-717.1;

(2) attorneys who are suspended pursuant to Rule 19-606 or ~~19-741~~ 19-740;

. . .

Source: This Rule is new.

Rule 19-802 was accompanied by the following Reporter's note.

The citation to Rule 19-740 in Rule 19-802 (b) (1) is amended to conform to the renumbering of Rule 19-740 as Rule 19-717.1 in the proposed revisions to Title 19, Chapter 700.



The citation to Rule 19-741 in subsection (b) (2) of this Rule is amended to conform to the renumbering of Rule 19-741 as Rule 19-740 in the proposed revisions to Title 19, Chapter 700.

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 400 - APPELLATE REVIEW

AMEND Rule 20-405 by revising the citation in section (c), as follows:

Rule 20-405. OTHER SUBMISSIONS

. . .

(c) Paper Copies Required From Persons Who File Electronically

An attorney or other registered user who files any of the following submissions electronically also shall file eight copies of the submission in paper form:

(1) a petition for certiorari to the Court of Appeals or a response to the petition;

(2) a petition to the Court of Appeals for a writ of mandamus, a writ of prohibition, or other extraordinary relief or a response to the petition;

(3) a motion for reconsideration filed pursuant to Rule 8-605 or a response to the motion;

(4) in an attorney grievance matter, (A) exceptions filed in the Court of Appeals pursuant to Rule 19-728 or a response to the exceptions, (B) recommendations concerning the appropriate disposition of a matter under Rule ~~19-729~~ 19-740 (c) or a response to the recommendations, (C) a petition filed in the Court of Appeals under Rule 19-737, 19-738, 19-739 (b), or 19-752 or a response to the petition, (D) an

application filed in the Court of Appeals pursuant to Rule 19-735 (a) or a response to the application;

. . .

Source: This Rule is new.

Rule 20-405 was accompanied by the following Reporter's note.

Rule 19-729 was renumbered as Rule 19-741 in 2017. The citation to Rule 19-729 in subsection (c)(4) of Rule 20-405 was not updated at that time. Rule 19-741 is renumbered as Rule 19-740 in the current proposed revisions to Title 19, Chapter 700. The citation in Rule 20-405 is updated to conform to the currently proposed renumbering of the Rules in Chapter 700.

Mr. Frederick said that the remaining items are conforming amendments necessitated by the amendments to Title 19, Chapter 700.

There being no motion to amend or reject the proposed Rules, they were approved as presented.

The Chair thanked Mr. Frederick, Ms. Lawless, Mr. Kramer and the Subcommittee for their work on the project. There being no further business before the Committee, the Chair adjourned the meeting.