STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

NOTICE OF PROPOSED RULES CHANGES

The Rules Committee has submitted its One Hundred Eighty-Seventh Report to the Court of Appeals, transmitting thereby the proposed deletion of Rule 6-123; proposed new Rules 9-205.3, 10-111, 10-112, 16-408, 16-409, 16-410, and 16-738; and proposed amendments to Rules 1-325, 1-333, 1-501, 2-504.1, 2-510, 2-541, 2-603, 2-703, 5-803, 6-122, 6-125, 6-126, 6-152, 6-153, 6-202, 6-203, 6-205, 6-312, 6-313, 6-316, 6-342, 6-402, 6-404, 6-405, 6-411, 6-413, 6-415, 6-416, 6-417, 6-443, 6-455, 6-501, 8-503, 8-112, 8-207, 8-303, 8-412, 8-413, 8-414, 8-431, 8-502, 8-511, 8-522, 8-603, 8-605, 9-208, 9-209, 10-103, 10-201, 10-202, 10-203, 10-206, 10-207, 10-208, 10-301, 10-601, 10-602, 10-705, 10-707, 10-708, 10-711, 10-712, 11-110, 11-111, 11-114, 11-115, 14-207.1, 14-503, 15-206, 15-207, 16-101, 16-202, 16-204, 16-306, 16-602, 16-758, 16-761, 16-801, 16-811.5, 16-813, 16-814, 16-816, 17-101, and 17-206 and Rules 1.12 and 7.4 of the Maryland Lawyers' Rules of Professional Conduct.

The Committee's One Hundred Eighty-Seventh Report and the proposed Rules changes are set forth below.

Interested persons are asked to consider the Committee's Report and proposed Rules changes and to forward on or before June 12, 2015 any written comments they may wish to make to:

Sandra F. Haines, Esq.

Reporter, Rules Committee

2011-D Commerce Park Drive

Annapolis, Maryland 21401

Bessie M. Decker
Clerk
Court of Appeals of Maryland

May 11, 2015

The Honorable Mary Ellen Barbera,
Chief Judge
The Honorable Glenn T. Harrell, Jr.
The Honorable Lynne A. Battaglia
The Honorable Clayton Greene, Jr.
The Honorable Sally D. Adkins
The Honorable Robert N. McDonald,
The Honorable Shirley M. Watts
Judges
The Court of Appeals of Maryland
Robert C. Murphy Courts of Appeal Building
Annapolis, Maryland 21401

Your Honors:

The Rules Committee submits this, its One Hundred Eighty-Seventh Report, and recommends that the Court adopt the new Rules and amendments to existing Rules set forth in this Report. The Report comprises thirteen categories of proposals.

Category 1 consists of amendments to Rules 16-761 and 16-758, which deal with costs in attorney discipline cases. The proposed changes were triggered by a request from the Court that the Committee consider whether the fees and expenses of expert witnesses should be included in costs that the Court may allocate to the prevailing party. In examining that issue, the Committee concluded that such fees and expenses should be included and that other clarifications regarding allocable costs would be desirable as well.

Rule 16-781 (n), which deals with reinstatement proceedings, requires an attorney who has petitioned for reinstatement to pay "all court costs and costs of investigation and other proceedings on the petition," including "expenditures incurred by Bar Counsel

that were reasonably necessary to evaluate the petition." That Rule focuses only on the costs incurred by Bar Counsel. Rule 16-761, which deals with costs in the disciplinary action itself, states that, unless otherwise ordered by the Court, the prevailing party is entitled to costs and that "costs of proceedings" under the Chapter, including the cost of transcripts, shall be taxed by the Clerk and included in the order as a judgment. The question, which presumably triggered the Court's request, is whether the general language in Rule 16-761, in contrast to the more specific language in Rule 16-781 (n) regarding Bar Counsel's expenses, suffices to include expert witness fees and expenses. The context of that question is broader than under Rule 16-781 (n), because it can include costs incurred by the attorney, if he or she ends up as the prevailing party.

With respect to expert witness fees and expenses, it appears from a review of the rules and statutes throughout the country, some of which are not entirely clear on the matter, that:

(1) twelve States have statutes or rules specifically allowing the State disciplinary unit to recover expert witness fees, in particular, or witness fees generally, against attorneys who are disciplined;

(2) seventeen States have statutes or rules that do not mention witness fees specifically but permit the recovery of all costs and expenses of the investigation and proceeding (or all reasonable and necessary costs), which is similar in content to Rule 16-781 (n);

(3) five States have statutes or rules that, in part by inference, appear not to include such fees and expenses as taxable costs; and

(4) in fifteen States, the statutes or rules are not clear on the point. Some permit the recovery of "expenses" of witnesses, but it is not clear whether that refers to the expenses incurred by the witness or the expense to the disciplinary unit (or the attorney) of obtaining the witness, which, at least as to expert witnesses, might include witness fees.

As noted, although the Court's request focused only on expert witness fees and expenses, there are other costs and expenses incurred by Bar Counsel or the attorney in the investigation and proceeding for which the ultimately prevailing party may claim reimbursement, and the Rule should make clear which of those costs may be recoverable. The Committee recommends that Rule 16-761 be amended to provide that:

(1) unless the Court orders otherwise and subject to Rule 16-781 (n), the prevailing party, which may be the attorney, is entitled to recover reasonable and necessary costs;

(2) by order, the Court may allocate costs between the parties which, in the event of any dispute or uncertainty, may require the Court to determine who is the prevailing party;

(3) costs be defined to include (i) fees and expenses paid to expert witnesses who testified in the proceeding before the circuit court judge, (ii) the reasonable and necessary travel expenses of other witnesses, (iii) the reasonable and necessary costs of transcripts of proceedings before the circuit court judge, (iv) the reasonable and necessary fees and expenses paid to a court reporter or reporting service for attendance at a deposition and for preparing a transcript, audio recording, or audio-video recording of the deposition, and (v) other reasonable and necessary expenses, **excluding** attorneys' fees, incurred in investigating the claims and in prosecuting or defending against the petition for disciplinary or remedial action.

To provide fairness to the parties and avoid post-hearing disputes, the Committee proposes that Rule 16-758 be amended to provide that, within fifteen days after notice that the record has been filed in the Court of Appeals -- which is the time fixed for the filing of exceptions to the circuit court judge's findings and conclusions -- each party may file a statement of costs to which the party may be entitled under Rule 16-761 if it prevails, and the other party may file a response. Although an actual allocation of costs would need to await a determination of who prevails, that amendment permits any dispute regarding the amount, reasonableness. and necessity of costs that may be claimed to be raised and considered before an opinion or order is entered in the matter.

Category 2 is in response to the Court's request that the Committee consider whether the maximum length of briefs and other filings in the appellate courts should be measured by the number of words, rather than by the number of pages. We note as a prelude to our discussion that, in Maryland and elsewhere, certain parts of a brief are not counted for purposes of applying limits on length -- *see* Md. Rule 8-503 (d)(1) -- and no amendment to that Rule is proposed.

Word limits and, to a lesser extent, line limits, have become increasingly common in both federal and State appellate courts. In 1998, Fed. R. App. Proc. 32 was amended to provide a triple option for principal briefs filed in the U.S. Courts of Appeals -- 30 pages, 14,000 words, or 1,300 lines of text. There is some

disagreement over how the word limit was determined. It appears that the limit was based on the average of the number of words per page in commercially printed 50-page briefs filed in the U.S. Supreme Court, which was estimated to be 280. Whether or not that estimate was accurate, the equivalence works mathematically for 50-page briefs (50 x 280 = 14,000) but not for the 30-page limit applicable to the Federal Courts of Appeals (30 x 280 = 8,400). Nonetheless, the option of 14,000 words has been the Rule for the U.S. Courts of Appeals since 1998.

Many States have followed the federal approach of providing word limits, either as an option to page or line limits or as the sole determinant. The States that have adopted word limits as a measuring standard vary significantly, however, in the number of words allowed. That is also the case with page limits; there are significant variations in that as well. Some States have adopted the federal standard of 14,000 words for a principal brief in the State's highest court, with proportionate reductions for reply briefs, *amicus* briefs, and other documents. Others go from a low of 9,000 words (Vermont) to 31,000 words (Missouri) and various limits in between. Most States that have intermediate appellate courts have different limits for briefs in their intermediate appellate courts.

In August 2014, the Federal Committee on Rules of Practice and Procedure of the Judicial Conference of the United States recommended and published for comment a proposed reduction of the 14,000-word limit for principal briefs to 12,500 words and corresponding reductions in the word lengths for other briefs and documents filed in the U.S. Courts of Appeals. The proposed reductions were based on an assumption that the 1998 estimate of 280 words per page was a mistake and had the effect of lengthening briefs. The Federal Judicial Conference Committee concluded that 250 words per page was the proper standard (50 x 250 = 12,500), even though the optional page limit would remain at 30.

The comment period expired February 17, 2015, and many comments were received, mostly from attorneys but from judges as well. The great majority of comments from attorneys expressed opposition to the reduction, mostly because, in their view, it would impede litigants from properly presenting the issues and would encourage more motions for leave to file longer briefs. That view was not universal, however, even among attorneys. The U.S. Department of Justice supported the proposed change, as did the Pennsylvania Bar Association and the Federal Courts Committee of the New York County Lawyers' Association.[1]

[1] The Department of Justice added a caveat to its support that the courts recognize the need to file over-length briefs when necessary.

Most of the comments from judges supported the reductions. Their view was that briefs filed in the federal appellate courts were often unnecessarily long and burdensome on the court. All but one of the active judges on the U.S. Court of Appeals for the Tenth Circuit and the vast majority of the senior judges of that Court supported the reduction, noting that many of the briefs submitted "are needlessly lengthy." Similar support was offered by the judges of the U.S. Court of Appeals for the D.C. Circuit, for the same reason. One notable exception was the comment by Judge Frank Easterbrook, of the U.S. Court of Appeals for the Seventh Circuit. He contended that the 14,000-word standard was not a mistake but was a deliberate compromise and that it should be retained.

Given the multiple layers of review required for the adoption or amendment of federal rules -- the Federal Rules Committee, the U.S. Supreme Court, and Congress -- it is not expected that any change ultimately approved with respect to Rule 32 (or the comparable rules governing documents other than principal briefs) would take effect before December 2016.

The Rules Committee had before it the history and current debate regarding the Federal Rule, an analysis of the rules in other States, average word counts in selected briefs filed in the Court of Special Appeals (which came to 273 words per page), and samples of briefs with different fonts, font sizes, and line-spacing.

After considerable debate, the Rules Committee came to three principal conclusions: first, that, except for typewritten briefs filed by self-represented litigants -- mostly by prisoners without access to a computer -- the length of briefs should be measured by words rather than pages; second, that the standard of measurement should be a word count based on 260 words per page; and third, that briefs should be in a Times New Roman font no smaller than 13-point, that lines be double-spaced, and that a minimum of one-inch margins be required.

The advantage of switching from a page limit to a word limit, coupled with requiring a Times New Roman font no less than 13-point and the double-spacing of lines, is that it removes the incentive to put multiple (and sometimes large) segments of text into single-spaced footnotes with smaller type and to use fonts and font sizes that permit the crowding of letters and words in a line, all in order to cram more words into each line and into the brief as a whole. Appellate judges, in Maryland and elsewhere, are regrettably familiar with those tactics and legitimately complain about them.

Using a conversion standard of 260 words per page would produce a 13,000-word limit for principal briefs in the Court of Appeals, 9,100 words for principal briefs in the Court of Special Appeals, 6,500 words for briefs or other filings now subject to a 25-page limit, and 3,900 words for briefs or other filings now subject to a 15-page limit.

The adoption of 260 as the standard of measurement, in large part, was a compromise between the competing estimates of 250, 273, and 280, but the Committee did feel that it was a fair compromise. It would produce word limits that are well within the range adopted in other States and for the federal appellate courts and should not result in significantly longer or shorter briefs than are allowed under current page limits. For self-represented litigants whose documents are typewritten, the current page limits would remain.

The new word limits, along with a required Certification of Word Count, are implemented by proposed amendments to Rule 8-503, with conforming amendments to Rules 8-112, 8-207, 8-303, 8-511, 8-603, and 8-605. The requirement of Times New Roman font no smaller than 13-point, double-spacing, and a minimum of one-inch margins appear in amendments to Rule 8-112.

The decision regarding fonts and font sizes also was the subject of debate. Current Rule 8-112 (c) requires that proportionately spaced type be not smaller than 13-point and that the font be one on a list approved by the Court of Appeals, which includes Times New Roman. Neither the type of font nor its size would affect the number of words, but they can affect the readability of the document, and the Committee believed that one font, available on all computers, should be utilized. Although some commentators have criticized Times New Roman and forcefully urged the use of other fonts, the Committee, after examining exemplars of five other fonts, concluded that Times New Roman presented the most readable font and the one that most of the appellate judges in Maryland currently use.

Category 3 attempts to ameliorate a logistical problem that has arisen under Code, Family Law Article, §4-505, dealing with domestic violence protective orders. Section 4-505 (c) limits the duration of a temporary protective order to seven days, subject to extension if necessary to effect service on the respondent. If the respondent is served promptly, a hearing on a final protective order must occur within the seven-day period, unless postponed by the court. Section 4-505 (e)(1), however, requires the judge presiding at the temporary protective order hearing, upon a reasonable belief that abuse of a child or vulnerable adult has occurred, to forward a copy of the petition and temporary protective order to the local Department of Social Services.

Section 4-505 (e)(2) requires that agency, upon receipt of the petition and order, to investigate the alleged abuse and, "by the date of the final protective order hearing, send to the court a copy of the report of the investigation."

Apart from the fact that it is difficult, and, the Committee is advised, often impossible, for the agency to make a proper investigation and get a report to the court prior to the hearing on a final protective order, the question has arisen as to what may be done with that report if and when it is sent to the court.[2] The Committee was advised that, in most cases, the social worker who conducted the investigation is not in court, and it may well be that the parties will not have seen the report prior to the hearing. There may be, of course, a variety of objections that conceivably could be made to the report, but an obvious one, if the author is not available for cross-examination, is hearsay. Yet, the General Assembly must have intended, by its mandate, that the report be considered by the court.

To deal at least with that problem, the Committee recommends an addition to Rule 5-803 (b)(8) -- which provides an exception to the hearsay rule for public records and reports -- of a new subsection (b)(8)(A)(iv), which would except from the hearsay rule, in a final protective order hearing, factual findings reported to the court pursuant to FL §4-505, provided that the parties have had a fair opportunity to review the report. A Committee note also is added noting that, if necessary, a continuance of the final protective order hearing may be granted in order to provide the parties a fair opportunity to review the report and prepare for the hearing, including an opportunity to subpoena the author. *See Sumpter v. Sumpter*, 436 Md. 74 (2013).

Category 4 consists of amendments and additions to the Rules Governing Admission to the Bar (RGAB) and the Rules currently in Title 16.[3] There are five proposals.

The first would amend current RGAB 15, which permits out-of-State attorneys to practice in Maryland if employed by a legal services program sponsored or approved by the Legal Aid Bureau,

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[2] The required investigation must be a "thorough" one. *See* Code, Family Law Article §§ 5-706 and 14-303.

[3] These Rules were initially drafted for inclusion in Part III of the Committee's 178th Report, which reorganizes and revises all of the Rules specifically dealing with attorneys, but, for a variety of reasons, the Committee was unable to complete Part III as quickly as it had intended. Those Rules will be included in Part III, which the Committee hopes to transmit to the Court within the next month, but, given the size of that Part and the need for the Court to consider it contemporaneously with supplements to Parts I and II of the 178th Report, to take account of circumstances that have arisen since the Court considered those Parts in 2013, more expeditious consideration can be given to these proposals as drafted to the current RGAB and current Title 16.

Inc. The amendments would expand the definition of "legal services program" to include other non-profit entities, exempt such attorneys from a two-year limit on such practice if they receive no compensation, require that they report any disciplinary proceedings against them in another State, and, unless they receive no compensation, contribute to the Client Protection Fund.

A new Rule 16-904 would permit out-of-State attorneys who comply with the applicable provisions of RGAB 15 and Maryland attorneys on retired/inactive status under Rule 16-811.5 (a)(2) to practice as pro bono attorneys, without compensation. The Rule would permit those attorneys to seek attorneys' fees from another party when permitted by substantive law but would require them to remit any such fees that are recovered to the legal services program that referred the case to them.

A new Rule 16-905 would require the Maryland Legal Services Corporation to provide annually to the State Court Administrator a current list of all grantees and other pro bono and nonprofit legal services programs that serve low-income individuals.

An amendment to Rule 16-811.5 exempts pro bono attorneys from required annual payments to the Client Protection Fund.

A new RGAB 15.1 would permit "military spouse attorneys" who are members in good standing of the bar of another State to practice in Maryland for a limited period and under certain conditions. The Rule would apply to out-of-State attorneys whose spouse is an active duty member of the U.S. armed forces and who reside in Maryland temporarily because the spouse has been transferred by military order to Maryland or a State contiguous to Maryland. The problem for many of these attorneys is that, because their service-member spouse is subject to transfer every three years and they choose, when possible, to accompany their spouse to keep the family together, they have no opportunity to practice in any one State long enough to qualify to take even the attorneys' exam (much less to study for and take the full bar examination) when they move to another State.

Sections (b), (c), and (e) of the proposed Rule place a number of conditions on their eligibility to practice in Maryland that the Committee believes are sufficient to protect the public but that will permit these attorneys to practice their chosen profession and maintain the family unit despite the frequent relocations over which they have no control.

Category 5 consists of proposed new Rule 16-738 which, under the limited circumstances set forth in the Rule, would give the Attorney Grievance Commission, Bar Counsel, and an attorney who is

the subject of a complaint or allegation that could lead to discipline or inactive status a new option -- that of the attorney's permanent retirement from the practice of law. As stated in section (a) of the Rule, it is intended to enable an attorney whose alleged conduct meets the criteria set forth in section (b) and was predominantly the product of the attorney's ill health or decline to retire permanently from the practice of law with dignity and without the stain of a sanction. Consistent with that purpose, permanent retired status is not regarded as discipline. With the aging of the population in general, and attorneys in particular, this is expected to become an increasing problem.

This approach is endorsed by the National Organization of Bar Counsel, and the proposed Rule is supported by Maryland Bar Counsel. This option is available only if (1) the alleged conduct did not involve misconduct so serious that, if proven, would likely result in a suspension or disbarment, did not reflect adversely on the attorney's honesty, and did not result in uncompensated actual harm to a client or anyone else, and (2) it is approved by the Attorney Grievance Commission. A conforming amendment to Rule 16-811.5 is proposed.

Category 6 consists of amendments to Rule 7.4 of the Lawyers' Rules of Professional Conduct and new Rules 16-408, 16-409, and 16-410. The amendments to Rule 7.4 would permit an attorney who has been certified as a specialist in a particular field of law by an entity accredited by the Commission on Certification of Attorneys as Specialists, created and governed by proposed Rules 16-408 through 16-410, to advertise that fact.

To provide some background, prior to 1977, most States severely limited attorneys from advertising their services beyond the inclusion of basic information in published lists of attorneys. Advertising in most other ways or formats -- radio, television, yellow page phone directories, other print media, direct solicitation -- was regarded as unprofessional. That changed when the Supreme Court, in *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977), held that advertising by attorneys was a form of commercial speech protected by the First Amendment and that, although States could impose appropriate restrictions to preclude advertising that was, in *fact*, misleading, they could not place an absolute restriction on advertising on the ground that it may be *potentially* misleading. That led to a scramble by the American Bar Association (ABA) and bar associations and courts throughout the country to develop "appropriate restrictions."

One of the issues considered at the time was whether a claim of *specialty* by an attorney which, unlike a factual statement that

the attorney confined his or her practice in some particular way, implied a level of expertise in the area beyond that possessed by the Bar in general, should be allowed. That, in turn, tended to rest on whether there was a credible structure and procedure for assuring that attorneys who wished to advertise that they were specialists really did have a higher level of expertise in that area. Not satisfied that there was such a structure and procedure then in existence, the Court of Appeals provided in Rule 7.4 that an attorney could communicate the fact that he or she did or did not practice in particular fields of law but "shall not hold himself or herself out publicly as a specialist." The Court has not been asked, since 1977, to reconsider that decision.[4]

Much has changed since 1977. The ABA has recognized many areas of specialty and has accredited a number of organizations it has found competent to establish rigorous standards for determining expertise in those areas and to certify as specialists attorneys who can demonstrate such expertise. Several States, mostly through rules or orders of their supreme court, have created their own commissions for determining specialties and accrediting entities competent to certify attorneys in those specialties. California commenced such a program in 1973, Texas in 1975.[5]

In 1990, the U.S. Supreme Court, in *Peel v. Attorney Registration and Disciplinary Commission of Illinois*, 496 U.S. 91 (1990), held that attorneys had a right under the First Amendment to advertise certification as a trial specialist by one of those entities, which the Court itself found credible. *See also Hayes v. New York Atty. Griev. Comm.*, 672 F.3d 158 (2d. Cir. 2012). Maryland appears to be the only State in the country that retains a flat prohibition on advertising a specialty, and, in light of *Peel* and *Hayes*, that prohibition may well be subject to Constitutional challenge. *See also Attorney Grievance v. Zhang*, 440 Md. 128, 180-81 (2014).

On October 31, 2014, the Maryland State Bar Association (MSBA) and the Maryland Professionalism Center co-sponsored a symposium on various aspects of professionalism, one of which was devoted to this subject. As a result of that program and comments by Judges Adkins and McDonald in *Zhang*, the Rules Committee undertook a study of the matter. The Committee looked at what had been done in the other States and by the ABA and, working with a special committee

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[4] In 2004, a committee appointed by the Court to review the latest Model Rules of Professional Conduct approved by the ABA considered the issue but voted not to recommend any significant change in Rule 7.4, and, in the absence of a minority report, the issue was not addressed by the Court when considering the committee's report.

[5] The impetus for creating a certification process may have been a 1973 article by then-Chief Justice Warren Burger in the Fordham Law Review. *See The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential to Our System of Justice*, Warren E. Burger, 42 Fordham L. Rev. 227 (1973).

of the MSBA, came up with the approach in the attached Rules.

Rule 16-408 creates the Commission, to be appointed by the Court. It would consist of thirteen members -- a circuit court and a District Court judge, one Maryland attorney from each of the eight judicial circuits of the State appointed from a list of at least three nominees submitted by the MSBA, one Maryland attorney from the State at large, and a full-time faculty member from each of the two Maryland law schools, appointed from a list of at least three nominees submitted by the Deans of the respective schools. This structure is generally consistent with commissions appointed for the purpose in other States, although there is considerable variance in how some of those commissions are structured.

Rule 16-409 charges the Commission, as a first step, with identifying and recommending to the Court of Appeals which fields of law or law practice should be recognized as specialties. The States are not at all uniform in their selection of specialties -- many have recognized only a handful -- but there is a wealth of information available to guide the Commission and the Court.

Once one or more areas of specialization have been recognized by the Court, the Commission is charged by Rule 16-410 with creating standards for the accreditation of entities competent to certify attorneys in those areas and, in accordance with those standards, presenting to the Court its conclusions as to which entities should be accredited. The Court could veto a proposed accreditation but would not formally approve any of them. Unless a proposed accreditation is disapproved by the Court or remanded for further consideration, the Commission would be the accrediting authority. That approach permits Rule 7.4 to allow the attorney to advertise that he or she has been certified as a specialist by the particular entity and that the entity has been accredited by the Commission but to preclude the attorney from advertising that the certification has been approved by the Court of Appeals. Most States that have created commissions of this type do not permit attorneys to claim that their certification has been approved by the State supreme court.

Category 7 implements Chapter ___, Laws of 2015 (HB 346), which changes the title of all "masters" in the court system to "magistrates." In April 2014, the former Judicial Cabinet, acting on a recommendation from the Conference of Circuit Judges, voted to change the title of family and juvenile court "masters" to family and juvenile court "magistrates." The Judicial Cabinet's decision was not intended to apply to other masters who did not regularly conduct hearings in family or juvenile matters. In September 2014, the Rules Committee, as part of its 186th Report, transmitted to the Court proposed new Rule 1-501, which implemented the decision of

the Judicial Cabinet.

Because some courts already had proceeded to change the term, notwithstanding its continued use in a myriad of statutes and Rules, the Rules Committee believed it important to have a Rule in place that (1) reflected the change in title, but (2) made clear that the change was solely in title and did not affect any of the duties, responsibilities, compensation, or other benefits of existing masters. Accordingly, the Committee limited its proposal to Rule 1-501 and decided not to spend the effort at that point to identify and draft conforming changes to all of the Rules in which the term "master" appeared. By Rules Order dated March 2, 2015, the Court adopted the proposed new Rule as submitted. Recognizing the urgency, the Court made the Rule effective March 15, 2015.

A month after the Court adopted Rule 1-501, the General Assembly enacted House Bill 346, which changes the title of *all* "masters," not just those affected by the Judicial Cabinet decision, to "magistrates." The bill accomplishes that result by amending every statute in which the term "master" appears. There is now an inconsistency between the Rules and the statutes. In order to eliminate that inconsistency, the Committee proposes amendments to Rule 1-501 and conforming amendments to Rules 1-325, 2-504.1, 2-510, 2-541, 2-603, 9-208, 9-209, 11-110, 11-111, 11-114, 11-115, 14-207.1, 15-206, 15-207, 16-101, 16-202, 16-204, 16-306, 16-813, 16-814, 16-816, 17-101, and 17-206 and Rule 1.12 of the Maryland Lawyers' Rules of Professional Conduct in which the term "master" appears.

One of the Rules needing amendment in that regard is Rule 2-541 (a), which allows the circuit courts to appoint full-time and part-time standing masters. Amending that provision creates a collateral, substantive issue. Rule 2-541 (a) provides that "[n]o person may serve as a standing master upon reaching the age of 70 years." That provision was adopted by the Court in 1980, although the Rules Order exempted from its application individuals then serving as masters. At the time, there was no conflict between that provision and the Federal Age Discrimination in Employment Act (ADEA), which then applied only to employees between the ages of 40 and 70. In 1986, however, Congress amended the ADEA to delete the cap of 70.

The ADEA excludes from the definition of "employee," for purposes of the Act, individuals elected to public office, individuals on such an officer's personal staff, and "an appointee on the policymaking level or an immediate advisor with respect to the exercise of the constitutional or legal powers of the office." *See* 29 U.S.C. §630 (f). In *Gregory v. Ashcroft*, 501 U.S. 452 (1991), the Supreme Court held that the ADEA did not protect State

judges, who (apart from those who were elected) the Court concluded could fall within the exception for officials appointed on a policymaking level.

That same year, the Maryland Attorney General opined that the *Gregory* decision did not extend to *masters*, who were not empowered to decide cases but only to make recommendations to a judge and therefore, quoting from two decisions of the Court of Appeals, "were entrusted with no part of the judicial power of the state" and were ministerial rather than judicial officers. The Attorney General's conclusion was that "masters appointed by the circuit court are protected by the ADEA against mandatory retirement" and that "the portion of Maryland Rule 2-541 that requires a standing master to retire at age 70 is not enforceable." 76 Md. Op. Atty. Gen. 81 (1991).

Ultimately, of course, it is for the Court of Appeals (or the U.S. Supreme Court) to determine the continued validity of that provision in Rule 2-541. The Rules Committee believes that the Attorney General's Opinion is correct and, by proposing the deletion of that provision as part of the amendment to Rule 2-541, the Court will have an opportunity to address the matter.

Category 8 consists of amendments to Rule 8-414 to clarify the proper scope of a motion filed in the appellate court to correct the lower court record and to make a conforming amendment to Rule 8-413. This, too, is in response to a request from the Court.

Rule 8-413 (a) specifies what the record on appeal must include. It requires the lower court, by order, to resolve any dispute over "whether the record accurately discloses what occurred in [that] court" and to "cause the record to conform to its decision." Rule 8-414 (a) provides that, on motion or its own initiative, the appellate court may order that "an *error or omission* in the record be corrected." (Emphasis added). The Rule, read as a whole, makes clear that a correction of the record may include the correction of an actual error in the record, the deletion of something that was included in the record but should not have been, or supplementation of the record by adding something that should have been included but, for some reason, was not.

What apparently triggered the Court's request to the Committee was some uncertainty whether, under the Rule as worded, correcting an "error or omission" could include adding to the record material that was not, in fact, presented to the lower court but has some potential or actual relevance to the appeal and, if not, whether the Rule should be amended to so provide.

Both the Court of Appeals and the Court of Special Appeals have stated, at least in general terms, that Rule 8-414 does not permit the addition to the record of evidence that was never submitted to the lower court, as that is neither an error nor an omission. *S*ee *Beyond v. Realtime*, 388 Md. 1, 10-11, n.9 (2005); *Mesbahi v. Board of Physicians*, 201 Md. App. 315, 340, n.21 (2011); *Shih Ping Li v. Tzu Lee*, 210 Md. App. 73, 95 (2013), *aff'd Li v. Lee*, 437 Md. 47 (2014). As applied, however, that construction is not rigid and absolute. Both appellate courts have considered facts not presented to the lower court that bear on mootness of the appeal or of which the appellate court could properly take judicial notice. With those kinds of exceptions, that principle applies in the federal appellate courts as well. *See In re Application of Adan*, 437 F.3d 381 (3d Cir. 2006):

> "[W]e will not consider new evidence on appeal absent extraordinary circumstances, such as those that render the case moot or alter the appropriateness of injunctive relief, a change in pertinent law, or facts of which a court may take judicial notice."

See also Goland v. Cent. Intelligence Agency, 607 F.2d 339. 370, n.7 (D.C. Cir. 1978); *United States v. Walker*, 601 F.2d 1051 (9th Cir. 1979); *compare New Evidence on Appeal*, Jeffrey C. Dobbins, 96 Minn. L. Rev. 2016 (2012).

The proposed amendment to Rule 8-414 (a) makes that view clear in the Rule, stating that the court ordinarily may not order an addition to the record of new facts, documents, information, or evidence that had not been submitted to the lower court, but pointing out in a Committee note that the court may consider facts of which it can take judicial notice, including facts bearing on mootness.

Category 9 consists of proposed new Rule 9-205.3, which creates a procedure for the appointment or approval by the circuit courts of qualified individuals to conduct custody and visitation assessments in cases where those matters are in dispute. The proposal emanated from the former Family Law Committee of the Judicial Conference. The concern was that, although courts were appointing individuals to perform such assessments, there were no guidelines governing the process and that, as a result, unqualified individuals sometimes were being appointed. The proposed Rule defines the different kinds of assessments that a court may want, sets minimum qualifications for individuals chosen to perform those assessments, requires a maximum fee schedule for individuals appointed by the court, provides for access to the assessor's

report by the parties and the judge, and provides for allocating the cost of the assessors among the parties.

Category 10 consists of amendments to several appellate Rules:

- Rules 8-412 and 8-502, clarifying when an appellant's brief must be filed.

- Rule 8-431, clarifying when a motion must be supported by affidavit.

- Rule 8-511, clarifying when an appellee's reply to an amicus brief not substantially in support of the appellee's position must be filed.

- Rule 8-522, limiting oral argument in the Court of Special Appeals to 20 minutes per side. By monthly order of the Chief Judge of that Court, that has been the effective limit for several years. In light of the reduction, the provision allowing further reductions is proposed for deletion.

- Rule 8-605, requiring a motion for reconsideration to include certain information bearing on the basis for the motion.

Category 11 consists of the proposed deletion of Rule 6-123, amendments to a variety of probate Rules in Title 6 (Rules 6-122, 6-125, 6-126, 6-152, 6-153, 6-202, 6-203, 6-205, 6-312, 6-313, 6-316, 6-342, 6-402, 6-404, 6-405, 6-411, 6-413, 6-415, 6-416, 6-417, 6-443, 6-455, and 6-501), and guardianship and fiduciary Rules in Title 10 (Rules 10-103, 10-111, 10-112, 10-201, 20-202, 10-203, 10-206, 10-207, 10-208, 10-301, 10-601, 10-602, 10-705, 10-707, 10-708, 10-711, and 10-712). The changes were recommended by registers of wills and Orphans' Court judges acting as consultants to the Committee. Some move provisions currently in the Rules to mandated forms, which are easier for unrepresented people to deal with; others implement statutory changes, create more uniformity in the wording of affidavits attached to various forms, or clarify provisions. The changes to each Rule are explained in the attached Reporter's note.

Category 12 consists of an amendment to Rule 16-602 dealing with attorney trust accounts, to take account of a recently enacted amendment to the Federal Credit Union Act (12 U.S.C. 1787 (k)) that creates parity, for deposit insurance purposes, between credit unions and other financial institutions. With the concurrence of Bar Counsel, Rule 16-602 g., which defines "financial institution," is amended to add credit unions.

Category 13 consists of housekeeping amendments to Rules 1-333, 2-703, 14-503, and 16-801.

For the further guidance of the Court and the public, following the proposed new Rules and the proposed amendments to each of the existing Rules is a Reporter's note describing in further detail the reasons for the proposals. *We caution that the Reporter's notes are not part of the Rules, have not been debated or approved by the Committee, and are not to be regarded as any kind of official comment or interpretation*. They are included solely to assist the Court in understanding some of the reasons for the proposed changes.

Respectfully submitted,

Alan M. Wilner
Chair

AMW:cdc
cc: Bessie M. Decker, Clerk
Hon. Robert A. Zarnoch, Vice Chair

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

AMEND Rule 16-761 by adding language modifying the word "costs" in section (a), by adding a new section (b) providing for a definition of "costs," and by making stylistic changes, as follows:

Rule 16-761. COSTS

(a) ~~Allowance and Allocation~~ Generally

Except as provided in Rule 16-781 (n), and unless the Court of Appeals orders otherwise, the prevailing party in proceedings under this Chapter is entitled to reasonable and necessary costs. By order, the Court~~, by order,~~ may allocate costs among the parties.

(b) Costs Defined

Costs include:

(1) court costs;

(2) reasonable and necessary fees and expenses paid to an expert witness who testified in the proceeding before the circuit court judge;

(3) reasonable and necessary travel expenses of a witness who is not an expert witness;

(4) reasonable and necessary costs of a transcript of proceedings before the circuit court judge;

(5) reasonable and necessary fees and expenses paid to a court reporter or reporting service for attendance at a deposition and for preparing a transcript, audio recording, or audio-video recording of the deposition; and

(6) other reasonable and necessary expenses, excluding attorneys' fees, incurred in investigating the claims and in prosecuting or defending against the petition for disciplinary or remedial action before the circuit court judge and in the Court of Appeals.

~~(b)~~ (c) Judgment

Costs of proceedings under this Chapter, including the costs of all transcripts, shall be taxed by the Clerk of the Court of Appeals and included in the order as a judgment. On motion, the Court may review the action of the Clerk.

~~(c)~~ (d) Enforcement

Rule 8-611 applies to proceedings under this Chapter.

Source: This Rule is in part derived from former Rule 16-715 (BV15) and in part new.

REPORTER'S NOTE

The Court of Appeals requested that the Rules Committee study whether expert witness fees incurred by the Attorney Grievance Commission can or should be assessed as costs against a non-prevailing respondent attorney in a disciplinary proceeding. The Rules Committee recommends amending Rule 16-761 to clarify which costs can be assessed and amending Rule 16-758 to provide a mechanism for a party to file exceptions to an assessment of costs against him or her.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

AMEND Rule 16-758 by adding to section (b) language referring to exceptions to costs, as follows:

Rule 16-758. 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 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, ~~and~~ (2) recommendations concerning the appropriate disposition under Rule 16-759 (c), and (3) a statement of costs to which the party may be entitled under Rule 16-761.

(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.

Source: This Rule is derived in part from former Rule 16-711 (BV11) and is in part new.

REPORTER'S NOTE

See the Reporter's note to Rule 16-761.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 500 - RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-503 (d) and (e) to specify word count limitations in briefs in lieu of page limitations, to add a new section (g) requiring a certain Certification of Word Count and Compliance with Rule 8-112, and to make a stylistic change, as follows:

Rule 8-503. STYLE AND FORM OF BRIEFS

. . .

(d) Length

(1) Principal Briefs of Parties

Except as otherwise provided in section (e) of this Rule or with permission of the Court, the principal brief of an appellant or appellee shall not exceed ~~35 pages~~ 9,100 words in the Court of Special Appeals or ~~50 pages~~ 13,000 words in the Court of Appeals. This limitation does not apply to (A) the table of contents and citations required by Rule 8-504 (a)(1); (B) the citation and text required by Rule 8-504 (a)(8); ~~or~~ (C) a motion to dismiss and argument supporting or opposing the motion; or (D) a Certification of Word Count and Compliance with Rule 8-112 required under section (g) of this Rule.

(2) Motion to Dismiss

Except with permission of the Court, any portion of a party's brief pertaining to a motion to dismiss shall not exceed an additional ~~ten pages~~ 2,600 words in the Court of Special Appeals or ~~25 pages~~ 6,500 words in the Court of Appeals.

(3) Reply Brief

Any reply brief filed by the appellant shall not exceed ~~15 pages~~ 3,900 words in the Court of Special Appeals or ~~25 pages~~ 6,500 words in the Court of Appeals.

(4) Amicus Curiae Brief

Except with the permission of the Court, an amicus curiae brief:

(A) if filed in the Court of Special Appeals, shall not exceed ~~15 pages~~ 3,900 words; and

(B) if filed in the Court of Appeals, shall not exceed ~~25 pages~~ 6,500 words, except that an amicus curiae brief supporting or opposing a petition for certiorari or other extraordinary writ shall not exceed ~~15 pages~~ 3,900 words.

(e) Briefs of Cross-appellant and Cross-appellee

In cases involving cross-appeals, the brief filed by the appellee/cross-appellant shall have a back and cover the color of an appellee's brief and shall not exceed ~~50 pages~~ 13,000 words. The responsive brief filed by the appellant/cross-appellee shall have a back and cover the color of a reply brief and shall not exceed (1) ~~50 pages~~ 13,000 words in the Court of Appeals or (2) in the Court of Special Appeals (A) ~~35 pages~~ 9,100 words if no reply to the appellee's answer is included or (B) ~~50 pages~~ 13,000

words if a reply is included.

(f) Incorporation by Reference

In a case involving more than one appellant or appellee, any appellant or appellee may adopt by reference any part of the brief of another.

(g) Certification of Word Count and Compliance with Rule 8-112

(1) Requirement

Except as otherwise provided by Rule 8-112 (b)(3), a brief shall include a Certification of Word Count and Compliance with Rule 8-112 substantially in the form set forth in subsection (g)(2) of this Rule. The party or amicus curiae providing the certification may rely on the word count of the word-processing system used to prepare the brief.

(2) Form

A Certification of Word Count and Compliance with Rule 8-112 shall be signed by the individual making the certification and shall be substantially in the following form:

CERTIFICATION OF WORD COUNT AND COMPLIANCE
WITH RULE 8-112

1. This brief contains _____words, excluding the parts of the brief exempted from the word count by Rule 8-503.

2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

_____
Signature

~~(g)~~ (h) Effect of Noncompliance

For noncompliance with this Rule, the appellate court may dismiss the appeal or make any other appropriate order with respect to the case, including an order that an improperly prepared brief be reproduced at the expense of the attorney for the party for whom the brief was filed.

Source: This Rule is derived as follows:
Section (a) is derived from former Rules 831 a and 1031 a.
Section (b) is derived from former Rules 831 a and 1031 a.
Section (c) is derived from former Rules 831 a and 1031 a.
Section (d) is in part derived from Rule 831 b and 1031 b and in part new.
Section (e) is new.
Section (f) is derived from ~~FRAP~~ Fed. R. App. P. 28 (i).
Section (g) is new and is derived in part from Fed. R. App. P. 32.
Section ~~(g)~~ (h) is derived from former Rules 831 g and 1031 f.

REPORTER'S NOTE

At the request of the Court of Appeals (as to page and word counts) and the Court of Special Appeals (as to fonts), the Rules Committee has reviewed current Rules 8-503 and 8-112 and proposes amendments to them, together with related amendments to Rules 8-207, 8-303, 8-511, 8-603, and 8-605.

The Appellate Subcommittee of the Rules Committee reviewed the Federal Rules of Appellate Procedure, proposed amendments to those Rules, and samples of briefs prepared with different fonts, type sizes, and spacing. Based upon the Subcommittee's review and recommendations, the Committee recommends that the Rules be amended to require that printed and computer-generated briefs and other papers use Times New Roman font, not smaller than 13 point, and be double-spaced. A 1" margin at the top, bottom, and each side of the page is required, except that a page number may be within the bottom margin.

When word count maximums were include in the Federal Rules of Appellate Procedure in 2005, the maximums were based on an estimate of 280 words per page; however, a more recent federal study of appellate briefs concluded that an estimate of 250 words per page may be more accurate. Amendments to the Federal Rules that use an estimate of 250 words per page have now been proposed.

A sample brief from the Court of Special Appeals in 13 point Times New Roman font, double-spaced, with 1" margins averaged 273 words per page.

The Committee recommends that word counts replace page counts and that the conversion be based on an estimate of 260 words per page, as follows: "13,000 words" replaces "50 pages," "9,100 words" replaces "35 pages," "6,500 words" replaces "25 pages," "3,900 words" replaces "15 pages," and "2,600 words" replaces "10 pages."

With word counts replacing page counts, litigants no longer have an incentive to make adjustments to kerning and horizontal scaling in order to include more words on a page. Therefore, "kerning" and "horizontal scaling" provisions are proposed for deletion from Rule 8-112. Also proposed for deletion as unnecessary are line length specifications, which are replaced by the uniform 1' margin requirement.

Added to Rule 8-503 is a new section (g), requiring a "Certification of Word Count and Compliance with Rule 8-112" in each brief that is commercially printed or generated by a computer printer.

Because some litigants (especially self-represented litigants) may submit papers that are typewritten, rather than commercially printed or generated by a computer printer, existing type size, spacing, and page limits for typewritten papers are retained, and a typewritten brief is not required to contain a Rule 8-503 (g) Certification.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 8-112 to add provisions retaining page limits in lieu of word count maximums for certain typewritten documents; to delete provisions pertaining to horizontal scaling, kerning, and line length; to require the use of the Times New Roman font in printed and computer-generated papers; to change spacing requirements from 1.5 spaces to double spacing between lines in printed and computer-generated papers; and to require a side margin of at least 1 inch on each side of a page; as follows:

Rule 8-112. FORM OF COURT PAPERS

(a) In General

A brief, table of contents of a record extract, petition for a writ of certiorari, motion, or other paper filed shall be typewritten or printed and shall comply with this Rule.

(b) Typewritten Papers - Uniformly Spaced Type

(1) Type Size

Uniformly spaced type (such as produced by typewriters) in the text and footnotes shall not be smaller than 11 point and shall not exceed 10 characters per inch.

(2) Spacing

Papers prepared with uniformly spaced type shall be

double-spaced, except that headings, indented quotations, and footnotes may be single-spaced.

(3) Documents Subject to Word Count Maximums

(A) Applicability

This subsection applies to a typewritten document as to which a word count maximum is specified by the Rules in this Title. It does not apply to a document that is commercially printed or generated by a computer printer.

(B) Page Limits

Word count maximums are replaced by page limits, as follows:

(i) if the word count maximum is 13,000, the typewritten document shall not exceed 50 pages in length;

(ii) if the word count maximum is 9,100, the typewritten document shall not exceed 35 pages in length;

(iii) if the word count maximum is 6,500, the typewritten document shall not exceed 25 pages in length;

(iv) if the word count maximum is 3,900, the typewritten document shall not exceed 15 pages in length; and

(v) if the word count maximum is 2,600, the typewritten document shall not exceed 10 pages.

(C) No Certification Required

The certification requirement of Rule 8-503 (g) does not apply.

(c) Printed and Computer-generated Papers - Proportionally Spaced Type

(1) Type Size and Font

Proportionally spaced type (such as produced by commercial printers and many computer printers) in the text and footnotes shall be in Times New Roman font and shall not be smaller than 13 point. ~~The Court of Appeals shall approve, from time to time, a list of fonts that comply with the requirements of this Rule. Upon the docketing of an appeal, the clerk of the appellate court shall send the approved list to all parties or their attorneys. The horizontal scaling ordinarily produced by the computer program may not be altered in order to decrease the width of the characters or increase the number of characters on a line.~~

~~Committee note: "Horizontal scaling" refers to the width of the characters.~~

(2) Spacing

Papers prepared with proportionally spaced type shall have ~~at least 1.5~~ double spacing between lines, except that headings, indented quotations, and footnotes may be single-spaced. ~~The kerning ordinarily produced by the computer program may not be altered in order to reduce the amount of space between characters or to increase the number of characters on a line.~~

~~Committee note: "Kerning" refers to the amount of space between characters.~~

(d) Margins

Margins at the top, ~~and~~ bottom, and each side of the page shall be not less than 1 inch, except that the page number may be

within the bottom margin. ~~Line length shall not exceed 61/2 inches, and the~~ The margin on the bound edge of each page shall be sufficient to prevent the binding from covering any text.

(e) Copies

Copies required to be filed shall be duplicated by any process that produces a clear black image on white, opaque, unglazed paper.

(f) Effect of Noncompliance

For noncompliance with this Rule, the appellate court may enter any appropriate order, including an order that an improperly prepared brief be corrected at the expense of the attorney for the party for whom the brief was filed.

Cross reference: With respect to exhibits, see Rules 1-301 (e) and 8-501 (i).

Source: This Rule is new but is derived in part from former Rules 831 a and 1031 a.

REPORTER'S NOTE

See the Reporter's note to Rule 8-503.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 200 - OBTAINING REVIEW IN COURT OF SPECIAL APPEALS

AMEND Rule 8-207 (b) to specify word count limitations in lieu of page limitations, as follows:

Rule 8-207. EXPEDITED APPEAL

. . .

(b) By Election of Parties

. . .

(4) Appellant's Brief

The appellant shall file a brief within 15 days after the filing of the agreed statement required by subsection (b)(2) of this Rule. The brief need not include statement of facts, shall be limited to two issues, and shall not exceed ~~ten pages~~ 2,600 words in length. Otherwise, the brief shall conform to the requirements of Rule 8-504. The appellant shall attach the agreed statement of the case as an appendix to the brief.

(5) Appellee's Brief

The appellee shall file a brief within 15 days after the filing of the appellant's brief. The brief shall not exceed ~~ten pages~~ 2,600 words in length and shall otherwise conform to the requirements of Rule 8-504.

(6) Reply Brief

A reply brief may be filed only with permission of the

Court.

(7) Briefs in Cross-appeals

An appellee who is also a cross-appellant shall include in the brief filed under subsection (b)(5) of this Rule the issue and argument on the cross-appeal as well as the response to the brief of the appellant. The combined brief shall not exceed ~~15 pages~~ 3,900 words in length. Within ten days after the filing of an appellee/cross-appellant's brief, the appellant/cross-appellee shall file a brief, not exceeding ~~ten pages~~ 2,600 words in length, in response to the issues and argument raised on the cross-appeal.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 8-503.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 300 - OBTAINING APPELLATE REVIEW IN COURT OF APPEALS

AMEND Rule 8-303 to specify a word count limitation in lieu of a page limitation, as follows:

Rule 8-303. PETITION FOR WRIT OF CERTIORARI - PROCEDURE

. . .

(b) Petition

(1) Contents

The petition shall present accurately, briefly, and clearly whatever is essential to a ready and adequate understanding of the points requiring consideration. Except with the permission of the Court of Appeals, a petition shall not exceed ~~15 pages~~ 3,900 words. It shall contain the following information:

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 8-503.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 600 - DISPOSITION

AMEND Rule 8-603 to specify word count limitations in lieu of page limitations, as follows:

Rule 8-603. MOTION TO DISMISS APPEAL

. . .

(f) Separate Oral Argument

(1) Not Unless Directed by the Court

Oral argument on a motion to dismiss will not be held in advance of argument on the merits unless directed by order of the Court.

(2) Briefs

If the Court directs oral argument on a motion to dismiss in advance of argument on the merits, the parties, with permission of the Court, may file briefs in support of or in opposition to the motion. Not later than one day before the date assigned for argument (A) an original shall be filed with the Clerk together with three copies in the Court of Special Appeals or seven copies in the Court of Appeals, and (B) a copy shall be delivered to other parties. Unless otherwise ordered by the Court, the briefs shall not exceed ~~ten pages~~ 2,600 words in the Court of Special Appeals or ~~25 pages~~ 6,500 words in the Court of

Appeals.

(3) Time; Number of Counsel

Unless otherwise ordered by the Court, separate oral argument on a motion to dismiss is restricted to 15 minutes for each side, and only one attorney may argue for each side.

Source: This Rule is derived from former Rules 1036, 1037, 836, and 837.

REPORTER'S NOTE

See the Reporter's note to Rule 8-503.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 800 - HEARSAY

AMEND Rule 5-803 to add a new subsection (b)(8)(A)(iv) regarding the admissibility of reports made pursuant to a certain statute pertaining to abuse of a child or vulnerable adult, to add a Committee note following subsection (b)(8)(A)(iv), and to make stylistic changes, as follows:

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

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

. . .

(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).

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.

(7) Absence of Entry in Records Kept in Accordance with Subsection (b)(6)

Unless the circumstances indicate a lack of trustworthiness, evidence that a diligent search disclosed that a matter is not included in the memoranda, reports, records, or data compilations kept in accordance with subsection (b)(6), when offered to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind about which a memorandum, report, record, or data compilation was regularly made and preserved.

(8) Public Records and Reports

(A) Except as otherwise provided in this paragraph, a memorandum, report, record, statement, or data compilation made by a public agency setting forth

(i) the activities of the agency;

(ii) matters observed pursuant to a duty imposed by law, as to which matters there was a duty to report; ~~or~~

(iii) in civil actions and when offered against the State

in criminal actions, factual findings resulting from an investigation made pursuant to authority granted by law~~.~~; or

(iv) in a final protective order hearing conducted pursuant to Code, Family Law Article, §4-506, factual findings reported to a court pursuant to Code, Family Law Article, §4-505, provided that the parties have had a fair opportunity to review the report.

Committee note: If necessary, a continuance of a final protective order hearing may be granted in order to provide the parties a fair opportunity to review the report and to prepare for the hearing.

(B) A record offered pursuant to paragraph (A) may be excluded if the source of information or the method or circumstance of the preparation of the record indicate that the record or the information in the record lacks trustworthiness.

(C) A record of matters observed by a law enforcement person is not admissible under this paragraph when offered against an accused in a criminal action.

(D) This paragraph does not supersede specific statutory provisions regarding the admissibility of particular public records.

Committee note: This section does not mandate following the interpretation of the term "factual findings" set forth in *Beech Aircraft Corp. v. Rainey*, 488 U.S. 153 (1988). See *Ellsworth v. Sherne Lingerie, Inc.*, 303 Md. 581 (1985).

(9) Records of Vital Statistics

Except as otherwise provided by statute, records or data compilations of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to

requirements of law.

Cross reference: See Code, Health General Article, §4-223 (inadmissibility of certain information when paternity is contested) and §5-311 (admissibility of medical examiner's reports).

(10) Absence of Public Record or Entry

Unless the circumstances indicate a lack of trustworthiness, evidence in the form of testimony or a certification in accordance with Rule 5-902 that a diligent search has failed to disclose a record, report, statement, or data compilation made by a public agency, or an entry therein, when offered to prove the absence of such a record or entry or the nonoccurrence or nonexistence of a matter about which a record was regularly made and preserved by the public agency.

(11) Records of Religious Organizations

Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) Marriage, Baptismal, and Similar Certificates

Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a member of the clergy, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(13) Family Records

Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones or the like.

(14) Records of Documents Affecting an Interest in Property

The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and a statute authorizes the recording of documents of that kind in that office.

(15) Statements in Documents Affecting an Interest in Property

A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document or the circumstances otherwise indicate lack of trustworthiness.

(16) Statements in Ancient Documents

Statements in a document in existence twenty years or more, the authenticity of which is established, unless the circumstances indicate lack of trustworthiness.

(17) Market Reports and Published Compilations

Market quotations, tabulations, lists, directories, and

other published compilations, generally used and reasonably relied upon by the public or by persons in particular occupations.

(18) Learned Treatises

To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination, statements contained in a published treatise, periodical, or pamphlet on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness, by other expert testimony, or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

(19) Reputation Concerning Personal or Family History

Reputation, prior to the controversy before the court, among members of a person's family by blood, adoption, or marriage, or among a person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, or other similar fact of personal or family history.

(20) Reputation Concerning Boundaries or General History

(A) Reputation in a community, prior to the controversy before the court, as to boundaries of, interests in, or customs affecting lands in the community.

(B) Reputation as to events of general history important to the community, state, or nation where the historical events occurred.

(21) Reputation as to Character

Reputation of a person's character among associates or in the community.

(22) [Vacant].- There is no subsection 22.

(23) Judgment as to Personal, Family, or General History, or Boundaries

Judgments as proof of matters of personal, family, or general history, or boundaries, essential to the judgment, if the matter would be provable by evidence of reputation under subsections (19) or (20).

(24) Other Exceptions

Under exceptional circumstances, the following are not excluded by the hearsay rule: A statement not specifically covered by any of the hearsay exceptions listed in this Rule or in Rule 5-804, but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. A statement may not be admitted under this exception unless the proponent of it makes known to the adverse party, sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the intention to offer the statement and the particulars

of it, including the name and address of the declarant.

Committee note: The residual exception provided by Rule 5-803 (b)(24) does not contemplate an unfettered exercise of judicial discretion, but it does provide for treating new and presently unanticipated situations which demonstrate a trustworthiness within the spirit of the specifically stated exceptions. Within this framework, room is left for growth and development of the law of evidence in the hearsay area, consistently with the broad purposes expressed in Rule 5-102.

It is intended that the residual hearsay exception will be used very rarely, and only in exceptional circumstances. The Committee does not intend to establish a broad license for trial judges to admit hearsay statements that do not fall within one of the other exceptions contained in Rules 5-803 and 5-804 (b). The residual exception is not meant to authorize major judicial revisions of the hearsay rule, including its present exceptions. Such major revisions are best accomplished by amendments to the Rule itself. It is intended that in any case in which evidence is sought to be admitted under this subsection, the trial judge will exercise no less care, reflection, and caution than the courts did under the common law in establishing the now-recognized exceptions to the hearsay rule.

Source: This Rule is derived as follows:
Section (a) is derived from F.R.Ev. 801 (d)(2).
Section (b) is derived from F.R.Ev. 803.

REPORTER'S NOTE

Code, Family Law Article, §4-505 (e) requires the court and the local department of social services to take certain actions if, during a temporary protective order hearing, the court finds reasonable grounds to believe that a child or a vulnerable adult has been abused. Specifically, the court must forward to the local department a copy of the petition and temporary protective order, and the local department must investigate the alleged abuse and send to the court a copy of the report of its investigation by the date of the final protective order hearing. The statute is silent regarding the admissibility of the report and its contents.

The Civil Law and Procedure Committee of the Maryland Judicial Conference studied the admissibility of these reports in trial courts across the State and conducted a survey of trial judges. The survey disclosed that the reports are admitted under widely different standards of admissibility. For example, at least one court admits the reports based on the assumption that the statutory authority calling for referral to the local

department necessarily implies that the report should be admitted. In other courts, admissibility may depend upon whether the parties object or whether the author of the report is present for cross-examination.

The Rules Committee reviewed the results of the survey and a research memorandum prepared by the Judiciary's Legal Affairs Department. The memorandum analyzes the applicable evidentiary rules and case law. It concludes that the rules of evidence should apply to the reports, and that a party should be permitted to object to the admission of the report on the basis of the evidentiary rules.

After considering various options, the Rules Committee recommends amending Rule 5-803 by adding a new subsection (b)(8)(A)(iv) to provide that factual findings contained in the report are not excluded by the hearsay rule, provided that the parties have had an opportunity to review the report.

The Committee also recommends the addition of a Committee note stating that a continuance of a final protective order hearing may be granted if necessary to provide the parties a fair opportunity to review the report and prepare for the hearing. The continuance may be required because the parties often see the report for the first time at the hearing, and they may need time to refute any factual inaccuracies and to otherwise prepare for the hearing in light of the report.

MARYLAND RULES OF PROCEDURE

RULES GOVERNING ADMISSION TO THE BAR OF MARYLAND

AMEND Bar Admission Rule 15 by changing its title, by adding a definition of "legal services program," by adding a cross reference after section (b), by adding a certain certification to the proof of eligibility requirements, by making the two-year expiration date of the special authorization inapplicable to pro bono attorneys, by adding a Committee note after section (c), by changing from five to ten days the time within which a notice of termination of authorization must be filed with the Clerk of the Court of Appeals and revising designation of the responsibility for filing the notice, by adding section (f) pertaining to disciplinary proceedings in another jurisdiction, by clarifying the authority of the Court of Appeals pertaining to special authorizations under the Rule, by exempting pro bono attorneys from the requirement of making certain payments, by adding section (i) pertaining to the Maryland Lawyers' Rules of Professional Conduct, by adding section (j) pertaining to certain reports, and by making stylistic changes, as follows:

Rule 15. SPECIAL AUTHORIZATION FOR OUT-OF-STATE ATTORNEYS ~~TO PRACTICE IN THIS STATE~~ AFFILIATED WITH PROGRAMS PROVIDING LEGAL SERVICES TO LOW-INCOME INDIVIDUALS

(a) Definition

As used in this Rule, "legal services program" means a

program (1) operated by a nonprofit entity that provides legal services to low-income individuals in Maryland who meet the financial eligibility requirements of the Maryland Legal Services Corporation and (2) is on a list of such programs provided by the Corporation to the State Court Administrator and posted on the Judiciary website pursuant to Rule 16-905.

~~(a)~~ (b) Eligibility

~~Subject to the provisions of~~ Pursuant to this Rule, a member of the Bar of another state who is employed by or associated with ~~an organized~~ a legal services program ~~that is sponsored or approved by Legal Aid Bureau, Inc.~~ may practice in this State pursuant to that ~~organized legal services~~ program~~,~~ if (1) the individual is a graduate of a law school meeting the requirements of Rule 4 (a)(2)~~, (2) the legal services program provides legal assistance to indigents in this State,~~ and ~~(3)~~ (2) the individual will practice under the supervision of a member of the Bar of this State.

Cross reference: For the definition of "State," see Rule 1 (i) of the Rules Governing Admission to the Bar of Maryland.

~~(b)~~ (c) Proof of Eligibility

To obtain authorization to practice under this Rule, the out-of-state attorney shall file with the Clerk of the Court of Appeals a written request accompanied by (1) evidence of graduation from a law school as defined in Rule 4 (a)(2), (2) a certificate of the highest court of another state certifying that the attorney is a member in good standing of the Bar of that

state, and (3) a statement signed by the Executive Director of ~~Legal Aid Bureau, Inc.,~~ the legal services program that includes (A) a certification that the attorney is currently employed by or associated with ~~an approved organized legal services~~ the program, (B) a statement as to whether the attorney is receiving any compensation other than reimbursement of reasonable and necessary expenses, and (C) an agreement that, within ten days after cessation of the attorney's employment or association, the Executive Director will file the Notice required by section (e) of this Rule.

~~(c)~~ (d) Certificate of Authorization to Practice

Upon the filing of the proof of eligibility required by this Rule, the Clerk of the Court of Appeals shall issue a certificate under the seal of the Court certifying that the attorney is authorized to practice under this Rule, subject to the automatic termination provision of section (e) of this Rule. The certificate shall ~~contain~~ state (1) the effective date, (2) whether the attorney (A) is authorized to receive compensation for the practice of law under this Rule or (B) is authorized to practice exclusively as a pro bono attorney pursuant to Rule 16-904, and (3) any expiration date of the special authorization to practice. If the attorney is receiving compensation for the practice of law under this Rule, the expiration date shall be no later than two years after the effective date. If the attorney is receiving no compensation other than reimbursement of reasonable and necessary expenses, no expiration date shall be

stated.

Committee note: An attorney who intends to practice law in Maryland for compensation for more than two years should apply for admission to the Maryland Bar.

~~(d)~~ (e) Automatic Termination ~~Before Expiration~~

Authorization to practice under this Rule is automatically terminated ~~before its expiration date~~ if the attorney ceases to be employed by or associated with ~~an approved organized~~ the legal services program ~~in this State~~. Within ~~five~~ ten days after cessation of the attorney's employment or association, the Executive Director of ~~Legal Aid Bureau, Inc.~~ the legal services program shall file with the Clerk of the Court of Appeals notice of the termination of authorization.

(f) Disciplinary Proceedings in Another Jurisdiction

Promptly upon the filing of a disciplinary proceeding in another jurisdiction, an attorney authorized to practice under this Rule shall notify the Executive Director of the legal services program of the disciplinary matter. An attorney authorized to practice under this Rule 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 inactive status based on incapacity shall inform Bar Counsel and the Clerk of the Court of Appeals promptly of the discipline, resignation, or inactive status.

~~(e)~~ (g) Revocation or Suspension

At any time, the Court, in its discretion, may revoke or

suspend an attorney's authorization to practice under this Rule ~~either~~ by written notice to the attorney. ~~or by~~ By amendment or deletion of this Rule, the Court may modify, suspend, or revoke the special authorizations of all out-of-state attorneys issued pursuant to this Rule.

~~(f)~~ (h) Special Authorization not Admission

Out-of-state attorneys authorized to practice under this Rule are not, and shall not represent themselves to be, members of the Bar of this State, except in connection with practice that is authorized under this Rule. They ~~shall be~~ are required to make payments to the Client Protection Fund of the Bar of Maryland and the Disciplinary Fund, except that an attorney who is receiving no compensation other than reimbursement of reasonable and necessary expenses is not required to make the payments.

(i) Rules of Professional Conduct

An attorney authorized to practice under this Rule is subject to the Maryland Lawyers' Rules of Professional Conduct.

(j) Reports

Upon request by the Administrative Office of the Courts, an attorney authorized to practice under this Rule shall timely file an IOLTA Compliance Report in accordance with Rule 16-608 and a Pro Bono Legal Service Report in accordance with Rule 16-903.

Source: This Rule is in part derived from former Rule 19 and is in part new.

REPORTER'S NOTE

See the Reporter's note to Rule 16-904.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURTS, JUDGES, AND ATTORNEYS

CHAPTER 900 - PRO BONO LEGAL SERVICES

ADD new Rule 16-904, as follows:

Rule 16-904. PRO BONO ATTORNEY

(a) Definition

As used in this Rule, "pro bono attorney" means an attorney who is authorized by Rule 15 of the Rules Governing Admission to the Bar of Maryland or Rule 16-811.5 (a)(2) to represent clients, without compensation other than reimbursement of reasonable and necessary expenses, and whose practice is limited to providing such representation. "Pro bono attorney" does not include (1) an active member of the Maryland Bar in good standing or (2) an attorney whose certificate of authorization to practice under Rule 15 permits the attorney to receive compensation for the practice of law under that Rule.

Cross reference: For the professional responsibility of an active member of the Maryland Bar to render pro bono publico legal service, see Rule 6.1, (Pro Bono Publico Service) of the Maryland Lawyers' Rules of Professional Conduct.

(b) Authorization to Practice as a Pro Bono Attorney

To practice as a pro bono attorney, an out-of-state attorney shall comply with Rule 15 of the Rules Governing Admission to the Bar of Maryland and a retired/inactive member of the Maryland Bar shall comply with Rule 16-811.5 (a)(2).

(c) Recovery of Attorneys' Fees

If the substantive law governing a matter in which a pro bono attorney is providing representation permits the recovery of attorneys' fees, the pro bono attorney may seek attorneys' fees in accordance with the Rules in Title 2, Chapter 700 or Rule 3-741 but shall remit to the legal services or pro bono publico program that referred the matter to the attorney all attorneys' fees that are recovered.

(d) Reports

Upon request by the Administrative Office of the Courts, a pro bono attorney shall timely file an IOLTA Compliance Report in accordance with Rule 16-608 and a Pro Bono Legal Service Report in accordance with Rule 16-903.

Source: This Rule is new.

REPORTER'S NOTE

Based upon recommendations from the Maryland Access to Justice Commission, new Rules 16-904 and 16-905, together with amendments to Rule 16-811.5 and Rule 15 of the Rules Governing Admission to the Bar, are proposed to facilitate *pro bono* practice among attorneys barred elsewhere but residing or working in Maryland. Under the proposals, an out-of-state attorney who wishes to provide *pro bono* legal services to low income individuals in Maryland may do so without becoming a member of the Maryland Bar or paying the annual assessment to the Client Protection Fund provided that the out-of-state attorney is affiliated with a program that is on the list posted on the Judiciary website pursuant to Rule 16-905, receives no compensation for providing the services (other than reimbursement of reasonable and necessary expenses), practices under the supervision of a member of the Maryland Bar, and complies with all other applicable provisions of Rule 16-904 and Bar Admission Rule 15.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 500 – PRO BONO LEGAL SERVICES

ADD new Rule 16-905, as follows:

Rule 16-905. LIST OF PRO BONO AND LEGAL SERVICES PROGRAMS

At least once a year, the Maryland Legal Services Corporation shall provide to the State Court Administrator a current list of all grantees and other pro bono and nonprofit legal services programs known to the Corporation that serve low-income individuals who meet the financial eligibility criteria of the Corporation. The State Court Administrator shall post the current list on the Judiciary website.

Cross reference: See Rules 1-325, 1-325.1, and 16-811.5 and Rule 15 of the Rules Governing Admission to the Bar of Maryland.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to proposed new Rule 16-904.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 800 - MISCELLANEOUS

AMEND Rule 16-811.5 to exempt *pro bono* attorneys from the requirement of making annual payments to the Fund, to require annual payments to the Fund by attorneys authorized to practice under Bar Admission Rule 15.1, to add language to subsection (a)(2) referring to proposed new Rule 16-738, and to make stylistic changes, as follows:

Rule 16-811.5. OBLIGATIONS OF ATTORNEYS

(a) Conditions Precedent to Practice

(1) Generally

Except as otherwise provided in ~~this section~~ subsection (a)(2) of this Rule or Rule 15 (h) of the Rules Governing Admission to the Bar of Maryland, each attorney admitted to practice before the Court of Appeals or issued a certificate of special authorization under Rule 15 or 15.1 of the Rules Governing Admission to the Bar of Maryland, as a condition precedent to the practice of law in this State, shall (A) provide to the treasurer of the Fund the attorney's Social Security number, (B) provide to the treasurer of the Fund the attorney's federal tax identification number or a statement that the attorney has no such number, and (C) pay annually to the treasurer of the Fund the sum, and all applicable late charges,

set by the Court of Appeals.

(2) Exception

~~Upon~~ Unless the attorney is on permanent retired status pursuant to Rule 16-738, upon timely application by ~~an~~ the attorney, the trustees of the Fund may approve an attorney for inactive/retired status. By regulation, the trustees may provide a uniform deadline date for seeking approval of inactive/retired status. An attorney on inactive/retired status may engage in the practice of law without payment to the Fund if (A) the attorney is on inactive/retired status solely as a result of having been approved for that status by the trustees of the Fund and not as a result of any action against the attorney pursuant to the Rules in Title 16, Chapter 700, and (B) the attorney's practice is limited to representing clients without compensation, other than reimbursement of reasonable and necessary expenses, as part of the attorney's participation in a legal services or pro bono publico program sponsored or supported by a local bar association, the Maryland State Bar Association, Inc., an affiliated bar foundation, or the Maryland Legal Services Corporation.

(3) Bill; Request for Information; Compliance

For each fiscal year, the trustees by regulation shall set dates by which (A) the Fund shall send to an attorney a bill, together with a request for the information required by subsection (a)(1) of this Rule, and (B) the attorney shall comply with subsection (a)(1) of this Rule by paying the sum due and

providing the required information. The date set for compliance shall be not earlier than 60 days after the Fund sends the bill and requests the information.

(4) Method of Payment

Payments of amounts due the Fund shall be by check or money order, or by any additional method approved by the trustees.

(b) Change of Address

Each attorney shall give written notice to the trustees of every change in the attorney's resident address, business address, e-mail address, telephone number, or facsimile number within 30 days of the change. The trustees shall have the right to rely on the latest information received by them for all billing and other correspondence.

Source: This Rule is derived from former Rule 16-811 (2013).

REPORTER'S NOTE

Proposed amendments to Rule 16-811.5 (a) exempt from the requirement of annual payments to the Client Protection Fund all individuals who are "*pro bono* attorneys" under Rule 16-904 and attorneys who are on permanent retired status under Rule 16-738.

The amendments also add a reference to proposed new Rule 15.1 of the Rules Governing Admission to the Bar of Maryland, because a "military spouse attorney" authorized to practice under that Rule is required to make the annual payment to the Fund. If an individual who could qualify as a "military spouse attorney" wishes to devote his or her practice in Maryland exclusively to serving as a "pro bono attorney" (and therefore not be required to make payments to the Fund), the individual could apply for special authorization under Rule 15, rather than under Rule 15.1.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 200 - ADMISSION TO THE BAR

ADD new Rule 15.1, as follows:

Rule 15.1. SPECIAL AUTHORIZATION FOR MILITARY SPOUSE ATTORNEYS

(a) Definition

As used in this Rule, a "military spouse attorney" means an (1) attorney admitted to practice in another state but not admitted in this State, (2) is married to an active duty servicemember of the United States Armed Forces and (3) resides in the State of Maryland due to the servicemember's military orders for a permanent change of station to Maryland or a state contiguous to Maryland.

Cross reference: For the definition of "State," see Rule 1 (i).

(b) Eligibility

Subject to the conditions of this Rule, a military spouse attorney may practice in this State if the individual:

(1) is a graduate of a law school meeting the requirements of Rule 4 (a)(2);

(2) is a member in good standing of the Bar of another state;

(3) will practice under the direct supervision of a member of the Bar of this State;

(4) has not taken and failed the Maryland bar examination or attorney examination;

(5) has not had an application for admission to the Maryland Bar or the Bar of any state denied on character or fitness grounds;

(6) certifies that the individual will comply with the requirements of Rule 16-811.5; and

(7) certifies that the individual has read and is familiar with the Maryland Rules of civil and criminal procedure, the Maryland Rules of Evidence, and the Maryland Lawyers' Rules of Professional Conduct, as well as the Maryland laws and Rules relating to any particular area of law in which the individual intends to practice.

Cross reference: See Rule 5.1 for the responsibilities of a supervising attorney.

(c) Proof of Eligibility

To obtain authorization to practice under this Rule, the military spouse attorney shall file with the Clerk of the Court of Appeals a written request accompanied by:

(1) evidence of graduation from a law school meeting the requirements of Rule 4 (a)(2);

(2) a list of states where the military spouse attorney is admitted to practice, together with a certificate of the highest court of each such state certifying that the attorney is a member in good standing of the Bar of that state;

(3) a copy of the servicemember's military orders reflecting a permanent change of station to a military installation in Maryland or a state contiguous to Maryland;

(4) a copy of a military identification card that lists the military spouse attorney as the spouse of the servicemember;

(5) a statement signed by the military spouse attorney certifying that the military spouse attorney:

(A) resides in Maryland;

(B) has not taken and failed the Maryland bar examination or attorney examination;

(C) has not had an application for admission to the Maryland Bar or the Bar of any state denied on character or fitness grounds;

(D) will comply with the requirements of Rule 16-811.5; and

(E) has read and is familiar with the Maryland Rules of civil and criminal procedure, the Maryland Rules of Evidence, and the Maryland Lawyers' Rules of Professional Conduct, as well as the Maryland law and Rules relating to any particular area of law in which the individual intends to practice; and

(6) a statement signed by the supervising attorney that includes a certification that (A) the military spouse attorney is or will be employed by or associated with the supervising attorney's law firm or the agency or organization that employs the supervising attorney, and (B) an agreement that within ten days after cessation of the military spouse attorney's employment or association, the supervising attorney will file the notice required by section (e) of this Rule and that the supervising attorney will be prepared, if necessary, to assume responsibility for open client matters that the individual no longer will be

authorized to handle.

(d) Certificate of Authorization to Practice

Upon the filing of the proof of eligibility required by this Rule, the Clerk of the Court of Appeals shall issue a certificate under the seal of the Court certifying that the attorney is authorized to practice under this Rule for a period not to exceed two years, subject to the automatic termination provisions of section (e) of this Rule. The certificate shall state the effective date and the expiration date of the special authorization to practice.

(e) Automatic Termination

(1) Cessation of Employment

Authorization to practice under this Rule is automatically terminated upon the earlier of (A) the expiration of two years from the issuance of the certificate of authorization, or (B) the expiration of ten days after the cessation of the military spouse attorney's employment by or association with the supervising attorney's law firm or the agency or organization that employs the supervising attorney unless, within the ten day period, the military spouse attorney files with the Clerk of the Court of Appeals a statement signed by another supervising attorney who is a member of the Bar of this State in compliance with subsection (c)(6) of this Rule. Within ten days after cessation of the military spouse attorney's employment or association, the supervising attorney shall file with the Clerk of the Court of Appeals notice of the termination

of authorization.

(2) Change in Status

A military spouse attorney's authorization to practice law under this Rule automatically terminates 30 days after (A) the servicemember spouse is no longer a member of the United States Armed Forces, (B) the servicemember and the military spouse attorney are divorced or their marriage is annulled, or (C) the servicemember receives a permanent transfer outside Maryland or a state contiguous to Maryland, except that a servicemember's assignment to an unaccompanied or remote assignment does not automatically terminate the military spouse attorney's authorization, provided that the military spouse attorney continues to reside in Maryland. The military spouse attorney promptly shall notify the Clerk of the Court of Appeals of any change in status that pursuant to this subsection terminates the military spouse attorney's authorization to practice in Maryland.

Committee note: A military spouse attorney who intends to practice law in Maryland for more than two years should apply for admission to the Maryland Bar. The bar examination process may be commenced and completed while the military spouse attorney is practicing under this Rule.

(f) Disciplinary Proceedings in Another Jurisdiction

Promptly upon the filing of a disciplinary proceeding in another jurisdiction, a military spouse attorney shall notify the supervising attorney of the disciplinary matter. A military spouse 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 inactive status based on incapacity shall inform Bar Counsel and the Clerk of the Court of Appeals promptly of the discipline, resignation, or inactive status.

(g) Revocation or Suspension

At any time, the Court, in its discretion, may revoke or suspend a military spouse attorney's authorization to practice under this Rule by written notice to the attorney. By amendment or deletion of this Rule, the Court may modify, suspend, or revoke the special authorizations of all military spouse attorneys issued pursuant to this Rule.

(h) Special Authorization not Admission

Military spouse attorneys authorized to practice under this Rule are not, and shall not represent themselves to be, members of the Bar of this State.

(i) Rules of Professional Conduct; Required Payments

A military spouse attorney authorized to practice under this Rule is subject to the Maryland Lawyers' Rules of Professional Conduct and is required to make payments to the Client Protection Fund of the Bar of Maryland and the Disciplinary Fund.

(j) Reports

Upon request by the Administrative Office of the Courts, a military spouse attorney authorized to practice under this Rule shall timely file an IOLTA Compliance Report in accordance with

Rule 16-608 and a Pro Bono Legal Service Report in accordance with Rule 16-903.

Source: This Rule is new.

REPORTER'S NOTE

An organization of attorneys married to members of the United States Armed Forces has requested a change to the Maryland Bar Admission Rules to admit without examination qualified attorneys who are married to active duty servicemembers stationed in Maryland or a nearby jurisdiction. Qualifications include that the attorney be admitted to the bar of at least one other state and be in good standing in all states in which he or she is admitted.

The Rules Committee recommends the addition of a Rule permitting qualified military spouse attorneys to practice law in Maryland for a period not to exceed two years without being admitted to the bar provided that they are under the supervision of an attorney who is a member of the Maryland bar.

Requirements and other provisions included in proposed new Rule 15.1 are based upon requirements applicable to out-of-state attorneys employed by programs providing legal services to low-income individuals pursuant to Rule 15, L.R. 701 of the Rules of the United States District Court for the District of Maryland, and provisions suggested by the proponents of the Rule.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 - DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

ADD new Rule 16-738, as follows:

Rule 16-738. 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 16-771 or 16-773;

(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 Lawyers' Rules of Professional Conduct, the attorney should no longer engage in the practice of law; and

(7) the attorney has take 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 (f) 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 16-760 (d).

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 new.

REPORTER'S NOTE

Attorneys who are charged with misconduct because of the attorney's ill health or decline may prefer to permanently retire from the practice of law rather than face sanctions. As long as the misconduct 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 Rule 16-771 or 16-773, the attorney may be eligible to retire under new Rule 16-738. The new Rule provides a mechanism for the attorney to stop practicing law yet retain his or her dignity by not being exposed to sanctions. Rule 16-811.5 is proposed to be

amended to provide an exception to the procedure for trustees of the Client Protection Fund to approve attorneys for retired status. The exception is the permanent retired status allowed by proposed new Rule 16-738.

AMEND Rule 7.4, as follows:

Rule 7.4. COMMUNICATION OF FIELDS OF PRACTICE

(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law, subject to the requirements of Rule 7.1. Except as otherwise provided in this Rule, ~~A~~ a lawyer shall not hold himself or herself out publicly as a specialist.

(b) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation.

(c) A lawyer who has been certified as a specialist in a particular field of law or law practice by an entity accredited pursuant to Rules 16-408 through 16-410 may advertise the certification during such time as the certification of the lawyer and the accreditation of the entity are in effect. A lawyer may not advertise that the certification or accreditation has been approved by the Court of Appeals or any other Maryland court but may advertise that the certifying entity was accredited by the Commission on Certification of Attorneys as Specialists.

COMMENT

[1] This Rule permits a lawyer to indicate areas of practice in communications about the lawyer's services; for example, in a telephone directory or other advertising. If a lawyer practices only in such fields, or will not accept matters except in such

fields, the lawyer is permitted so to indicate.

[2] Paragraph (b) recognizes the long-established policy of the Patent and trademark Office for the designation of lawyers practicing before the Office.

[3] Paragraph (c) does not limit the right of a certified specialist to practice in any field of law or require an attorney to be certified as a specialist in order to practice in any field of law.

~~**Model Rules Comparison.** – This Rule substantially retains existing Maryland language and does not adopt Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct, with the exception of: 1) adding ABA Rule 7.4 (c) (incorporated as Rule 7.4 (b) above); 2) the first sentence of ABA Comment [2] (included as Comment [2] above).~~

REPORTER'S NOTE

Proposed amendments to Rule 7.4 permit an attorney to advertise that the attorney has been certified as a specialist by an accredited entity. Proposed new Rules 16-408, 16-409, and 16-410 set up a mechanism by which entities are accredited and attorneys are certified by the entities. Rule 16-408 provides for a Commission on Certification of Attorneys as Specialists. Rule 16-409 sets out a procedure for the Commission to develop criteria for determining which fields of law or law practice are to be recognized as specialties. Rule 16-410 sets out standards and procedures for the accreditation of entities, so that they are able to certify attorneys as specialists.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 400 - ATTORNEYS, OFFICERS OF COURT, AND OTHER PERSONS

ADD new Rule 16-408, as follows:

Rule 16-408. COMMISSION ON CERTIFICATION OF ATTORNEYS AS SPECIALISTS

(a) Existence

There is a Commission on Certification of Attorneys as Specialists. The Commission is an independent unit within the Judicial Branch.

(b) Membership

The Commission shall consist of the following members appointed by the Court of Appeals:

(1) one incumbent Circuit Court judge;

(2) one incumbent District Court judge;

(3) a full-time faculty member of the University of Baltimore School of Law who (A) is a member of the Maryland Bar in good standing and (B) is chosen from a list of at least three full-time faculty members nominated by the Dean of the University of Baltimore School of Law;

(4) a full-time faculty member of the University of Maryland School of Law who (A) is a member of the Maryland Bar in good standing and (B) is chosen from a list of at least three full-time faculty members nominated by the Dean of the University of

Maryland School of Law;

(5) one member of the Maryland Bar in good standing from each of the eight judicial circuits of the State, each member to be appointed from a list of at least three nominees, who need not be members of the Maryland State Bar Association, submitted by the Board of Governors of the Maryland State Bar Association; and

(6) one additional member of the Maryland Bar in good standing, chosen from the State at large.

(c) Terms

(1) Generally

Subject to subsection (c)(3) of this Rule:

(A) the term of a judge is five years, but the judge shall be deemed to have resigned upon ceasing to be an incumbent judge of the court upon which the judge was serving at the time of appointment;

(B) the term of a law school faculty member is five years, but the faculty member shall be deemed to have resigned upon ceasing to be a full-time faculty member of the law school where the faculty member was employed at the time of appointment; and

(C) the term of each of the other members is five years.

(2) Reappointment

A member who serves for a full term or the unexpired term of a former member may be reappointed for one additional term of five years.

(3) Removal

The Court of Appeals may remove a member of the

Commission at any time.

(4) Commencement of Full Terms

The full terms shall commence on July 1.

(d) Chair; Vice Chair; Reporter

The Court of Appeals shall designate one member of the Commission as Chair and one member as Vice Chair. The Chair shall preside at meetings of the Commission and, with the assistance of the Reporter, generally supervise the work of the Commission. The Vice Chair shall perform the duties of the Chair in the absence of the Chair. The Court shall also appoint a Reporter to the Commission to serve at the pleasure of the Court. The Reporter shall be a member in good standing of the Maryland Bar.

(e) Staff; Consultants

The Commission may employ such professional and clerical staff as are authorized in the annual budget for the Judiciary. All personnel decisions with respect to the staff shall be in accordance with the judicial personnel policy approved by the State Court Administrator. The Commission also may consult with other persons to assist it in performing its duties under Rules 16-409 and 16-410.

(f) Meetings; Quorum

(1) Meetings

All meetings of the Commission shall be open to the public except as otherwise expressly allowed under the State Open Meetings Law (Code, General Provisions Article, §3-305). Subject

to reasonable time limits established by the Chair, persons in attendance shall be allowed to address the Commission on matters relevant to items on its agenda.

(2) Quorum

A majority of the incumbent members shall constitute a quorum for the transaction of business.

(g) Compensation; Expenses

Members shall serve without compensation but shall be reimbursed for necessary and reasonable expenses incurred in the performance of official duties for the Commission.

(h) Budget

The Commission shall prepare and submit to the Chief Judge of the Court of Appeals an annual budget as directed by the Chief Judge.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 7.4.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 400 - ATTORNEYS, OFFICERS OF COURT, AND OTHER PERSONS

ADD new Rule 16-409, as follows:

Rule 16-409. RECOGNITION OF SPECIALTIES

(a) In General

After investigating and considering conclusions reached by the supreme courts or other appropriate authorities in other states, by the American Bar Association, and by other national or international organizations that have considered the matter, and after soliciting and considering the views of the Maryland State Bar Association and attorneys and judges in Maryland, the Commission shall:

(1) develop objective criteria for determining which fields of law or law practice should be recognized as specialties for purposes of Rule 7.4 of the Maryland Lawyers' Rules of Professional Conduct, and

(2) applying those criteria, recommend to the Court of Appeals, from time to time, which fields of law or law practice should be recognized as specialties for those purposes.

(b) Development of Criteria

In developing its criteria, the Commission shall consider:

(1) whether and how the public interest would be served by a proposed criterion;

(2) whether there is sufficient interest manifested among members of the Maryland Bar to warrant designation of a particular field of law or law practice as a specialty;

(3) whether appropriate standards of proficiency can be established for the specialty field; and

(4) whether there exists or feasibly could be created one or more entities with sufficient ability and credibility to administer effectively and efficiently a program of certifying attorneys as competent to hold themselves out as specialists in the particular field of law or law practice in accordance with the appropriate standards of proficiency.

(c) Review by Court of Appeals

(1) Report; Comments

The Commission's recommendations shall be in the form of a written Report to the Court. Upon receipt, the Court shall post the Report on the Judiciary website, along with a Notice requesting written comment within a period and in a manner designated by the Court. Comments shall be sent to the Reporter of the Commission and, at the conclusion of the comment period, forwarded by the Reporter to the Clerk of the Court of Appeals.

(2) Hearing

At the conclusion of the comment period, the Court shall hold a public hearing on the Report and any timely filed written comments. Persons desiring to be heard shall notify the Clerk of the Court at least two days before the hearing. The Court may limit the time for oral presentations.

(3) Action by Court

The Court, by Administrative Order, may approve, reject, or amend and approve as amended the recommendations of the Commission. The Administrative Order shall be posted and maintained on the Judiciary website. On its own initiative or on written recommendation of the Commission, the Court may amend or rescind an Administrative Order.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 7.4.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 400 - ATTORNEYS, OFFICERS OF COURT, AND OTHER PERSONS

ADD new Rule 16-410, as follows:

Rule 16-410. ACCREDITATION OF CERTIFYING ENTITIES

(a) Generally

Upon or in anticipation of the approval of specialties by the Court of Appeals pursuant to Rule 16-409, and in conformance with the requirements and procedures in this Rule, the Commission may accredit entities the Commission finds qualified to certify attorneys as specialists in the specialties approved by the Court.

(b) Standards for Accreditation

In determining whether to accredit an entity as a certifying entity, the Commission shall be guided by the following:

(1) the nature, structure, governance, and financial integrity of the entity, including:

(A) whether the entity is a for-profit or not-for-profit organization; and

(B) the composition of the governing board and the principal officers of the entity, including whether and to what extent the board and the officers consist of attorneys who themselves have demonstrated expertise or extensive practice in

the specialty;

(2) whether the entity is accredited as a certifying entity in the particular specialty by the supreme court or other judicial authority of any state, by the American Bar Association, or by any other national or international organization that the Commission finds credible and knowledgeable in the relevant field of law or law practice;

(3) whether the entity has applied for accreditation by any authority or organization mentioned in subsection (b)(2) of this Rule and been denied accreditation;

(4) any evaluations of the entity by or on behalf of any authority that has accredited the entity as a certifying entity.

(5) the procedures, criteria, and requirements used by the entity in processing and deciding upon applications by attorneys for certification and the approximate cost of processing applications, with a view to assuring that (A) only attorneys who are truly proficient and have demonstrated expertise in the particular specialty will be certified by the entity, and (B) the process will not be so rigorous or expensive as to preclude attorneys who are truly qualified from being certified;

(6) whether the criteria for initial and renewed certification will include a requirement and process for assuring that the attorney is not merely knowledgeable generally in the specialty but is and will remain knowledgeable in all aspects of Maryland law and procedure applicable to the specialty;

Committee note: The Commission may consider an attorney's

participation in continuing education in the field of specialty offered by sections or committees of the Maryland State Bar Association, the University of Maryland School of Law School, the University of Baltimore Law School, and other organizations of attorneys found credible by the Commission as satisfying this requirement.

(7) whether a certification by the entity is for a fixed period and, if so (A) the length of that period, (B) the procedures, criteria, requirements, and cost for renewing the certification, and (C) whether a certification can be terminated by the entity for good cause and, if so, what the entity considers to be good cause;

(8) the number of attorneys that have been certified by the entity and the number of applications for certification that have been rejected by the entity in the past five years; and

(9) any other criteria that the Commission finds relevant.

(c) Procedure

(1) Report

The Commission's determination to accredit an entity as a certifying entity in a specialty approved by the Court of Appeals shall be in the form of a written Report to the Court of Appeals. Upon receipt, the Court shall post the Report on the Judiciary website, along with a Notice requesting written comment within a period designated by the Court. Comments shall be sent to the Reporter of the Commission and, at the conclusion of the comment period, forwarded by the Reporter to the Clerk of the Court of Appeals.

(2) Hearing

At the conclusion of the comment period, the Court shall hold a public hearing on the Report. Persons desiring to be heard shall notify the Clerk of the Court at least two days before the hearing. The Court may limit the time for oral presentations.

(3) Action by Court

Proposed accreditations submitted by the Commission are not subject to approval by the Court, but the Court may reject a proposed accreditation or direct that the Commission give further consideration to it. If the Court does not reject or direct further consideration of a proposed accreditation, the accreditation shall become effective as determined by the Commission. Failure to reject or direct further consideration may not be deemed to be an approval by the Court.

(4) Monitoring of Performance; Withdrawal of Accreditation

The Commission shall monitor the performance of an accredited entity with respect to (A) its continued reliability and credibility as a certifying entity in the particular specialty, and (B) how well it serves the needs of the members of the Maryland Bar and the public at large. The Commission, after public notice and conducting a public hearing, may withdraw an accreditation for good cause.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 7.4.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 500 - FAMILY MAGISTRATES

AMEND Rule 1-501 to change the title of the Rule and to conform it to Chapter ___ , Laws of 2015 (HB 346), as follows:

Rule 1-501. ~~FAMILY~~ MAGISTRATE

(a) Designation

~~The Administrative Judge of a county shall designate as "family magistrates" for that county the masters for juvenile causes and masters in chancery assigned to hear actions and matters in the categories listed in Rule 16-204 (b). An order designating a family magistrate shall state whether the individual is to perform the functions of a master in chancery, a master for juvenile causes, or both.~~

An individual who, as of September 30, 2015, was serving as a master or family magistrate shall be designated a magistrate on October 1, 2015. The powers, duties, salary, benefits, and pension of the individual are not affected by the individual's designation as a magistrate. In the discretion of the appointing court, a magistrate assigned to hear juvenile or family law matters may be referred to as a family magistrate.

Committee note: A descriptive title, such as family magistrate, may be used to indicate the subject matter area to which the magistrate is assigned.

~~(b) Effect of Designation~~

~~The powers, duties, salary, benefits, and pension of a master are not affected by the individual's designation as a family magistrate. A master serving as a family magistrate shall comply with Rule 16-814, Maryland Code of Conduct for Judicial Appointees, and is required to file a financial disclosure statement in accordance with Rule 16-816.~~

~~(c)~~ (b) Rules of Construction

Rules and statutes in effect as of September 30, 2015 that refer to a master in chancery, master for juvenile causes, family magistrate, or master apply to a ~~family~~ magistrate, as appropriate. Statutes and provisions in the Constitution of Maryland in effect as of September 30, 2015 that refer to a magistrate shall not be construed as referring to a ~~family~~ magistrate within the meaning of this Rule.

~~Cross reference: For references to "master" see Code, Business, Occupations & Professions Article, §10-603; Code, Courts Article, §§2-102, 2-501, 3-8A-04, 3-807, 3-1802; Code, Family Law Article, §1-203; Code, Land Use Article, §4-402; Code, State Government Article, §19-102; Code, State Personnel and Pensions Article, §§21-307, 21-309, 23-201, 27-201, 27-304, and 27-402; and Rules 1-325, 2-504.1, 2-510, 2-541, 2-603, 9-208, 9-209, 11-110, 11-111, 11-114, 11-115, 14-207.1, 15-206, 15-207, 16-202, 16-306, 16-814, 16-816, and 17-206. For references to "magistrate," see Maryland Constitution, §41-I; Code, Courts Article, §2-607; Code, Criminal Procedure Article, §9-103, Code, Health-General Article, §§10-1301 and 10-1303; Code, Natural Resources Article, §10-1201; and Code, State Government Article, §§16-104 and 16-105.~~

Source: This Rule is new.

REPORTER'S NOTE

At the request of the Judicial Cabinet, Rule 1-501 was adopted by Rules Order of March 2, 2015, effective March 15, 2015. The Rule retitled certain masters as family magistrates

but, in accordance with the intent of the Cabinet, left undisturbed the remaining masters who did not handle family matters. Chapter ___ (HB 346) of the 2015 session of the General Assembly was enacted to "alter[ ]" all references from master to magistrate for circuit court and juvenile court masters. Proposed amendments to Rule 1-501 are intended to conform the Rule to Chapter ___.

The Rules Committee also proposes amendments to Rules 1-325, 2-504.1, 2-510, 2-541, 2-603, 9-208, 9-209, 11-110, 11-111, 11-114, 11-115, 14-207.1, 15-206, 15-207, 16-101, 16-202, 16-204, 16-306, 16-813, 16-814, 16-816, 17-101, and 17-206 and Rule 1.12 of the Maryland Lawyers' Rules of Professional Conduct to conform them to Chapter ____.

The amendments to Rule 1-501 and other Rules are not intended to change the law recognizing the limited authority of masters through altering the references to them to "magistrates." A substantial body of law governing masters in the Judiciary has developed under the Constitution of Maryland, common law, statutes, and Rules. A "master is a ministerial officer, and not a judicial officer.... [U]nder the Maryland Constitution a master is entrusted with no part of the judicial power of this State."). *Matter of Anderson,* 272 Md. 85, 106 (1974). A master's recommendations are not binding on the parties unless and until the trial judge adopts them. *In re Kaela C.*, 394 Md. 432, 473 (2006). A "master's status as an 'officer of the court' does not confer judicial powers upon the master, such as the authority to hold someone in contempt, to sign a warrant, or to order a police officer to make an arrest." *State v. Wiegmann*, 350 Md. 585, 594-95 (1998). Accordingly, "[b]ecause a master is not a judicial officer, and performs only ministerial functions, a construction of the rules that recognizes an implied power to order an arrest would run afoul of constitutional precepts." *Id.* at 595 (1998). Furthermore, masters should not wear robes or sit on the bench in a judge's courtroom, lest there be confusion on the limited authority of the master. *Id.* at 599-600. A master is an "officer of the court," but not a "judicial officer." *Id.* at 594-95.

The term "magistrate" has several different uses in other judicial systems across the country. As the term "magistrate" is used in the Maryland Rules, however, those foreign examples are not instructive.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-325 to change the term "master" to "magistrate," as follows:

Rule 1-325. WAIVER OF COSTS DUE TO INDIGENCE - GENERALLY

(a) Scope

This Rule applies only to original civil actions in a circuit court or the District Court.

Committee note: Original civil actions in a circuit court include actions governed by the Rules in Title 7, Chapter 200, 300, and 400.

(b) Definition

In this Rule, "prepaid costs" means costs that, unless prepayment is waived pursuant to this Rule, must be paid prior to the clerk's docketing or accepting for docketing a pleading or paper or taking other requested action.

Committee note: "Prepaid costs" may include a fee to file an initial complaint or a motion to reopen a case, a fee for entry of the appearance of an attorney, and any prepaid compensation, fee, or expense of a ~~master,~~ master or examiner~~, or family magistrate~~. See Rules 1-501, 2-541, 2-542, 2-603, and 9-208.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 1-501.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-504.1 to change the term "master" to "magistrate," as follows:

Rule 2-504.1. SCHEDULING CONFERENCE

. . .

(c) Order for Scheduling Conference

An order setting a scheduling conference may require that the parties, at least ten days before the conference:

(1) complete sufficient initial discovery to enable them to participate in the conference meaningfully and in good faith and to make decisions regarding (A) settlement, (B) consideration of available and appropriate forms of alternative dispute resolution, (C) limitation of issues, (D) stipulations, (E) any issues relating to preserving discoverable information, (F) any issues relating to discovery of electronically stored information, including the form in which it is to be produced, (G) any issues relating to claims of privilege or of protection, and (H) other matters that may be considered at the conference; and

(2) confer in person or by telephone and attempt to reach agreement or narrow the areas of disagreement regarding the matters that may be considered at the conference and determine

whether the action or any issues in the action are suitable for referral to an alternative dispute resolution in accordance with Title 17, Chapters 100 and 200 of these rules.

Committee note: Examples of matters that may be considered at a scheduling conference when discovery of electronically stored information is expected, include:

(1) its identification and retention;

(2) the form of production, such as PDF, TIFF, or JPEG files, or native form, for example, Microsoft Word, Excel, etc.;

(3) the manner of production, such as CD-ROM;

(4) any production of indices;

(5) any electronic numbering of documents and information;

(6) apportionment of costs for production of electronically stored information not reasonably accessible because of undue burden or cost;

(7) a process by which the parties may assert claims of privilege or of protection after production; and

(8) whether the parties agree to refer discovery disputes to a ~~master~~ magistrate or Special ~~Master~~ Magistrate.

The parties may also need to address any request for metadata, for example, information embedded in an electronic data file that describes how, when, and by whom it was created, received, accessed, or modified or how it is formatted. For a discussion of metadata and factors to consider in determining the extent to which metadata should be preserved and produced in a particular case, *see*, The Sedona Conference, *The Sedona Principles: Best Practices Recommendations and Principles for Addressing Electronic Document Production*, (2d ed. 2007), Principle 12 and related Comment.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 1-501.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-510 to change the term "master" to "magistrate," as follows:

Rule 2-510. SUBPOENAS

(a) Required, Permissive, and Non-permissive Use

(1) A subpoena is required:

(A) to compel the person to whom it is directed to attend, give testimony, and produce designated documents, electronically stored information, or tangible things at a court proceeding, including proceedings before a ~~master~~ magistrate, auditor, or examiner; and

(B) to compel a nonparty to attend, give testimony, and produce and permit inspection, copying, testing, or sampling of designated documents, electronically stored information, or tangible things at a deposition.

(2) A subpoena may be used to compel a party over whom the court has acquired jurisdiction to attend, give testimony, and produce and permit inspection, copying, testing, or sampling of designated documents, electronically stored information, or tangible things at a deposition.

(3) A subpoena may not be used for any other purpose. If the court, on motion of a party or on its own initiative, after

affording the alleged violator an opportunity for a hearing, finds that a person has used or attempted to use a subpoena or a copy or reproduction of a subpoena form for a purpose other than one allowed under this Rule, the court may impose an appropriate sanction, including an award of a reasonable attorney's fee and costs, the exclusion of evidence obtained as a result of the violation, and reimbursement of any person inconvenienced for time and expenses incurred.

. . .

(e) Objection to Subpoena for Court Proceedings

On motion of a person served with a subpoena to attend a court proceeding (including a proceeding before a ~~master~~ magistrate, auditor, or examiner) or a person named or depicted in an item specified in the subpoena filed promptly and, whenever practicable, at or before the time specified in the subpoena for compliance, the court may enter an order that justice requires to protect the person from annoyance, embarrassment, oppression, or undue burden or cost, including one or more of the following:

(1) that the subpoena be quashed or modified;

(2) that the subpoena be complied with only at some designated time or place other than that stated in the subpoena;

(3) that documents, electronically stored information, or tangible things designated in the subpoena be produced only upon the advancement by the party serving the subpoena of the reasonable costs of producing them; or

(4) that documents, electronically stored information, or

tangible things designated in the subpoena be delivered to the court at or before the proceeding or before the time when they are to be offered in evidence, subject to further order of court to permit inspection of them.

A motion filed under this section based on a claim that information is privileged or subject to protection as work product materials shall be supported by a description of the nature of each item that is sufficient to enable the demanding party to evaluate the claim.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 1-501.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-541 to change the term "master" to "magistrate" and to delete the second sentence of subsection (a)(1) as follows:

Rule 2-541. ~~MASTERS~~ MAGISTRATES

(a) Appointment - Compensation

(1) Standing ~~Master~~ Magistrate

A majority of the judges of the circuit court of a county may appoint a full time or part time standing ~~master~~ magistrate and shall prescribe the compensation, fees, and costs of the ~~master~~ magistrate. ~~No person may serve as a standing master upon reaching the age of 70 years.~~

(2) Special ~~Master~~ Magistrate

The court may appoint a special ~~master~~ magistrate for a particular action and shall prescribe the compensation, fees, and costs of the special ~~master~~ magistrate and assess them among the parties. The order of appointment may specify or limit the powers of a special ~~master~~ magistrate and may contain special directions.

(3) Officer of the Court

A ~~master~~ magistrate serves at the pleasure of the appointing court and is an officer of the court in which the

referred matter is pending.

(b) Referral of Cases

(1) Referral of domestic relations matters to a ~~master~~ magistrate shall be in accordance with Rule 9-208 and shall proceed only in accordance with that Rule.

(2) On motion of any party or on its own initiative, the court, by order, may refer to a ~~master~~ magistrate any other matter or issue not triable of right before a jury.

(c) Powers

Subject to the provisions of any order of reference, a ~~master~~ magistrate has the power to regulate all proceedings in the hearing, including the powers to:

(1) Direct the issuance of a subpoena to compel the attendance of witnesses and the production of documents or other tangible things;

(2) Administer oaths to witnesses;

(3) Rule upon the admissibility of evidence;

(4) Examine witnesses;

(5) Convene, continue, and adjourn the hearing, as required;

(6) Recommend contempt proceedings or other sanctions to the court; and

(7) Recommend findings of fact and conclusions of law.

(d) Hearing

(1) Notice

The ~~master~~ magistrate shall fix the time and place for the hearing and shall send written notice to all parties.

(2) Attendance of Witnesses

A party may procure by subpoena the attendance of witnesses and the production of documents or other tangible things at the hearing.

(3) Record

All proceedings before a ~~master~~ magistrate shall be recorded either stenographically or by an electronic recording device, unless the making of a record is waived in writing by all parties. A waiver of the making of a record is also a waiver of the right to file any exceptions that would require review of the record for their determination.

(e) Report

(1) When Filed

The ~~master~~ magistrate shall notify each party of the proposed recommendation, either orally at the conclusion of the hearing or thereafter by written notice served pursuant to Rule 1-321. Within five days from an oral notice or from service of a written notice, a party intending to file exceptions shall file a notice of intent to do so and within that time shall deliver a copy to the ~~master~~ magistrate. If the court has directed the ~~master~~ magistrate to file a report or if a notice of intent to file exceptions is filed, the ~~master~~ magistrate shall file a written report with the recommendation. Otherwise, only the recommendation need be filed. The report shall be filed within 30 days after the notice of intent to file exceptions is filed or within such other time as the court directs. The failure to file

and deliver a timely notice is a waiver of the right to file exceptions.

(2) Contents

Unless otherwise ordered, the report shall include findings of fact and conclusions of law and a recommendation in the form of a proposed order or judgment, and shall be accompanied by the original exhibits. A transcript of the proceedings before the ~~master~~ magistrate need not be prepared prior to the report unless the ~~master~~ magistrate directs, but, if prepared, shall be filed with the report.

(3) Service

The ~~master~~ magistrate shall serve a copy of the recommendation and any written report on each party pursuant to Rule 1-321.

(f) Entry of Order

(1) The court shall not direct the entry of an order or judgment based upon the ~~master's~~ magistrate's recommendations until the expiration of the time for filing exceptions, and, if exceptions are timely filed, until the court rules on the exceptions.

(2) If exceptions are not timely filed, the court may direct the entry of the order or judgment as recommended by the ~~master~~ magistrate.

(g) Exceptions

(1) How Taken

Within ten days after the filing of the ~~master's~~

magistrate's written report, a party may file exceptions with the clerk. Within that period or within three days after service of the first exceptions, whichever is later, any other party may file exceptions. Exceptions shall be in writing and shall set forth the asserted error with particularity. Any matter not specifically set forth in the exceptions is waived unless the court finds that justice requires otherwise.

(2) Transcript

Unless a transcript has already been filed, a party who has filed exceptions shall cause to be prepared and transmitted to the court a transcript of so much of the testimony as is necessary to rule on the exceptions. The transcript shall be ordered at the time the exceptions are filed, and the transcript shall be filed within 30 days thereafter or within such longer time, not exceeding 60 days after the exceptions are filed, as the ~~master~~ magistrate may allow. The court may further extend the time for the filing of the transcript for good cause shown. The excepting party shall serve a copy of the transcript on the other party. Instead of a transcript, the parties may agree to a statement of facts or the court by order may accept an electronic recording of the proceedings as the transcript. The court may dismiss the exceptions of a party who has not complied with this section.

(h) Hearing on Exceptions

The court may decide exceptions without a hearing, unless a hearing is requested with the exceptions or by an opposing

party within five days after service of the exceptions. The exceptions shall be decided on the evidence presented to the ~~master~~ magistrate unless: (1) the excepting party sets forth with particularity the additional evidence to be offered and the reasons why the evidence was not offered before the ~~master~~ magistrate, and (2) the court determines that the additional evidence should be considered. If additional evidence is to be considered, the court may remand the matter to the ~~master~~ magistrate to hear the additional evidence and to make appropriate findings or conclusions, or the court may hear and consider the additional evidence or conduct a de novo hearing.

(i) Costs

Payment of the compensation, fees, and costs of a ~~master~~ magistrate may be compelled by order of court. The costs of any transcript may be included in the costs of the action and assessed among the parties as the court may direct.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 596 b.
Section (b) is derived in part from former Rule 596 c.
Section (c) is derived in part from former Rule 596 d. Subsections (6) and (7) are new but are consistent with former Rule 596 f 1 and g 2.
Section (d) is in part new and in part derived from former Rule 596 e.
Section (e) is derived from former Rule 596 f.
Section (f) is new.
Section (g) is derived from former Rule 596 h 1, 2, 3, 4 and 7 except that subsection 3 (b) of section h of the former Rule is replaced.
Section (h) is derived from former Rule 596 h 5 and 6.
Section (i) is derived from former Rule 596 h 8 and i.

REPORTER'S NOTE

See the Reporter's note to Rule 1-501. Additionally, in subsection (a)(1), the provision that no person may serve as a standing master upon reaching the age of 70 years is proposed to be deleted.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 600 - JUDGMENT

AMEND Rule 2-603 to change the term "master" to "magistrate," as follows:

Rule 2-603. COSTS

. . .

(e) Waiver of Costs in Domestic Relations Cases - Indigency

In an action under Title 9, Chapter 200 of these Rules, the court shall grant a final waiver of open costs, including any compensation, fees, and costs of a ~~master~~ magistrate or examiner if the court finds that the party against whom the costs are assessed is unable to pay them by reason of poverty. The party may seek the waiver at the conclusion of the case by filing a request for a final waiver of open costs, together with (1) an affidavit substantially in the form prescribed by Rule 1-325 (e)(1)(A), or (2) if the party was granted a waiver of prepayment of prepaid costs by court order pursuant to Rule 1-325 (e) and remains unable to pay the costs, an affidavit that recites the existence of the prior waiver and the party's continued inability to pay.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 1-501.

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

CHAPTER 200 - DIVORCE, ANNULMENT AND ALIMONY

AMEND Rule 9-208 to change the term "master" to "magistrate," as follows:

Rule 9-208. REFERRAL OF MATTERS TO ~~MASTERS~~ MAGISTRATES

(a) Referral

(1) As of Course

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

(A) uncontested divorce, annulment, or alimony;

(B) alimony pendente lite;

(C) child support pendente lite;

(D) support of dependents;

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

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

(G) subject to Rule 9-205 as to child access disputes, constructive civil contempt by reason of noncompliance with an

order or judgment relating to custody of or visitation with a minor child, the payment of alimony or support, or the possession or use of the family home or family-use personal property, following service of a show cause order upon the person alleged to be in contempt;

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

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

(J) stay of an earnings withholding order; and

(K) such other matters arising under this Chapter and set forth in the court's case management plan filed pursuant to Rule 16-202 b.

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

(2) By Order on Agreement of the Parties

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

(b) Powers

Subject to the provisions of an order referring a matter or issue to a ~~master~~ magistrate, the ~~master~~ magistrate has the power to regulate all proceedings in the hearing, including the power

to:

(1) direct the issuance of a subpoena to compel the attendance of witnesses and the production of documents or other tangible things;

(2) administer oaths to witnesses;

(3) rule on the admissibility of evidence;

(4) examine witnesses;

(5) convene, continue, and adjourn the hearing, as required;

(6) recommend contempt proceedings or other sanctions to the court; and

(7) recommend findings of fact and conclusions of law.

(c) Hearing

(1) Notice

A written notice of the time and place of the hearing shall be sent to all parties.

(2) Attendance of Witnesses

A party may procure by subpoena the attendance of witnesses and the production of documents or other tangible things at the hearing.

(3) Record

All proceedings before a ~~master~~ magistrate shall be recorded either stenographically or electronically, unless the making of the record is waived in writing by all parties. A waiver of the making of a record is also a waiver of the right to file exceptions that would require review of the record for their determination.

(d) Contempt Proceedings; Referral for De Novo Hearing

If, at any time during a hearing on a party's alleged constructive civil contempt, the ~~master~~ magistrate concludes that there are reasonable grounds to believe that the party is in contempt and that incarceration may be an appropriate sanction, the ~~master~~ magistrate shall (1) set a de novo hearing before a judge of the circuit court, (2) cause the alleged contemnor to be served with a summons to that hearing, and (3) terminate the ~~master's~~ magistrate's hearing without making a recommendation. If the alleged contemnor is not represented by an attorney, the date of the hearing before the judge shall be at least 20 days after the date of the ~~master's~~ magistrate's hearing and, before the ~~master~~ magistrate terminates the ~~master's~~ magistrate's hearing, the ~~master~~ magistrate shall advise the alleged contemnor on the record of the contents of the notice set forth in Rule 15-206 (c)(2).

(e) Findings and Recommendations

(1) Generally

Except as otherwise provided in section (d) of this Rule, the ~~master~~ magistrate shall prepare written recommendations, which shall include a brief statement of the ~~master's~~ magistrate's findings and shall be accompanied by a proposed order. The ~~master~~ magistrate shall notify each party of the recommendations, either on the record at the conclusion of the hearing or by written notice served pursuant to Rule 1-321. In a matter referred pursuant to subsection (a)(1) of this Rule, the written notice

shall be given within ten days after the conclusion of the hearing. In a matter referred pursuant to subsection (a)(2) of this Rule, the written notice shall be given within 30 days after the conclusion of the hearing. Promptly after notifying the parties, the ~~master~~ magistrate shall file the recommendations and proposed order with the court.

(2) Supplementary Report

The ~~master~~ magistrate may issue a supplementary report and recommendations on the ~~master's~~ magistrate's own initiative before the court enters an order or judgment. A party may file exceptions to new matters contained in the supplementary report and recommendations in accordance with section (f) of this Rule.

(f) Exceptions

Within ten days after recommendations are placed on the record or served pursuant to section (e) of this Rule, a party may file exceptions with the clerk. Within that period or within ten days after service of the first exceptions, whichever is later, any other party may file exceptions. Exceptions shall be in writing and shall set forth the asserted error with particularity. Any matter not specifically set forth in the exceptions is waived unless the court finds that justice requires otherwise.

(g) Requirements for Excepting Party

At the time the exceptions are filed, the excepting party shall do one of the following: (1) order a transcript of so much of the testimony as is necessary to rule on the exceptions, make an agreement for payment to ensure preparation of the transcript,

and file a certificate of compliance stating that the transcript has been ordered and the agreement has been made; (2) file a certification that no transcript is necessary to rule on the exceptions; (3) file an agreed statement of facts in lieu of the transcript; or (4) file an affidavit of indigency and motion requesting that the court accept an electronic recording of the proceedings as the transcript. Within ten days after the entry of an order denying a motion under subsection (g)(4) of this section, the excepting party shall comply with subsection (g)(1). The transcript shall be filed within 30 days after compliance with subsection (g)(1) or within such longer time, not exceeding 60 days after the exceptions are filed, as the ~~master~~ magistrate may allow. For good cause shown, the court may shorten or extend the time for the filing of the transcript. The excepting party shall serve a copy of the transcript on the other party. The court may dismiss the exceptions of a party who has not complied with this section.

Cross reference: For the shortening or extension of time requirements, see Rule 1-204.

(h) Entry of Orders

(1) In General

Except as provided in subsections (2) and (3) of this section,

(A) the court shall not direct the entry of an order or judgment based upon the ~~master's~~ magistrate's recommendations until the expiration of the time for filing exceptions, and, if

exceptions are timely filed, until the court rules on the exceptions; and

(B) if exceptions are not timely filed, the court may direct the entry of the order or judgment as recommended by the ~~master~~ magistrate.

(2) Immediate Orders

This subsection does not apply to the entry of orders in contempt proceedings. If a ~~master~~ magistrate finds that extraordinary circumstances exist and recommends that an order be entered immediately, the court shall review the file and any exhibits and the ~~master's~~ magistrate's findings and recommendations and shall afford the parties an opportunity for oral argument. The court may accept, reject, or modify the ~~master's~~ magistrate's recommendations and issue an immediate order. An order entered under this subsection remains subject to a later determination by the court on exceptions.

(3) Contempt Orders

(A) On Recommendation by the ~~Master~~ Magistrate

On the recommendation by the ~~master~~ magistrate that an individual be found in contempt, the court may hold a hearing and direct the entry of an order at any time. The order may not include a sanction of incarceration.

(B) Following a De Novo Hearing

Upon a referral from the ~~master~~ magistrate pursuant to section (d) of this Rule, the court shall hold a de novo hearing and enter any appropriate order.

(i) Hearing on Exceptions

(1) Generally

The court may decide exceptions without a hearing, unless a request for a hearing is filed with the exceptions or by an opposing party within ten days after service of the exceptions. The exceptions shall be decided on the evidence presented to the ~~master~~ magistrate unless: (A) the excepting party sets forth with particularity the additional evidence to be offered and the reasons why the evidence was not offered before the ~~master~~ magistrate, and (B) the court determines that the additional evidence should be considered. If additional evidence is to be considered, the court may remand the matter to the ~~master~~ magistrate to hear and consider the additional evidence or conduct a de novo hearing.

(2) When Hearing to be Held

A hearing on exceptions, if timely requested, shall be held within 60 days after the filing of the exceptions unless the parties otherwise agree in writing. If a transcript cannot be completed in time for the scheduled hearing and the parties cannot agree to an extension of time or to a statement of facts, the court may use the electronic recording in lieu of the transcript at the hearing or continue the hearing until the transcript is completed.

(j) Costs

The court, by order, may assess among the parties the compensation, fees, and costs of the ~~master~~ magistrate and of any

transcript.

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

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

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

REPORTER'S NOTE

See the Reporter's note to Rule 1-501.

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

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

AMEND Rule 9-209 to change the term "master" to "magistrate," as follows:

Rule 9-209. TESTIMONY

A judgment granting a divorce, an annulment, or alimony may be entered only upon testimony in person before an examiner or ~~master~~ magistrate or in open court. In an uncontested case, testimony shall be taken before an examiner or ~~master~~ magistrate unless the court directs otherwise. Testimony of a corroborating witness shall be oral unless otherwise ordered by the court for good cause.

Cross reference: For the requirement of oral testimony by the plaintiff in a divorce action, see Code, Family Law Article, §1-203 (c). For the requirement of corroboration, see Code, Family Law Article, §7-101 (b). For default procedures, see Rule 2-613.

Source: This Rule is derived from former Rules S73 and S75 a.

REPORTER'S NOTE

See the Reporter's note to Rule 1-501.

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

AMEND Rule 11-110 to change the term "master" to "magistrate," as follows:

Rule 11-110. HEARINGS - GENERALLY

a. Before ~~Master~~ Magistrate or Judge - Proceedings Recorded

Hearings shall be conducted before a ~~master~~ magistrate or a judge without a jury. Proceedings shall be recorded by stenographic notes or by electronic, mechanical or other appropriate means.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 1-501.

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

AMEND Rule 11-111 to change the term "master" to "magistrate," as follows:

Rule 11-111. MASTERS

a. Authority

1. Detention or Shelter Care

A ~~master~~ magistrate is authorized to order detention or shelter care in accordance with Rule 11-112 (Detention or Shelter Care) subject to an immediate review by a judge if requested by any party.

2. Other Matters

A ~~master~~ magistrate is authorized to hear any cases and matters assigned to him by the court, except a hearing on a waiver petition. The findings, conclusions and recommendations of a ~~master~~ magistrate do not constitute orders or final action of the court.

b. Report to the Court

Within ten days following the conclusion of a disposition hearing by a ~~master~~ magistrate, he shall transmit to the judge the entire file in the case, together with a written report of his proposed findings of fact, conclusions of law, recommendations and proposed orders with respect to adjudication and disposition. A copy of his report and proposed order shall

be served upon each party as provided by Rule 1-321.

c. Review by Court if Exceptions Filed

Any party may file exceptions to the ~~master's~~ magistrate's proposed findings, conclusions, recommendations or proposed orders. Exceptions shall be in writing, filed with the clerk within five days after the ~~master's~~ magistrate's report is served upon the party, and shall specify those items to which the party excepts, and whether the hearing is to be de novo or on the record.

Upon the filing of exceptions, a prompt hearing shall be scheduled on the exceptions. An excepting party other than the State may elect a hearing de novo or a hearing on the record. If the State is the excepting party, the hearing shall be on the record, supplemented by such additional evidence as the judge considers relevant and to which the parties raise no objection. In either case the hearing shall be limited to those matters to which exceptions have been taken.

d. Review by Court in Absence of Exceptions

In the absence of timely and proper exceptions, the ~~master's~~ magistrate's proposed findings of fact, conclusions of law and recommendations may be adopted by the court and the proposed or other appropriate orders may be entered based on them. The court may remand the case to the ~~master~~ magistrate for further hearing, or may, on its own motion, schedule and conduct a further hearing supplemented by such additional evidence as the court considers relevant and to which the parties raise no

objection. Action by the court under this section shall be taken within two days after the expiration of the time for filing exceptions.

Source: This Rule is former Rule 911.

REPORTER'S NOTE

See the Reporter's note to Rule 1-501.

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

AMEND Rule 11-114 to change the term "master" to "magistrate," as follows:

Rule 11-114. ADJUDICATORY HEARING

. . .

f. Adjudication - Finding - Adjudicatory Order

If the hearing is conducted by a judge, at its conclusion, he shall announce and dictate to the court stenographer or reporter, or prepare and file with the clerk, an adjudicatory order stating the grounds upon which he bases his adjudication. If the hearing is conducted by a ~~master~~ magistrate, the procedures set forth in Rule 11-111 (~~Masters~~ Magistrates) shall be followed.

Source: This Rule is former Rule 914.

REPORTER'S NOTE

See the Reporter's note to Rule 1-501.

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

AMEND Rule 11-115 to change the term "master" to "magistrate," as follows:

Rule 11-115. DISPOSITION HEARING

. . .

b. Disposition - Judge or ~~Master~~ Magistrate

The disposition made by the court shall be in accordance with Section 3-820 (b) of the Courts Article. If the disposition hearing is conducted by a judge, and his order includes placement of the child outside the home, the judge shall announce in open court and shall prepare and file with the clerk, a statement of the reasons for the placement. If the hearing is conducted by a ~~master~~ magistrate, the procedures of Rule 11-111 shall be followed. In the interest of justice, the judge or ~~master~~ magistrate may decline to require strict application of the rules in Title 5, except those relating to the competency of witnesses. A commitment recommended by a master is subject to approval by the court in accordance with ule 11-111, but may be implemented in advance of court approval.

. . .

d. Commitment to Department of Social Services

In cases in which a child is committed to a local department of social services for placement outside the child's

home, the court, within 18 months after the original placement and periodically thereafter at intervals not greater than 18 months, shall conduct a review hearing to determine whether and under what circumstances the child's commitment to the local department of social services should continue. Considerations pertinent to the determination include whether the child should (1) be returned home, (2) be continued in foster care for a specified period, (3) be placed for adoption, or (4) because of the child's special needs or circumstances, be continued in foster care on a permanent or long-term basis. The hearing shall be conducted as prescribed in Rule 11-110 or, if conducted by a ~~master~~ magistrate, as prescribed in Rule 11-111, except that the child's presence shall not be required if presence at the hearing is likely to cause serious physical, mental, or emotional harm to the child.

Source: This Rule is former Rule 915.

REPORTER'S NOTE

See the Reporter's note to Rule 1-501.

MARYLAND RULES OF PROCEDURE

TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-207.1 to change the term "master" to "magistrate," as follows:

Rule 14-207.1. COURT SCREENING

. . .

(c) Special ~~Masters~~ Magistrates or Examiners

The court may designate one or more qualified Maryland lawyers to serve as a part-time special ~~master~~ magistrate or examiner to screen pleadings and papers under section (a) of this Rule, conduct proceedings under section (b) of this Rule, and make appropriate recommendations to the court. Subject to section (d) of this Rule, the costs and expenses of the special ~~master~~ magistrate or examiner may be assessed against one or more of the parties pursuant to Code, Courts Article, §2-102 (c), Rule 2-541 (i), or Rule 2-542 (i). With his or her consent, the special ~~master~~ magistrate or examiner may serve on a pro bono basis.

(d) Assessment of Costs, Expenses, and Attorney's Fees

The costs, expenses, and attorney's fees of any proceeding under this Rule, including any costs or expense of a special ~~master~~ magistrate or examiner under section (c) of this Rule, shall not be assessed against the borrower or record owner either

directly or as an expense of sale, unless the affidavit in question was filed by or on behalf of the borrower or record owner.

Committee note: The exercise of the authority granted in this Rule is discretionary with the court. Nothing in this Rule precludes the court from using its own personnel for these purposes.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 1-501.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 200 - CONTEMPT

AMEND Rule 15-206 to change the term "master" to "magistrate," as follows:

Rule 15-206. CONSTRUCTIVE CIVIL CONTEMPT

. . .

(c) Content of Order or Petition

. . .

(2) Unless the court finds that a petition for contempt is frivolous on its face, the court shall enter an order providing for (i) a prehearing conference, or (ii) a hearing, or (iii) both. The scheduled hearing date shall allow a reasonable time for the preparation of a defense and may not be less than 20 days after the prehearing conference. An order issued on a petition or on the court's own initiative shall state:

(A) the time within which any answer by the alleged contemnor shall be filed, which, absent good cause, may not be less than ten days after service of the order;

(B) the time and place at which the alleged contemnor shall appear in person for (i) a prehearing conference, or (ii) a hearing, or (iii) both and, if a hearing is scheduled, whether it is before a ~~master~~ magistrate pursuant to Rule 9-208 (a)(1)(G) or before a judge; and

(C) if incarceration to compel compliance with the court's order is sought, a notice to the alleged contemnor in the following form:

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 1-501.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 200 - CONTEMPT

AMEND Rule 15-207 to change the term "master" to "magistrate," as follows:

Rule 15-207. CONSTRUCTIVE CONTEMPT; FURTHER PROCEEDINGS

. . .

(c) Hearing

(1) Contempt of Appellate Court

Where the alleged contemnor is charged with contempt of an appellate court, that court, in lieu of conducting the hearing itself, may designate a trial judge as a special ~~master~~ magistrate to take evidence and make recommended findings of fact and conclusions of law, subject to exception by any party and approval of the appellate court.

(2) Failure of Alleged Contemnor to Appear

If the alleged contemnor fails to appear personally at the time and place set by the court, the court may enter an order directing a sheriff or other peace officer to take custody of and bring the alleged contemnor before the court or judge designated in the order. If the alleged contemnor in a civil contempt proceeding fails to appear in person or by counsel at the time and place set by the court, the court may proceed ex parte.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 1-501.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 100 - COURT ADMINISTRATIVE STRUCTURE,

JUDICIAL DUTIES, ETC.

AMEND Rule 16-101 to change the term "master" to "magistrate" and to provide for the assignment of magistrates appointed on a circuit-wide basis, as follows:

Rule 16-101. ADMINISTRATIVE RESPONSIBILITY

. . .

c. Circuit Administrative Judge

1. Designation

In each judicial circuit there shall be a Circuit Administrative Judge, who shall be appointed by order and serve at the pleasure of the Chief Judge of the Court of Appeals. In the absence of any such appointment, the Chief Judge of the judicial circuit shall be the Circuit Administrative Judge.

2. Duties

Each Circuit Administrative Judge shall be generally responsible for the administration of the several courts within the judicial circuit, pursuant to these Rules and subject to the direction of the Chief Judge of the Court of Appeals. Each Circuit Administrative Judge shall also be responsible for the supervision of the County Administrative Judges within the judicial circuit and may perform any of the duties of a County Administrative Judge. The Circuit Administrative Judge shall also call a meeting of all

judges of the judicial circuit at least once every six months. In any circuit in which magistrates have been appointed on a circuit-wide basis, the Circuit Administrative Judge, after consulting with the county administrative judges in the circuit, may direct the assignment of those judges among the courts within the circuit as judicial business requires.

Cross reference: For more detailed provisions pertaining to the duties of Circuit Administrative Judges, see section (d) of Rule 4-344 (Sentencing - Review); Rule 16-103 (Assignment of Judges); and Rule 16-104 (Judicial Leave).

d. County Administrative Judge

1. Appointment

. . .

2. Duties

Subject to the provisions of this Chapter, the general supervision of the Chief Judge of the Court of Appeals, and the general supervision of the Circuit Administrative Judge, the County Administrative Judge is responsible for the administration of the circuit court, including:

. . .

(I) ordering the purchase of all equipment and supplies for (i) the court, and (ii) the ancillary services and officials of the court, including ~~masters~~ magistrates, auditors, examiners, court administrators, court reporters, jury commissioner, staff of the medical offices, and all other court personnel except personnel comprising the Clerk of Court's office;

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 1-501. Additionally a new sentence is added to subsection c. 2. to provide for the assignment of magistrates who have been appointed on a circuit-wide basis.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 200 - GENERAL PROVISIONS – CIRCUIT AND DISTRICT COURT

AMEND Rule 16-202 to change the term "master" to "magistrate," as follows:

Rule 16-202. ASSIGNMENT OF ACTIONS FOR TRIAL

a. Generally

The County Administrative Judge in each county shall supervise the assignment of actions for trial to achieve the efficient use of available judicial personnel and to bring pending actions to trial and dispose of them as expeditiously as feasible. Procedures instituted in this regard shall be designed to:

(1) eliminate docket calls in open court;

(2) insure the prompt disposition of motions and other preliminary matters;

(3) provide for the use of scheduling and pretrial conferences, and the establishment of a calendar for that purpose, when appropriate;

(4) provide for the prompt disposition of uncontested and ex parte matters, including references to an examiner ~~master~~ magistrate, when appropriate;

(5) provide for the disposition of actions under Rule 2-507;

(6) establish trial and motion calendars and other appropriate systems under which actions ready for trial will be assigned for

trial and tried, after proper notice to parties, without necessity of a request for assignment from any party; and

Cross reference: See Rule 16-201 (Motion Day - Calendar).

(7) establish systems of regular reports which will indicate the status of all pending actions with respect to their readiness for trial, the disposition of actions, and the availability of judges for trial work.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 1-501.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 200 - GENERAL PROVISIONS - CIRCUIT AND DISTRICT COURT

AMEND Rule 16-204 to change the term "master" to "magistrate," as follows:

Rule 16-204. FAMILY DIVISION AND SUPPORT SERVICES

(a) Family Division

. . .

(4) Responsibilities of the County Administrative Judge

The County Administrative Judge of the Circuit Court for each county having a family division shall:

(A) allocate sufficient available judicial resources to the family division so that actions are heard expeditiously in accordance with applicable law and the case management plan required by Rule 16-202 b;

Committee note: This Rule neither requires nor prohibits the assignment of one or more judges to hear family division cases on a full-time basis. Rather, it allows each County Administrative Judge the flexibility to determine how that county's judicial assignments are to be made so that actions in the family division are heard expeditiously. Additional matters for county-by-county determination include whether and to what extent ~~masters~~ magistrates, special ~~masters~~ magistrates, and examiners are used to assist in the resolution of family division cases. Nothing in this Rule affects the authority of a circuit court judge to act on any matter within the jurisdiction of the circuit court.

(B) provide in the case management plan required by Rule 16-202 b criteria for:

(i) requiring parties in an action assigned to the family

division to attend a scheduling conference in accordance with Rule 2-504.1 (a)(1) and

(ii) identifying those actions in the family division that are appropriate for assignment to a specific judge who shall be responsible for the entire case unless the County Administrative Judge subsequently decides to reassign it;

Cross reference: For rules concerning the referral of matters to ~~masters~~ magistrates as of course, see Rules 2-541 and 9-208.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 1-501.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 300 - CIRCUIT COURT CLERKS' OFFICES

AMEND Rule 16-306 to change the term "master" to "magistrate," as follows:

Rule 16-306. FILING AND REMOVAL OF PAPERS

. . .

d. Removal of Papers and Exhibits

1. Court Papers and Exhibits Filed with Pleadings

No paper or exhibit filed with a pleading in any case pending in or decided by the court shall be removed from the clerk's office, except by direction of a judge of the court, and except as authorized by rule or law; provided, however, that an attorney of record, upon signing a receipt, may withdraw any such paper or exhibit for presentation to the court, an auditor, or examiner-~~master~~ magistrate, and an auditor or examiner-~~master~~ magistrate, upon signing a receipt, may withdraw such paper or exhibit in connection with the performance of his official duties.

2. Exhibits Filed During Trial

All exhibits introduced in evidence or marked for identification during the trial of a case, and not filed as a part of or with the pleadings, shall be retained by the clerk of court or such other person as may be designated by the court. After either (i) the time for appeal has expired, or (ii) in the event of an

appeal, the mandate has been received by the clerk, the clerk shall send written notice to all counsel of record advising them that if no request to withdraw the exhibits is received within 30 days from the date of the notice, the exhibits will be disposed of. Unless a request is received by the clerk within 30 days from the date of notice, or unless the court within that period shall order otherwise, the clerk shall dispose of the exhibits in any manner, including destruction, as may be appropriate.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 1-501.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 800 - MISCELLANEOUS

AMEND Rule 16-813 to change the term "master" to "magistrate," as follows:

Rule 16-813. MARYLAND CODE OF JUDICIAL CONDUCT

. . .

Rule 2.13. ADMINISTRATIVE APPOINTMENTS

(a) In making administrative appointments, a judge:

(1) shall exercise the power of appointment impartially and on the basis of merit; and

(2) shall avoid nepotism, favoritism, and unnecessary appointments.

(b) A judge shall not approve compensation of appointees beyond the fair value of services rendered.

COMMENT

[1] Appointees of a judge include assigned counsel, officials such as commissioners, special ~~masters~~ magistrates, receivers, and guardians, and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by paragraph (a).

[2] Unless otherwise defined by law, nepotism is the appointment or hiring of any relative within the third degree of relationship to either the judge or the judge's spouse or domestic partner, or the spouse or domestic partner of such relative.

Source.-- This Rule is derived generally from Rule 2.13 of the 2007 ABA Code, although paragraph (b) of that Rule is not included. Comments [1] and [2] are derived from the ABA Comments to that Rule, although ABA Comment [3] is not included.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 1-501.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 800 - MISCELLANEOUS

AMEND Rule 16-814 to change the term "master" to "magistrate," as follows:

Rule 16-814. MARYLAND CODE OF CONDUCT FOR JUDICIAL APPOINTEES

. . .

DEFINITIONS

(a) Judicial Appointee

"Judicial appointee" means:

(1) an auditor, examiner, or ~~master~~ magistrate appointed by a court of this State; and

Cross reference: See Rules 2-541, 2-542, and 2-543.

(2) a District Court commissioner appointed pursuant to Article IV, §41G of the Maryland Constitution.

Source: With style changes this definition is derived from the former Code of Conduct for Judicial Appointees.

Cross reference: For the definition of "judicial appointee" for purposes of filing a financial disclosure statement, see Rule 16-816.

. . .

APPLICATION

(a) District Court Commissioners and Full-time Standing ~~Masters~~ Magistrates, Examiners, and Auditors

This Code applies in its entirety to District Court

Commissioners and full-time standing ~~masters~~ magistrates, examiners, and auditors.

(b) Part-time Standing ~~Masters~~ Magistrates, Examiners, and Auditors

Except as otherwise provided in a specific Rule, this Code applies in its entirety to part-time standing ~~masters~~ magistrates, examiners, and auditors.

(c) Special ~~Masters~~ Magistrates, Examiners, and Auditors

During the period of their serving in that capacity, special ~~masters~~ magistrates, examiners, and auditors are subject only to the Rules in Sections 1 and 2, to Rule 3.5, and to such of the Comments to those Rules as are relevant, given the limited duration of the service. Special ~~masters~~ magistrates, examiners, and auditors shall, however, on request of a party or the appointing authority, disclose any extra-official activity or interests covered by the other Rules in this Code that may be grounds for a motion to recuse under Rule 2.11.

Source: This provision is new.

Committee note: District Court Commissioners, despite the number of hours they may actually be on duty, are regarded as full-time judicial appointees. Auditors, examiners, and ~~masters~~ magistrates may fall into several categories.

Under Code, Courts Article, §2-102, all courts may appoint a ~~master~~ magistrate, examiner, or auditor in "a specific proceeding." Under Code, Courts Article, §2-501, the judges of the circuit courts have more general authority to employ ~~masters~~ magistrates, examiners, and auditors. That authority is extended and made more specific in Rules 2-541 (~~Masters~~ Magistrates), 2-542 (Examiners), and 2-543 (Auditors).

Rules 2-541, 2-542, and 2-543 create two categories of ~~masters~~ magistrates, examiners, and auditors - standing and special.

Standing ~~masters~~ magistrates, examiners, and auditors are employed to deal with whatever cases are referred to them on an on-going basis, but their employment by the court may be full-time or part-time. Special ~~masters~~ magistrates, examiners, and auditors are appointed "for a particular action," and thus, like appointments made under Courts Article, §2-102, their service is limited to the particular action or proceeding. During that period of service, however, it is possible that they may work full-time or part-time, as necessary or as directed by the court. A ~~master~~ magistrate, examiner, or auditor may therefore be standing full-time, standing part-time, special full-time, or special part-time.

This Code, in its entirety, applies to District Court Commissioners and full-time standing ~~masters~~ magistrates, examiners, and auditors. Because their employment by the court is full-time and more-or-less permanent, it is appropriate to limit some of their extra-official activities in the same manner as judges. Standing ~~masters~~ magistrates, examiners, and auditors who work only part-time but whose employment is also more-or-less permanent and who handle whatever cases are referred to them also need to be subject to most of the requirements and limitations in the Code, but it is impractical to preclude them from engaging in other lawful remunerative activities, such as practicing law or accounting or providing ADR services. They are subject to the entire Code, except as provided in specific Rules. Special ~~masters~~ magistrates, examiners, and auditors, appointed for only one proceeding, are subject to those Rules governing such things as fairness, impartiality, integrity, and diligence during the period of their service, but it is impractical and unnecessary to subject them across-the-board to the Rules in Section 4 or most of the Rules in Section 3 (political and extra-official activities), provided that, upon request of a party or the appointing authority, they disclose any activity or interest that may be cause for recusal.

. . .

Rule 3.9. SERVICE AS ARBITRATOR OR MEDIATOR

(a) A full-time judicial appointee shall not act as an arbitrator or a mediator or perform other alternative dispute resolution functions apart from the judicial appointee's official duties unless expressly authorized by law.

(b) A part-time judicial appointee may conduct alternative dispute resolution (ADR) proceedings in a private capacity only if

the judicial appointee:

(1) conducts no ADR proceedings in a private capacity relating to a matter currently assigned to the judicial appointee;

(2) discloses to the parties in each matter assigned to the judicial appointee:

(A) the judicial appointee's professional association with any entity that is engaged in offering ADR services;

(B) whether the judicial appointee is conducting, or has conducted within the previous 12 months, an ADR proceeding involving any party, attorney, or law firm involved in the matter assigned to the judicial appointee; and

(C) any negotiations or agreements for future ADR services involving the judicial appointee and any of the parties or counsel to the case; and

(3) except if there is no disqualification by agreement as permitted by Rule 2.11 (c), does not participate in a matter in which the judicial appointee's impartiality might reasonably be questioned because of ADR services engaged in or offered by the judicial appointee.

COMMENT

[1] This Rule does not prohibit a part-time judicial appointee from participating in arbitration, mediation, or other alternative dispute resolution services in a private capacity. See, however, Rule 3.1.

[2] ~~Masters~~ Magistrates may conduct settlement conferences pursuant to Rules 17-102 (h) and 17-105 (b) as part of assigned official duties. Full-time judicial appointees shall not otherwise render dispute resolution services, whether or not for economic gain, unless expressly authorized by law.

Source: This Rule is derived in part from Canon 4F of the former Code of Conduct for Judicial Appointees.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 1-501.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 800 - MISCELLANEOUS

AMEND Rule 16-816 to change the term "master" to "magistrate," as follows:

Rule 16-816. FINANCIAL DISCLOSURE STATEMENT - JUDICIAL APPOINTEES

a. For purposes of this Rule, judicial appointee means (1) a full- or part-time ~~master~~ magistrate, (2) a commissioner appointed by a District Administrative Judge with the approval of the Chief Judge of the District Court of Maryland, and (3) an auditor or examiner who is full-time or who earns in any calendar year, by reason of the judicial appointee's official position, compensation at least equal to the pay provided for the base step of State Pay Grade 16, as in effect on July 1 of that calendar year. If an auditor or examiner has served as such for only a portion of a calendar year, a pro rata determination of compensation shall be applied.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 1-501.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 17-101 to change the term "master" to "magistrate," as follows:

Rule 17-101. APPLICABILITY

. . .

(b) Exceptions

Except as otherwise provided by Rule, the Rules in this Title do not apply to:

(1) an action or order to enforce a contractual agreement to submit a dispute to ADR;

(2) an action to foreclose a lien against owner-occupied residential property subject to foreclosure mediation conducted by the Office of Administrative Hearings under Rule 14-209.1;

(3) an action pending in the Health Care Alternative Dispute Resolution Office under Code, Courts Article, Title 3, Subtitle 2A, unless otherwise provided by law; or

(4) a matter referred to a ~~master~~ magistrate, examiner, auditor, or parenting coordinator pursuant to Rule 2-541, 2-542, 2-543, or 9-205.2.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 1-501.

MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 200 - PROCEEDINGS IN CIRCUIT COURT

AMEND Rule 17-206 to change the term "master" to "magistrate," as follows:

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

. . .

(b) Judges and ~~Masters~~ Magistrates

An active or retired judge or a ~~master~~ magistrate of the court may chair a non-fee-for-service settlement conference.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 1-501.

AMEND Rule 1.12 to change the term "master" to "magistrate," as follows:

Rule 1.12. FORMER JUDGE, ARBITRATOR, MEDIATOR OR OTHER THIRD-PARTY NEUTRAL

(a) Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing.

(b) A lawyer shall not negotiate for employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator or other third-party neutral. A lawyer serving as a law clerk to a judge or other adjudicative officer may negotiate for employment with a party or lawyer involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge or other adjudicative officer.

(c) If a lawyer is disqualified by paragraph (a), no lawyer in

a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this Rule.

(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

COMMENT

[1] This Rule generally parallels Rule 1.11. The term "personally and substantially" signifies that a judge who was a member of a multimember court, and thereafter left judicial office to practice law, is not prohibited from representing a client in a matter pending in the court, but in which the former judge did not participate. So also the fact that a former judge exercised administrative responsibility in a court does not prevent the former judge from acting as a lawyer in a matter where the judge had previously exercised remote or incidental administrative responsibility that did not affect the merits. Compare the Comment to Rule 1.11.

[2] The term "adjudicative officer" includes such officials as judges pro tempore, referees, special ~~masters~~ magistrates, hearing officers and other parajudicial officers, and also lawyers who serve as part-time judges. See Md. Rule 16-814, Maryland Code of Conduct for Judicial Appointees.

[3] Like former judges, lawyers who have served as arbitrators, mediators or other third-party neutrals may be asked to represent a client in a matter in which the lawyer participated personally and substantially. This Rule forbids such representation unless all of the parties to the proceedings give their informed consent, confirmed in writing. See Rule 1.0 (f) and (b). Other law or codes of ethics governing third-party neutrals may impose more stringent standards of personal or imputed disqualification. See Rule 2.4.

[4] Although lawyers who serve as third-party neutrals do not have information concerning the parties that is protected under Rule 1.6, they typically owe the parties an obligation of confidentiality under law or codes of ethics governing third-party neutrals. Thus, paragraph (c) provides that conflicts of the personally disqualified lawyer will be imputed to other lawyers in a law firm unless the conditions of this paragraph are met.

[5] Requirements for screening procedures are stated in Rule 1.0 (m). Paragraph (c)(1) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

[6] Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

Model Rules Comparison.-- Apart from redesignating the paragraphs of the Comments to this Rule, Rule 1.12 is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct.

REPORTER'S NOTE

See the Reporter's note to Rule 1-501.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 400 - PRELIMINARY PROCEDURES

AMEND Rule 8-414 by adding to section (a) clarifying language to limit when an appellate court may correct an error or omission in the record to material errors or omissions; by adding to section (a) language indicating that a court ordinarily may not order an addition to the record of information, etc., that had not been submitted to the lower court; by adding a cross-reference to follow section (a) that reflects case authority that has considered this issue; by adding a Committee note explaining that this Rule does not preclude an appellate court from its authority to take judicial notice of facts in certain instances; by dividing section (b)into two subsections, with new subsection (b)(1) adding a requirement that a motion to correct the record must include a stipulation of the parties regarding the alleged error and new subsection (b)(2) adding a requirement that the motion must specify the area of disagreement between the parties as to whether the record accurately discloses what occurred in the lower court; by adding language indicating that if the appellate court does not resolve the dispute, the appellate court may direct the lower court to determine what actually occurred and conform the record; by adding that the appellate court may set a deadline for the lower court to make its determination and

return the record; and by adding a new section (b)(3) to reflect the residual authority to the appellate court to answer all other questions as to the form and content of the record, as follows:

Rule 8-414. CORRECTION OF RECORD

(a) Authority of Appellate Court

On motion or on its own initiative, the appellate court may order that ~~an~~ a material error or omission in the record be corrected. The court ordinarily may not order an addition to the record of new facts, documents, information, or evidence that had not been submitted to the lower court.

Cross reference: See *Beyond v. Realtime*, 388 Md. 1, 10-11, n.9 (2005); *Mesbahi v. Board of Physicians*, 201 Md. App. 315, 340, n. 21 (2011); and *Shih Ping Li v. Tzu Lee*, 210 Md. App. 73, 95 (2013), *aff'd Li v. Lee*, 437 Md. 47 (2014).

Committee note: This Rule does not preclude the appellate court from considering facts of which the appellate court may take judicial notice, including facts bearing on mootness.

(b) Motion; Determination

(1) Generally

~~The motion shall specify~~ A party seeking correction of the record shall file a motion that specifies the parts of the record or proceedings that are alleged to be omitted or erroneous. A motion that is based on facts not contained in the record or papers on file in or under the custody and jurisdiction of the appellate court and not admitted by all the other parties shall be supported by affidavit. The motion shall be accompanied by (A) any stipulation of the parties regarding the alleged error

or omission and (B) a proposed order ~~which shall specify~~ specifying the requested corrections or additions.

(2) Correction or Modification of the Record

If the parties disagree about whether the record accurately discloses what occurred in the lower court, the motion shall specify what the difference is. If the appellate court does not resolve the dispute over what occurred in the lower court, the appellate court may direct the lower court to determine whether the record differs from what actually occurred and, if appropriate, conform the record accordingly. The appellate court may set a deadline for the lower court to make its determination and return the record.

(3) Other Questions

All other questions as to the form and content of the record shall be determined by the appellate court.

(c) Order to Correct Record

The order of the appellate court to correct the record constitutes the correction. The Court may also direct the clerk to take any additional action to implement the correction. An order to supplement the record shall be sent to the clerk of the lower court who promptly shall transmit the additional parts of the record specified in the order.

(d) Effect on Oral Argument

Oral argument generally will not be postponed because of an error or omission in the record. If a permitted correction or addition cannot be made to the record in time for the scheduled

oral argument, the appellate court may (1) postpone the argument or (2) direct the argument to proceed as if the correction or addition had been made and permit it to be filed after argument.

Source: This Rule is in part derived from former Rule 1027 and Rule 826 f through h and in part new.

REPORTER'S NOTE

The Court of Appeals requested the Rules Committee to consider proposing amendments to Rule 8-414 that would tailor the reach of the Rule with respect to supplementing the record with new adjudicative facts or information to reflect existing case authority, so that supplementing the record is limited to exceptional circumstances.

The Committee reviewed rules in other states, and it considered Fed. R. Civ. Proc. 10 (e) as a possible model. The Federal Rule provides a procedure for (1) allowing the parties to stipulate to correction of the record and (2) sending to the lower court any question about differences between the parties over whether the record truly discloses what occurred in the lower court for that court to determine whether a difference exists and to correct the record. The appellate court also retains authority to correct any misstatement or omission.

The Committee recommends adding procedures to Rule 8-414 that are similar to the Federal Rule, but retaining the motion procedure currently in the Maryland Rule. Language has been added to section (a), based on Maryland case law, and a cross reference has been created to selected Maryland cases, clarifying that an appellate court may not ordinarily order a correction or an addition to the record before the lower court, and that the error or omission must be material.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 400 - PRELIMINARY PROCEDURES

AMEND Rule 8-413 (a) to conform to a proposed amendment to Rule 8-414, as follows:

Rule 8-413. RECORD - CONTENTS AND FORM

(a) Contents of Record

The record on appeal shall include (1) a certified copy of the docket entries in the lower court, (2) the transcript required by Rule 8-411, and (3) all original papers filed in the action in the lower court except a supersedeas bond or alternative security and those other items that the parties stipulate may be omitted. The clerk of the lower court shall append a certificate clearly identifying the papers included in the record. The lower court may order that the original papers in the action be kept in the lower court pending the appeal, in which case the clerk of the lower court shall transmit only a certified copy of the original papers. The lower court, by order, shall resolve any dispute whether the record accurately discloses what occurred in the lower court, and shall cause the record to conform to its decision. <u>The lower court shall also correct or modify the record if directed by an appellate court pursuant to Rule 8-414 (b)(2).</u> When the Court of Appeals reviews

an action pending in or decided by the Court of Special Appeals, the record shall also include the record of any proceedings in the Court of Special Appeals.

(b) Statement of Case in Lieu of Entire Record

If the parties agree that the questions presented by an appeal can be determined without an examination of all the pleadings and evidence, they may sign and, upon approval by the lower court, file a statement showing how the questions arose and were decided, and setting forth only those facts or allegations that are essential to a decision of the questions. The parties are strongly encouraged to agree to such a statement. The statement, the judgment from which the appeal is taken, and any opinion of the lower court shall constitute the record on appeal. The appellate court may, however, direct the lower court clerk to transmit all or part of the balance of the record in the lower court as a supplement to the record on appeal. The appellant shall reproduce the statement in the appellant's brief, either in lieu of the statement of facts or as an appendix to the brief.

(c) Duties of Lower Court Clerk

The clerk shall prepare and attach to the beginning of the record a cover page, a complete table of contents, and the certified copy of the docket entries in the lower court. The original papers shall be fastened together in one or more binders and numbered consecutively, except that the pages of a transcript of testimony need not be renumbered. The clerk shall also prepare and transmit with the record a statement of the cost of

preparing and certifying the record, the costs taxed against each party prior to the transmission of the record, and the cost of all transcripts and of copies, if any, of the transcripts for each of the parties. The clerk shall serve a copy of the docket entries on each party.

Cross reference: See Code, Criminal Procedure Article, §11-104 (f)(2) for victim notification procedures.

Source: This Rule is derived from former Rule 1026 and Rule 826.

REPORTER'S NOTE

See the Reporter's note to Rule 8-414.

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

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

ADD new Rule 9-205.3, as follows:

Rule 9-205.3. CUSTODY AND VISITATION-RELATED ASSESSMENTS

(a) Applicability

This Rule applies to the appointment or approval by a court of a person to perform an assessment in an action under this Chapter in which child custody or visitation is at issue.

Committee note: In this Rule, when an assessor is selected by the court, the term "appointment" is used. When the assessor is selected by the parties and the selection is incorporated into a court order, the term "approval" is used.

(b) Definitions

In this Rule, the following definitions apply:

(1) Assessment

"Assessment" includes a custody evaluation, a home study, a mental health evaluation, and a specific issue evaluation.

(2) Assessor

"Assessor" means an individual who performs an assessment.

(3) Custody Evaluation

"Custody evaluation" means a study and analysis of the needs and development of a child who is the subject of an action

or proceeding under this Chapter and of the abilities of the parties to care for the child and meet the child's needs.

(4) Custody Evaluator

"Custody evaluator" means an individual appointed or approved by the court to perform a custody evaluation.

(5) Home Study

"Home study" means an inspection of a party's home that focuses upon the safety and suitability of the physical surroundings and living environment for the child.

(6) Mental Health Evaluation

"Mental health evaluation" means an evaluation of an individual's mental health performed by a psychiatrist or psychologist who has the qualifications set forth in subsection (d)(1)(A) or (B) of this Rule. A mental health evaluation may include psychological testing.

(7) Specific Issue Evaluation

"Specific issue evaluation" means a targeted investigation into a specific issue raised by a party, the child's attorney, or the court affecting the safety, health, or welfare of the child.

Committee note: An example of a specific issue evaluation is an evaluation of a party as to whom the issue of a problem with alcohol consumption has been raised, performed by an individual with expertise in alcoholism.

(8) State

"State" includes the District of Columbia.

(c) Authority

(1) On motion of a party or child's counsel, or on its own initiative, the court may order an assessment to aid the court in evaluating the health, safety, welfare, or best interests of a child in a contested custody or visitation case.

(2) The court may appoint or approve any person deemed competent by the court to perform a home study or a specific issue evaluation. The court may not appoint or approve a person to perform a custody evaluation unless (A) the assessor has the qualifications set forth in subsections (d)(1) and (d)(2) of this Rule, or (B) the qualifications have been waived for the assessor pursuant to subsection (d)(3) of this Rule.

(3) The court may not order the cost of an assessment to be paid, in whole or in part, by a party without giving the parties notice and an opportunity to object.

(d) Qualifications of Custody Evaluator

(1) Education and Licensing

A custody evaluator shall be:

(A) a physician licensed in any State who is board-certified in psychiatry or has completed a psychiatry residency accredited by the Accreditation Council for Graduate Medical Education or a successor to that Council;

(B) a Maryland licensed psychologist or a psychologist with an equivalent level of licensure in any other state;

(C) a Maryland licensed clinical marriage and family therapist or a clinical marriage and family therapist with an equivalent level of licensure in any other state; or

(D) a Maryland licensed certified social worker-clinical or a clinical social worker with an equivalent level of licensure in any other state.

(2) Training and Experience

In addition to complying with the continuing requirements of his or her field, a custody evaluator shall have training or experience in observing or performing custody evaluations and shall have current knowledge in the following areas:

(A) domestic violence;

(B) child neglect and abuse;

(C) family conflict and dynamics;

(D) child and adult development; and

(E) impact of divorce and separation on children and adults.

(3) Waiver of Requirements

If a court employee has been performing custody evaluations on a regular basis as an employee of, or under contract with, the court for at least five years prior to [effective date of the Rule], the court may waive any of the requirements set forth in subsection (d)(1) of this Rule, provided that the individual participates in at least 20 hours per year of continuing education relevant to the performance of custody evaluations, including course work in one or more of the areas listed in subsection (d)(2) of this Rule.

(e) Custody Evaluator Lists and Selection

(1) Custody Evaluator Lists

If the circuit court for a county appoints custody evaluators who are not court employees, the family support services coordinator for the court shall maintain a list of qualified custody evaluators. An individual, other than a court employee, who seeks appointment by a circuit court as a custody evaluator shall submit an application to the family support services coordinator for that court. If the applicant has the qualifications set forth in section (d) of this Rule, the applicant's name shall be placed on a list of qualified individuals. The family support services coordinator, upon request, shall make the list and the information submitted by each individual on the list available to the public.

(2) Selection of Custody Evaluator

(A) By the Parties

By agreement, the parties may employ a custody evaluator of their own choosing who may, but need not, be on the court's list. The parties may, but need not, request the court to enter a consent order approving the agreement and selection. The court shall enter the order if one is requested and the court finds that the custody evaluator has the qualifications set forth in section (d) and that the agreement contains the relevant information set forth in section (g) of this Rule.

(B) By the Court

An appointment of an individual, other than a court employee, as a custody evaluator by the court shall be made from the list maintained by the family support services coordinator.

In appointing a custody evaluator from a list, the court is not required to choose at random or in any particular order from among the qualified evaluators on the list. The court should endeavor to use the services of as many qualified individuals as practicable, but the court may consider, in light of the issues and circumstances presented by the action or the parties, any special training, background, experience, expertise, or temperament of the available prospective appointees. An individual appointed by the court to serve as a custody evaluator shall have the qualifications set forth in section (d) of this Rule.

(f) Description of Custody Evaluation

(1) Mandatory Elements

Subject to any protective order of the court, a custody evaluation shall include:

(A) a review of the relevant court records pertaining to the litigation;

(B) an interview of each party;

(C) an interview of the child, unless the custody evaluator determines and explains that by reason of age, disability, or lack of maturity, the child lacks capacity to be interviewed;

(D) a review of any relevant educational, medical, and legal records pertaining to the child;

(E) if feasible, observations of the child with each party, whenever possible in that party's household;

(F) factual findings about the needs of the child and the

capacity of each party to meet the child's needs; and

(G) a custody and visitation recommendation based upon an analysis of the facts found or, if such a recommendation cannot be made, an explanation of why.

(2) Optional Elements – Generally

Subject to subsection (f)(3) of this Rule, at the discretion of the custody evaluator, a custody evaluation also may include:

(A) contact with collateral sources of information;

(B) a review of additional records;

(C) employment verification;

(D) an interview of any other individual residing in the household;

(E) a mental health evaluation;

(F) consultation with other experts to develop information that is beyond the scope of the evaluator's practice or area of expertise; and

(G) an investigation into any other relevant information about the child's needs.

(3) Optional Elements Requiring Court Approval

The custody evaluator may not include an optional element listed in subsection (f)(2)(E), (F), or (G) if any additional cost is to be assessed for the element unless, after notice to the parties and an opportunity to object, the court approved inclusion of the element.

(g) Order of Appointment

An order appointing or approving a person to perform an assessment shall include:

(1) the name, business address, and telephone number of the person being appointed or approved;

(2) if there are allegations of domestic violence committed by or against a party or child, any provisions the court deems necessary to address the safety and protection of the parties, all children of the parties, any other children residing in the home of a party, and the person being appointed or approved;

(3) a description of the task or tasks the person being appointed or approved is to undertake;

(4) a provision concerning payment of any fee, expense, or charge, including a statement of any hourly rate that will be charged which, as to a court appointment, may not exceed the maximum rate established under section (n) of this Rule and, if applicable, a time estimate for the assessment;

(5) the term of the appointment or approval and any deadlines pertaining to the submission of reports to the parties and the court, including the dates of any pretrial or settlement conferences associated with the furnishing of reports;

(6) any restrictions upon the copying and distribution of reports, whether pursuant to this Rule, agreement of the parties, or entry of a separate protective order;

(7) whether a written report or an oral report on the record is required; and

(8) any other provisions the court deems necessary.

(h) Removal or Resignation of Person Appointed or Approved to Perform an Assessment

(1) Removal

The court may remove a person appointed or approved to perform an assessment upon a showing of good cause.

(2) Resignation

A person appointed or approved to perform an assessment may resign prior to completing the assessment and preparing a report pursuant to section (i) of this Rule only upon a showing of good cause, notice to the parties, an opportunity to be heard, and approval of the court.

(i) Report of Assessor

(1) Custody Evaluation Report

A custody evaluator shall prepare a report and provide the parties access to the report in accordance with subsection (i)(1)(A) or (i)(1)(B) of this Rule.

(A) Oral Report on the Record

If the court orders a pretrial or settlement conference to be held at least 45 days before the scheduled trial date or hearing at which the evaluation may be offered or considered, and the order appointing or approving the custody evaluator does not require a written report, the custody evaluator may present the custody evaluation report orally to the parties on the record at the conference. The custody evaluator shall produce and provide to the court and parties at the conference a written list containing an adequate description of all documents reviewed in

connection with the custody evaluation. If custody and access are not resolved at the conference, and no written report has been provided, the court shall (i) provide a transcript of the oral report to the parties free of charge, or (ii) direct the custody evaluator to prepare a written report and furnish it to the parties in accordance with subsection (i)(1)(B) of this Rule.

(B) Written Report Prepared by the Custody Evaluator

If an oral report is not prepared and presented pursuant to subsection (i)(1)(A) of this Rule, the custody evaluator shall prepare a written report of the custody evaluation and shall include in the report a list containing an adequate description of all documents reviewed in connection with the custody evaluation. The report shall be furnished to the parties at least 30 days before the scheduled trial date or hearing at which the evaluation may be offered or considered. The court may shorten or extend the time for good cause shown but the report shall be furnished to the parties no later than 15 days before the scheduled trial or hearing.

(2) Report of Home Study or Specific Issue Evaluation

Unless preparation of a written report is waived by the parties, an assessor who performed a home study or a specific issue evaluation shall prepare a written report of the assessment and furnish it to the parties. The report shall be furnished as soon as practicable after completion of the assessment and, if a date is specified in the order of appointment or approval, by that date.

(3) Report of Mental Health Evaluation

An assessor who performed a mental health evaluation shall prepare a written report and make it available to the parties solely for use in the case. The report shall be made available as soon as practicable after completion of the evaluation and, if a date is specified in the order of appointment or approval, by that date.

(j) Copying and Dissemination of Report

A party may copy a written report of an assessment or the transcript of an oral report prepared pursuant to subsection (i)(1)(A) of this Rule but, except as permitted by the court, shall not disseminate the report or transcript other than to individuals intended to be called as experts by the party.

Cross reference: See subsection (g)(6) of this Rule concerning the inclusion of restrictions on copying and distribution of reports in an order of appointment or approval of an assessor. See the Rules in Title 15, Chapter 200, concerning proceedings for contempt of court for violation of a court order.

(k) Court Access to Written Report

(1) Generally

Except as otherwise provided by this Rule, the court may receive access to a report by an individual appointed or approved by the court to perform an assessment only if the report has been admitted into evidence at a hearing or trial in the case.

(2) Advance Access to Report by Stipulation of the Parties

Upon consent of the parties, the court may receive and read the assessor’s report in advance of the hearing or trial.

(3) Access to Report by Settlement Judge or Magistrate

A judge or magistrate conducting a settlement conference shall have access to the assessor's report.

(l) Discovery

(1) Generally

Except as provided in this section, an individual who performs an assessment under this Rule is subject to the Maryland Rules applicable to discovery in civil actions.

(2) Deposition of Court-paid Assessor

Unless leave of court is obtained, any deposition of an assessor who is a court employee or is working under contract for the court and paid by the court shall: (A) be held at the courthouse where the action is pending or other court-approved location; (B) take place after the date on which an oral or written report is presented to the parties; and (C) not exceed two hours, with the time to be divided equally between the parties.

(m) Testimony and Report of Assessor at Hearing or Trial

(1) Subpoena for Assessor

A party requesting the presence of the assessor at a hearing or trial shall subpoena the assessor no less than ten days before the hearing or trial.

(2) Admission of Report into Evidence Without Presence of Assessor

The court may admit an assessor's report into evidence without the presence of the assessor, subject to objections based other than on the presence or absence of the assessor. If the

assessor is present, a party may call the assessor for cross-examination.

Committee note: The admissibility of an assessor's report pursuant to subsection (m)(2) of this Rule does not preclude the court or a party from calling the assessor to testify as a witness at a hearing or trial.

(n) Fees

(1) Applicability

Section (n) of this Rule does not apply to a circuit court for a county in which all custody evaluations are performed by court employees, free of charge to the litigants.

(2) Fee Schedules

Subject to the approval of the Chief Judge of the Court of Appeals, the county administrative judge of each circuit court shall develop and adopt maximum fee schedules for custody evaluations. In developing the fee schedules, the county administrative judge shall take into account the availability of qualified individuals willing to provide custody evaluation services and the ability of litigants to pay for those services. A custody evaluator appointed by the court may not charge or accept a fee for custody evaluation services in that action in excess of the fee allowed by the applicable schedule. Violation of this subsection shall be cause for removal of the individual from all lists maintained pursuant to subsection (e)(1) of this Rule.

(3) Allocation of Fees and Expenses

As permitted by law, the court may order the parties or a

party to pay the reasonable and necessary fees and expenses incurred by an individual appointed by the court to perform an assessment in the case. The court may fairly allocate the reasonable and necessary fees of the assessment between or among the parties. In the event of the removal or resignation of an assessor, the court may consider the extent to which any fees already paid to the assessor should be returned.

Source: This Rule is new.

REPORTER'S NOTE

The Custody Subcommittee of the Judicial Conference's Family Law Committee drafted a proposed Rule governing custody evaluations and other assessments in family law cases. The Subcommittee had learned from custody evaluators around the State that the ways custody evaluations are ordered, performed, reported, and used vary tremendously throughout the State, leading to some confusion. The Rule was drafted to provide greater uniformity and to set basic standards for custody evaluators and evaluations. The Rule also contains provisions pertaining to less comprehensive types of assessments (home studies, mental health evaluations, and specific issue evaluations) that may assist the court in making a custody and visitation determination in an appropriate case. The Rule was approved by the Conference of Circuit Judges. Based on the Custody Subcommittee's draft, the Rules Committee approved a revised version of the Rule, which it recommends for adoption.

Proposed new Rule 9-205.3 addresses several areas of concern. The Rule specifies what information is to be included in a custody evaluation, and it affords the parties notice and an opportunity to object to being required to pay for a court-ordered custody evaluation. The Rule also addresses access to reports prepared by a custody evaluator, limitations on dissemination of such reports, fee schedules, and payment of costs related to the assessments.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 400 - PRELIMINARY PROCEDURES

AMEND Rule 8-412 (c) to require the clerk of the appellate court to send a certain notice, as follows:

Rule 8-412. RECORD - TIME FOR TRANSMITTING

(a) To the Court of Special Appeals

Unless a different time is fixed by order entered pursuant to section (d) of this Rule, the clerk of the lower court shall transmit the record to the Court of Special Appeals within sixty days or thirty days in child in need of assistance cases and guardianships terminating parental rights cases, or other cases proceeding under Rule 8-207 (a)(1) after:

(1) the date of an order entered pursuant to Rule 8-206 (a)(1) that the appeal proceed without a prehearing conference, or an order entered pursuant to Rule 8-206 (d) following a prehearing conference, unless a different time is fixed by that order, in all civil actions specified in Rule 8-205 (a); or

(2) the date the first notice of appeal is filed, in all other actions.

Cross reference: Rule 8-207 (a).

(b) To the Court of Appeals

Unless a different time is fixed by order entered pursuant

to section (d) of this Rule, the clerk of the court having possession of the record shall transmit it to the Court of Appeals within 15 days after entry of a writ of certiorari directed to the Court of Special Appeals, or within sixty days after entry of a writ of certiorari directed to a lower court other than the Court of Special Appeals.

(c) When Record is Transmitted; Notice

For purposes of this Rule the record is transmitted when it is delivered to the Clerk of the appellate court or when it is sent by certified mail by the clerk of the lower court, addressed to the Clerk of the appellate court. Upon receipt and docketing of the record by the Clerk of the appellate court, the Clerk shall send a notice to the parties stating (1) the date the record was received and docketed and (2) the date by which an appellant other than a cross-appellant shall file a brief conforming with Rule 8-503. Unless otherwise ordered by the appellate court, the date by which the appellant's brief must be filed shall be no earlier than 40 days after the date the Clerk sends the notice.

(d) Shortening or Extending the Time

On motion or on its own initiative, the appellate court having jurisdiction of the appeal may shorten or extend the time for transmittal of the record. If the motion is filed after the prescribed time for transmitting the record has expired, the Court will not extend the time unless the Court finds that the failure to transmit the record was caused by the act or omission

of a judge, a clerk of court, the court reporter, or the appellee.

Source: This Rule is derived from former Rules 1025 and 825.

REPORTER'S NOTE

Proposed amendments to Rules 8-412 and 8-502 conform the Rules to the existing practice of the Clerk providing a notice to the parties that contains a date certain by which the brief of an appellant other than a cross-appellant must be filed.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 500 - RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-502 to conform to a proposed amendment to Rule 8-412, as follows:

Rule 8-502. FILING OF BRIEFS

(a) Duty to File; Time

Unless otherwise ordered by the appellate court:

(1) Appellant's Brief

~~Within 40 days after the clerk sends notice of the filing of the record, an~~ No later than the date specified in the notice sent by the appellate clerk pursuant to Rule 8-412 (c), an appellant other than a cross-appellant shall file a brief conforming to the requirements of Rule 8-503.

(2) Appellee's Brief

Within 30 days after the filing of the appellant's brief, the appellee shall file a brief conforming to the requirements of Rule 8-503.

(3) Appellant's Reply Brief

The appellant may file a reply brief not later than the earlier of 20 days after the filing of the appellee's brief or ten days before the date of scheduled argument.

Cross reference: The meaning of subsection (a)(3) is in accordance with *Heit v. Stansbury*, 199 Md. App. 155 (2011).

(4) Cross-appellant's Brief

An appellee who is also a cross-appellant shall include in the brief filed pursuant to subsection (2) of this section the issues and arguments on the cross-appeal as well as the response to the brief of the appellant, and shall not file a separate cross-appellant's brief.

(5) Cross-appellee's Brief

Within 30 days after the filing of that brief, the appellant/cross-appellee shall file a brief in response to the issues and argument raised on the cross-appeal and shall include any reply to the appellee's response that the appellant wishes to file.

(6) Cross-appellant's Reply Brief

The appellee/cross-appellant may file a reply to the cross-appellee's response within 20 days after the filing of the cross-appellee's brief, but in any event not later than ten days before the date of scheduled argument.

(7) Multiple Appellants or Appellees

In an appeal involving more than one appellant or appellee, including actions consolidated for purposes of the appeal, any number of appellants or appellees may join in a single brief.

(8) Court of Special Appeals Review of Discharge for

Unconstitutionality of Law

No briefs need be filed in a review by the Court of Special Appeals under Code, Courts Article, §3-706.

(b) Extension of Time

The time for filing a brief may be extended by (1) stipulation of counsel filed with the clerk so long as the appellant's brief and the appellee's brief are filed at least 30 days, and any reply brief is filed at least ten days, before the scheduled argument, or (2) order of the appellate court entered on its own initiative or on motion filed pursuant to Rule 1-204.

(c) Filing and Service

In an appeal to the Court of Special Appeals, 15 copies of each brief and 10 copies of each record extract shall be filed, unless otherwise ordered by the court. Incarcerated or institutionalized parties who are self-represented shall file nine copies of each brief and nine copies of each record extract. In the Court of Appeals, 20 copies of each brief and record extract shall be filed, unless otherwise ordered by the court. Two copies of each brief and record extract shall be served on each party pursuant to Rule 1-321.

(d) Default

If an appellant fails to file a brief within the time prescribed by this Rule, the appeal may be dismissed pursuant to Rule 8-602 (a)(7). An appellee who fails to file a brief within the time prescribed by this Rule may not present argument except with permission of the Court.

Source: This Rule is derived from former Rules 1030 and 830 with the exceptions of subsection (a)(8) which is derived from the last sentence of former Rule Z56 and of subsection (b)(2) which is in part derived from Rule 833 and in part new.

REPORTER'S NOTE

See the Reporter's note to Rule 8-412.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 400 - PRELIMINARY PROCEDURES

AMEND Rule 8-431 (c) by adding certain language clarifying that the records or papers on file are in the appellate court and by adding a cross reference, as follows:

Rule 8-431. MOTIONS

(a) Generally

An application to the Court for an order shall be by motion. The motion shall state briefly and clearly the facts upon which it is based, and if other parties to the appeal have agreed not to oppose the motion, it shall so state. The motion shall be accompanied by a proposed order.

(b) Response

Except as provided in Rule 8-605 (a), any party may file a response to the motion. Unless a different time is fixed by order of the Court, the response shall be filed within five days after service of the motion.

(c) Affidavit

A motion or a response to a motion that is based on facts not contained in the record or papers on file <u>in or in the custody and jurisdiction of the appellate court</u> in the proceeding shall be supported by affidavit and accompanied by any papers on

which it is based.

Cross reference: See Rule 20-402 concerning the transmittal of the record under MDEC.

(d) Statement of Grounds and Authorities

A motion and any response shall state with particularity the grounds and the authorities in support of each ground.

(e) Filing; Copies

The original of a motion and any response shall be filed with the Clerk. It shall be accompanied by (1) seven copies when filed in the Court of Appeals and (2) four copies when filed in the Court of Special Appeals, except as otherwise provided in these rules.

(f) Emergency Order

In an emergency, the Court may rule on a party's motion before expiration of the time for a response. The party requesting emergency relief shall file the certification required by Rule 1-351.

(g) Hearing

Except as otherwise provided in these rules, a motion may be acted on without a hearing or may be set for hearing at the time and place and on the notice the Court prescribes.

Source: This Rule is derived from former Rules 1055 and 855.

REPORTER'S NOTE

Section (c) of Rule 8-431 requires that a motion or response to a motion that is based on facts not contained in the record or papers on file in a proceeding shall be supported by affidavit and accompanied by any papers on which it is based. In response to a request by the Clerk of the Court of Special Appeals, the

Rules Committee recommends adding the language "in or in the custody and jurisdiction of the appellate court" to clarify that it is the record or papers on file in that court that are being referred to.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 500 - RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-511 to revise the time by which the appellee may file a reply brief under certain circumstances and to specify a word count limitation in lieu of a page count limitation, as follows:

Rule 8-511. AMICUS CURIAE

(a) Authorization to File Amicus Curiae Brief

An amicus curiae brief may be filed only:

(1) upon written consent of all parties to the appeal;

(2) by the Attorney General in any appeal in which the State of Maryland may have an interest;

(3) upon request by the Court; or

(4) upon the Court's grant of a motion filed under section (b) of this Rule.

(b) Motion and Brief

(1) Content of Motion

A motion requesting permission to file an amicus curiae brief shall:

(A) identify the interest of the movant;

(B) state the reasons why the amicus curiae brief is desirable;

(C) state whether the movant requested of the parties their consent to the filing of the amicus curiae brief and, if not, why not;

(D) state the issues that the movant intends to raise;

(E) identify every person, other than the movant, its members, or its attorneys, who made a monetary or other contribution to the preparation or submission of the brief, and identify the nature of the contribution; and

(F) if filed in the Court of Appeals to seek leave to file an amicus curiae brief supporting or opposing a petition for writ of certiorari or other extraordinary writ, state whether, if the writ is issued, the movant intends to seek consent of the parties or move for permission to file an amicus curiae brief on the issues before the Court.

(2) Attachment of Brief

Copies of the proposed amicus curiae brief shall be attached to two of the copies of the motion filed with the Court.

Cross reference: See Rule 8-431 (e) for the total number of copies of a motion required when the motion is filed in an appellate court.

(3) Service

The movant shall serve a copy of the motion and proposed brief on each party.

(4) If Motion Granted

If the motion is granted, the brief shall be regarded as having been filed when the motion was filed. Within ten days after the order granting the motion is filed, the amicus curiae

shall file the additional number of briefs required by Rule 8-502 (c).

(c) Time for Filing

(1) Generally

Except as required by subsection (c)(2) of this Rule and unless the Court orders otherwise, an amicus curiae brief shall be filed at or before the time specified for the filing of the principal brief of the appellee.

(2) Time for Filing in Court of Appeals

(A) An amicus curiae brief may be filed pursuant to section (a) of this Rule in the Court of Appeals on the question of whether the Court should issue a writ of certiorari or other extraordinary writ to hear the appeal as well as, if such a writ is issued, on the issues before the Court.

(B) An amicus curiae brief or a motion for leave to file an amicus curiae brief supporting or opposing a petition for writ of certiorari or other extraordinary writ shall be filed at or before the time any answer to the petition is due.

(C) Unless the Court orders otherwise, an amicus curiae brief on the issues before the Court if the writ is granted shall be filed at the applicable time specified in subsection (c)(1) of this Rule.

(d) Compliance with Rules 8-503 and 8-504

An amicus curiae brief shall comply with the applicable provisions of Rules 8-503 and 8-504.

(e) Reply Brief; Oral Argument; Brief Supporting or Opposing

Motion for Reconsideration

Without permission of the Court, an amicus curiae may not (1) file a reply brief, (2) participate in oral argument, or (3) file a brief in support of, or in opposition to, a motion for reconsideration. Permission may be granted only for extraordinary reasons.

(f) Appellee's Reply Brief

Within ten days after the later of (1) the filing of an amicus curiae brief that is not substantially in support of the position of the appellee or (2) the entry of an order granting a motion under section (b) that permits the filing of a brief not substantially in support of the position of the appellee, the appellee may file a reply brief limited to the issues in the amicus curiae brief that are not substantially in support of the appellee's position and are not fairly covered in the appellant's principal brief. Any such reply brief shall not exceed ~~15 pages~~ 3,900 words.

Source: This Rule is derived in part from Fed.R.App.P. 29 and Sup.Ct.R. 37 and is in part new.

REPORTER'S NOTE

An appellate clerk pointed out that when the authorization to file an amicus curiae brief is based on subsection (a)(4) of Rule 8-511, it is possible that, because of the "relation back" provision of subsection (b)(4) of the Rule, an appellee who is entitled to file a reply brief pursuant to section (f) would have no time to do so. The appellee's reply brief would have been due before the motion requesting permission to file an amicus curiae brief had been determined by the appellate Court. To address this timing issue, a proposed amendment to section (f) permits the appellant to file a reply brief within 10 days after the later of (1) the filing of an amicus curiae brief that is not

substantially in support of the position of the appellee or (2) the entry of an order granting a motion under section (b) that permits the filing of a brief not substantially in support of the position of the appellee.

See the Reporter's note to Rule 8-503 concerning a word count limitation in lieu of a page limitation.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 500 - RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-522 to reduce the time allotted for oral argument in the Court of Special Appeals to 20 minutes for each side, except with permission of the Court; to delete the second sentence of section (a); and to correct a stylistic error, as follows:

Rule 8-522. ORAL ARGUMENT

(a) Time Limit

Except with permission of the Court, oral argument is limited to 20 minutes for each side in the Court of Special Appeals and 30 minutes for each side in the Court of Appeals. ~~The Court of Special Appeals may prescribe a shorter period when it grants a request for oral argument pursuant to Rule 8-523 (b)(2), or upon the direction of the Chief Judge, when necessary to enable the Court to dispose of the cases scheduled for oral argument.~~ A party who believes that additional time is necessary for the adequate presentation of oral argument, may request, by letter addressed to the Court, the ~~addition~~ additional time deemed necessary. The request shall be made no later than ten days after the filing of the appellee's brief.

(b) Rebuttal

The appellant may reserve a portion of the time allowed for rebuttal, but in opening argument shall present the case fairly and completely and shall not reserve points of substance for presentation during rebuttal.

(c) Number of Counsel

Except with permission of the Court, not more than two attorneys may argue for a side. In granting a request for oral argument pursuant to Rule 8-523 (b)(2), the Court of Special Appeals may direct that only one attorney may argue for a side. When more than one attorney will argue for a side, the time allowed for the side may be divided as they desire.

(d) More than One Appeal in Same Action - Order of Argument

When there is more than one appeal in the same action, the order of argument may be determined by the Court. If the Court does not determine the order and unless otherwise agreed by parties, the appellant first in order on the docket will open and close.

(e) Failure to Appear

If a party fails to appear when the case is reached for argument, the adverse party may present oral argument or, with permission of the Court, may waive it.

(f) Restriction on Oral Argument

The Court may decline to hear oral argument on any matter not presented in the briefs.

Source: This Rule is derived from former Rules 1046 and 846.

REPORTER'S NOTE

It has been the practice of the Court of Special Appeals over at least the past decade, to restrict the time available for oral arguments, as reflected in Administrative Orders issued every month by the Chief Judge of the Court of Special Appeals. The Administrative Orders have been necessitated by a high volume of cases. The Administrative Orders have provided:

> Pursuant to Maryland Rule 8-522 (a), I hereby direct that oral argument in the month of _____ be limited to 20 minutes per side, subject to the discretion of the hearing panel to allow additional argument, not exceeding a total of 30 minutes per side.

Under Rule 8-522 (a), the prescribed norm for the length of oral argument is 30 minutes. The second sentence of Rule 8-522 (a) provides a means by which the Chief Judge of the Court of Special Appeals may shorten the time allotted for oral argument "when necessary to enable the Court to dispose of cases scheduled for oral argument" and permits the Court, under the unusual circumstances to which Rule 8-523 (b)(2) applies, to set a shortened time period for oral arguments requested by the Court pursuant to that Rule.

The proposed amendment to Rule 8-522 (a) deletes the second sentence in its entirety and changes the norm prescribed in the Rule to reflect what has been the administrative practice for at least the past decade, dispensing with the need for the Chief Judge of the Court of Special Appeals to issue monthly administrative orders shortening the time allotted for oral argument.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 600 - DISPOSITION

AMEND Rule 8-605 to add a new section (b) providing the content of a motion for reconsideration or a response to it, to specify a word count limitation in lieu of a page limitation, and to make stylistic changes, as follows:

Rule 8-605. RECONSIDERATION

(a) Motion; Response; No Oral Argument

Except as otherwise provided in Rule 8-602 (c), a party may file pursuant to this Rule a motion for reconsideration of a decision by the Court that disposes of the appeal. The motion shall be filed (1) before issuance of the mandate or (2) within 30 days after the filing of the opinion of the Court, whichever is earlier. A response to a motion for reconsideration may not be filed unless requested on behalf of the Court by at least one judge who concurred in the opinion or order. Except to make changes in the opinion that do not change the decision in the case, the Court ordinarily will not grant a motion for reconsideration unless it has requested a response. There shall be no oral argument on the motion.

(b) Content

A motion or response ordinarily shall be limited to

addressing one or more of the following:

(1) whether the Court's opinion or order did not address a material factual or legal matter raised in the lower court and argued by a party in its submission to the Court, and if not raised or argued, a brief statement as to why it was not raised or argued;

(2) whether a material change in the law relevant to the appeal occurred after the case was submitted and was not addressed in the Court's opinion or order;

(3) whether there is a significant consequence of the decision that was not addressed in the opinion;

(4) if the motion or response is filed in the Court of Appeals, whether and how the Court's opinion or order is in material conflict with a decision of the United States Supreme Court or a decision of the Court of Appeals; or

(5) if the motion or response is filed in the Court of Special Appeals, whether and how the Court's opinion or order is in material conflict with a decision of the United States Supreme Court or the Court of Appeals or a reported opinion of the Court of Special Appeals.

~~(b)~~ (c) Length

A motion or response filed pursuant to this Rule shall not exceed ~~15 pages~~ 3,900 words.

~~(c)~~ (d) Copies - Filing

(1) In Court of Special Appeals

In the Court of Special Appeals, the original of the

motion and any response shall be filed together with four copies if the opinion of the Court was unreported or 13 copies if reported.

(2) In Court of Appeals

In the Court of Appeals, the original and seven copies of the motion and any response shall be filed.

~~(d)~~ (e) Mandate to be Delayed

A motion for reconsideration shall delay issuance of a mandate, unless otherwise ordered by the Court.

~~(e)~~ (f) Disposition of Motion

A motion for reconsideration shall be granted only with the consent of at least half the judges who concurred in the opinion. If a motion for reconsideration is granted, the Court may make a final disposition of the appeal without reargument, restore the appeal to the calendar for argument, or make other orders, including modification or clarification of its opinion, as the Court finds appropriate.

Source: This Rule is in part derived from former Rules 1050 and 850 and in part new.

REPORTER'S NOTE

An attorney pointed out that in contrast with the federal rules, Rule 8-605 offers practitioners no guidance concerning the contents of a motion for reconsideration.

The Rules Committee proposes the addition of a new section to Rule 8-605, which provides some bases for a motion for reconsideration, derived from the bases in the federal rules. However, since the federal rules do not address filing a motion for reconsideration when the opinion went in an unanticipated direction, the Committee recommends adding language to subsection (b)(1) stating that if a motion raises a factual or legal matter

not raised in the lower court and argued by the party in its submission to the appellate court, the person filing the motion shall include in the motion a brief statement why the factual or legal matter had not been raised or argued. The Committee also recommends a new subsection (b)(3), which adds as one of the bases for a motion for reconsideration whether there is a significant consequence of the decision that was not addressed in the opinion.

See the Reporter's note to Rule 8-503 concerning a word count limitation in lieu of a page count limitation.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 100 - GENERAL PROVISIONS

DELETE Rule 6-123, as follows:

~~Rule 6-123. VERIFICATION~~

~~When verification of a document is required by rule or law, the verification shall be in the following form: "I solemnly affirm under the penalties of perjury that the contents of the foregoing document are true to the best of my knowledge, information, and belief."~~

~~Cross reference: Code, Estates and Trusts Article, §1-102.~~

REPORTER'S NOTE

The affirmation clauses in the Probate Rules are worded inconsistently. The Rules Committee had considered a suggestion that the language in all of the affirmation clauses conform to the language in Rule 6-123, which is based on Code, Estates and Trusts Article, §1-102. However, the Committee observed that the language "contents of the foregoing document" raises the question of what the foregoing document actually is. It could be construed as referring to some document other than the one containing the affirmation clause. Substituting the language "contents of this document" would more clearly indicate that the reference is to the document containing the affirmation clause.

The Committee recommends changing the language in the affirmation clauses of the Probate Rules to the following: "contents of this document." The same change is recommended for the affirmation clauses in Title 10. The Committee also recommends deleting Rule 6-123, which directs the use of the misleading language when verification of a document is required.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 6-122 by adding a new Section 6. to the petition form, referring to certain crimes the commission of which would disqualify the petitioner from appointment as personal representative; by adding a Committee note after Section 6. referring to a certain statute; by changing current Section 6. to Section 7., expanding it to provide certain boxes to check pertaining to specific crimes and to list reasons for appointment; by changing Section 7. to Section 8., deleting language from it and adding language to it; by deleting the lines for "date" and for the signature of the personal representative after Section 4. of Schedule B; by changing the affirmation clause in Section B and C; by adding to section (d) of the form "Limited Order to Locate Will" a line after the words "Register of Wills" and "Register's authorized deputy, the words "Register's authorized deputy," and three lines for judge's signatures; and by making stylistic changes, as follows:

Rule 6-122. PETITIONS

(a) Initial Petition

The Initial Petition shall be substantially in the following form:

IN THE ORPHANS' COURT FOR

(OR) _____, MARYLAND

BEFORE THE REGISTER OF WILLS FOR

IN THE ESTATE OF:

_____ ESTATE NO: _____

FOR:

[ ] REGULAR ESTATE PETITION FOR ADMINISTRATION Estate value in excess of $50,000. (If spouse is sole heir or legatee, $100,000.) Complete and attach Schedule A.	[ ] SMALL ESTATE PETITION FOR ADMINISTRATION Estate value of $50,000 or less. (If spouse is sole heir or legatee, $100,000.) Complete and attach Schedule B.	[ ] WILL OF NO ESTATE Complete items 2 and 5	[ ] LIMITED ORDERS Complete item 2 and attach Schedule C

NOTE: For the purpose of computing whether an estate qualifies as a small estate, value is determined by the fair market value of property less debts of record secured by the property as of the date of death, to the extent that insurance benefits are not payable to the lien holder or secured party for the secured debt. See Code, Estates and Trusts Article, §5-601 (d).

The petition of:

_____ _____
Name

_____
Address

_____ _____
Name

_____
Address

_____ _____
Name

_____
Address

Each of us states:

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

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

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

4. I am entitled to priority of appointment as personal representative of the decedent's estate pursuant to §5-104 of the Estates and Trusts Article, Annotated Code of Maryland because: _____ _____ _____.

5. I am mentally competent.

6. I am not a disqualified person because of feloniously and intentionally killing, conspiring to kill, or procuring the

killing of the decedent.

Committee note: Code, Estates and Trusts Article, §11-112 provides that a disqualified person may not serve as a personal representative.

~~6.~~ 7. (Check one of the following boxes)

[ ] I have not been convicted of fraud, extortion, embezzlement, forgery, perjury, theft or any ~~a~~ other serious crime that reflects adversely on my honesty, trustworthiness, or fitness to perform the duties of a personal representative or

[ ] I was convicted of such a crime, namely _____ _____, in _____, but the following good cause exists (year)

for me to be appointed as personal representative _____ _____.

Committee note: Code, Estates and Trusts Article, §5-105 provides that letters of administration may not be granted to someone who has been convicted of certain serious crimes, unless the person shows good cause for the granting of letters.

~~7.~~ 8. I am not excluded otherwise by ~~other provisions of §5-105 (b) of the Estates and Trusts Article, Annotated Code of Maryland~~ law from serving as a personal representative.

~~8.~~ 9. I have made a diligent search for the decedent's will and to the best of my knowledge:

[ ] none exists; or

[ ] the will dated _____ (including codicils, if any, dated _____)

accompanying this petition is the last will and it came into my

hands in the following manner: _____

_____

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

_____ _____

_____ _____

_____ _____

~~9.~~ 10. Other proceedings, known to petitioner, regarding the decedent or the estate are as follows: _____

_____

~~10.~~ 11. If appointed, I accept the duties of the office of personal representative and consent to personal jurisdiction in any action brought in this State against me as personal representative or arising out of the duties of the office of personal representative.

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

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

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

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

[ ] that only a limited order be issued;

[ ] that the following additional relief be granted: _____

_____

I solemnly affirm under the penalties of perjury that the

contents of ~~the foregoing~~ this document are true to the best of my knowledge, information, and belief.

_____ Attorney	_____ Petitioner Date
_____ Address	_____ Petitioner Date
_____	_____ Petitioner Date
_____ Telephone Number	_____ Telephone Number (optional)
_____ Facsimile Number	_____
_____ E-mail Address	_____

IN THE ORPHANS' COURT FOR

(OR) _____, MARYLAND

BEFORE THE REGISTER OF WILLS FOR

IN THE ESTATE OF:

_____ ESTATE NO. _____

SCHEDULE - A

Regular Estate

Estimated Value of Estate and Unsecured Debts

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

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

Value of property subject to:

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

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

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

_____ Attorney	_____ Petitioner Date
_____ Address	_____ Petitioner Date
_____	_____ Petitioner Date
_____ Telephone Number	_____ Telephone Number (optional)
_____ Facsimile Number	_____
_____ E-mail Address	_____

.....

(FOR REGISTER'S USE)

Safekeeping Wills _____ Custody Wills _____

Bond Set $_____ Deputy _____

IN THE ORPHANS' COURT FOR

(OR) _____, MARYLAND

BEFORE THE REGISTER OF WILLS FOR

IN THE ESTATE OF:

_____ ESTATE NO. _____

SCHEDULE - B

Small Estate - Assets and Debts of the Decedent

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

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

_____

_____

_____

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

_____

_____

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

3. Attached is a List of Interested Persons.

4. After the time for filing claims has expired, subject to the statutory order of priorities, and subject to the resolution of disputed claims by the parties or the court, I shall (a) pay all proper claims made pursuant to Code, Estates and Trusts Article, §8-104 in the order of priority set forth in Code, Estates and Trusts Article, §8-105, expenses, and allowances not previously paid; (b) if necessary, sell property of the estate in order to do so; and (c) distribute the remaining assets of the estate in accordance with the will or, if none, with the intestacy laws of this State.

~~Date~~	~~Personal Representative~~

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

Attorney	Petitioner Date
Address	Petitioner Date
	Petitioner Date
Telephone Number	Telephone Number (optional)
Facsimile Number	
E-mail Address	

IN THE ORPHANS' COURT FOR

(OR) _____, MARYLAND

BEFORE THE REGISTER OF WILLS FOR

IN THE ESTATE OF:

_____ ESTATE NO._____

SCHEDULE - C

Request for Limited Order

[ ] To Locate Assets

[ ] To Locate Will

1. I am entitled to the issuance of a limited order because I am:

[ ] a nominated personal representative or

[ ] a person interested in the proceedings by reason of

_____

_____

_____

_____

2. The reasons(s) a limited order should be granted are:

_____

_____

_____

I solemnly affirm under the penalties of perjury that the contents of ~~the foregoing~~ this document are true to the best of my knowledge, information, and belief. I further acknowledge that this order may not be used to transfer assets.

_____	_____
Attorney	Petitioner Date
_____	_____
Address	Petitioner Date
_____	_____
	Petitioner Date
_____	_____
Telephone Number	Telephone Number (optional)
_____	_____
Facsimile Number	
_____	_____
E-mail Address	

(b) Other Petitions

(1) Generally

Except as otherwise provided by the rules in this Title or permitted by the court, and unless made during a hearing or trial, a petition shall be in writing, shall set forth the relief or order sought, shall state the legal or factual basis for the relief requested, and shall be filed with the Register of Wills. The petitioner may serve on any interested person and shall serve on the personal representative and such persons as the court may direct a copy of the petition, together with a notice informing the person served of the right to file a response and the time for filing it.

(2) Response

Any response to the petition shall be filed within 20 days after service or within such shorter time as may be fixed by the court for good cause shown. A copy of the response shall be served on the petitioner and the personal representative.

(3) Order of Court

The court shall rule on the petition and enter an appropriate order.

Cross reference: Code, Estates and Trusts Article, §§2-102 (c), 2-105, 5-201 through 5-206, and 7-402.

(c) Limited Order to Locate Assets

Upon the filing of a verified petition pursuant to Rule 6-122 (a), the orphans' court may issue a limited order to search for assets titled in the sole name of a decedent. The petition

shall contain the name, address, and date of death of the decedent and a statement as to why the limited order is necessary. The limited order to locate assets shall be in the following form:

IN THE ORPHANS' COURT FOR

(OR) _____, MARYLAND

BEFORE THE REGISTER OF WILLS FOR

IN THE ESTATE OF:

_____ LIMITED ORDER NO. _____

LIMITED ORDER TO LOCATE ASSETS

Upon the foregoing petition by a person interested in the proceedings, it is this _____ day of _____, _____ by the Orphans' Court for _____(county), Maryland, ORDERED that:

1. The following institutions shall disclose to _____ _____ the assets, and the values
(Name of petitioner)
thereof, titled in the sole name of the above decedent:

_____ _____
(Name of financial institution) (Name of financial institution)

_____ _____
(Name of financial institution) (Name of financial institution)

_____ _____
(Name of financial institution) (Name of financial institution)

2. THIS ORDER MAY NOT BE USED TO TRANSFER ASSETS.

(d) Limited Order to Locate Will

Upon the filing of a verified petition pursuant to Rule 6-122 (a), the orphans' court may issue a limited order to a financial institution to enter the safe deposit box of a decedent in the presence of the Register of Wills or the Register's authorized deputy for the sole purpose of locating the decedent's will and, if it is located, to deliver it to the Register of Wills or the authorized deputy. The limited order to locate a will shall be in the following form:

IN THE ORPHANS' COURT FOR

(OR) _____, MARYLAND

BEFORE THE REGISTER OF WILLS FOR

IN THE ESTATE OF:

_____ LIMITED ORDER NO. _____

LIMITED ORDER TO LOCATE WILL

Upon the foregoing Petition, it is this _____ day of

_____ (month), _____(year) by the Orphans' Court for

_____(County), Maryland, ORDERED that:

_____, located at
(Name of financial institution)

_____ enter the
(Address)

safe deposit box titled in the sole name of _____

_____, in the presence of
(Name of decedent)

the Register of Wills _____ OR the Register's authorized deputy _____, for the sole purpose of locating the decedent's will and, if the will is located, deliver it to the Register of Wills or the Register's authorized deputy.

_____
JUDGE

_____
JUDGE

_____
JUDGE

Committee note: This procedure is not exclusive. Banks may also rely on the procedure set forth in Code, Financial Institutions Article, §12-603.

REPORTER'S NOTE

Chapter 486, Laws of 2013 (HB 1211) enacted a slayer's statute, Code, Estates and Trusts Article, §11-112, which provided that a person who feloniously and intentionally kills, conspires to kill, or procures the killing of someone may not serve as the personal representative of that decedent. The Rules Committee recommends adding a new Section 6. of the initial petition form in Rule 6-122 to refer to disqualification because of killing, conspiring to kill, or procuring the killing of the decedent. The Committee also recommends the addition of a Committee note after Section 6. referring to the statute.

Chapter 291, Laws of 2014 (SB 321) modified Code, Estates and Trusts Article, §5-105 to define the term "serious crime" and to add a good cause exception to the rule that letters of administration may not be granted to a person who has been convicted of a serious crime. The Committee recommends amending what has become Section 7. of the petition form in Rule 6-122 and adding a Committee note after it to conform to the statutory changes and provide clarity to people who are seeking to be a

personal representative. The Committee proposes to change Section 7., renumbering it Section 8., and expanding the statement to state that the person applying to be personal representative is not excluded by law from serving as a personal representative rather than excluded by the Estates and Trusts Article from serving.

In Schedule B of the petition form, a register of wills pointed out that after Section 4., the line for a date and the line for the signature of the personal representative do not belong there. The Committee recommends deleting those lines and the accompanying text.

See the Reporter's note to the deletion of Rule 6-123 for the change to the affirmation clause in Schedule B and C.

In the form for a Limited Order to Locate Will, a register of wills suggested that a line be added after the language "Register of Wills" and after the language "Register's authorized deputy" to indicate the name of those individuals. The Committee agreed with this proposal. The register of wills also suggested adding a reference to the "Register's authorized deputy" at the end of the form to make clear that the deputy can also receive the will. Another suggestion was to add three lines for judges' signatures, which are required. The Committee agreed with these suggestions.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 6-125 to add a form of affidavit of attempts to contact, locate, and identify interested persons, to modify the Certificate of Service in section (b), and to make stylistic changes, as follows:

Rule 6-125. SERVICE

(a) Method of Service - Generally

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

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

(b) Certificate of Service

(1) When Required

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

(2) Service by Certified Mail

If the paper is served by certified mail, the certificate

shall be in the following form:

CERTIFICATE OF SERVICE

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

_____.
(name and address)

_____
Signature

(3) Service by Personal Delivery or First Class Mail

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

CERTIFICATE OF SERVICE

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

_____.
(name and address)

_____
Signature

(c) Affidavit of Attempts to Contact, Locate, and Identify Interested Persons

An affidavit of attempts to contact, locate, and identify interested persons shall be substantially in the following form:

[CAPTION]

AFFIDAVIT OF ATTEMPTS TO CONTACT, LOCATE, AND IDENTIFY INTERESTED PERSONS

I, _____, am: (check one)

[ ] a party

[ ] a person interested in the above-captioned matter

[ ] an attorney.

I have reason to believe that the persons listed below are persons interested in the estate of _____ (Provide any information you have).

Name	Relationship	Address
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

I have made a good faith effort to contact, locate, or identify the persons listed above by the following means: _____

_____

_____.

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

_____ _____

Signature Date

~~(c)~~ (d) Proof

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

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

REPORTER'S NOTE

The Rules Committee proposes adding to Rules 6-125 and 10-203 a form affidavit of attempts to contact, locate, and identify interested persons. The Rules in Titles 6 and 10 that address attempts to contact, locate, and identify interested persons will refer to the form affidavits in those Titles. The affidavits are particularly important in circumstances in which the party bringing the action knows there may be siblings or relatives of the decedent who should be notified, but does not know their names or locations.

The Rules Committee was not in favor of adding a specific form affidavit to Title 1 because its application would be too broad and affect too many Rules.

The two Certificate of Service forms are recommended to be changed to conform to the change to the affirmation clauses. See the Reporter's note to the deletion of Rule 6-123.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 6-126 to add lines to the form for an attorney's facsimile number and e-mail address and to modify the language of the Certificate of Service, as follows:

Rule 6-126. WAIVER OR CONSENT

(a) Generally

A person may waive the right to any notice or may consent to any matter. The waiver or consent shall set forth the specific matter that is the subject of the waiver or consent, shall be signed, and shall be filed with the register and served on the personal representative. A person may revoke a waiver or consent at any time by filing a revocation with the register and serving it on the personal representative. The revocation shall have prospective effect only.

(b) Form of Waiver

A waiver of notice shall be filed with the register in the following form:

[CAPTION]

WAIVER OF NOTICE

I waive notice that would otherwise be required by law or rule to be sent to me in this estate regarding the matters

indicated:

[ ] Notice of Judicial Probate	[ ] Notice of Removal of Personal Representative
[ ] Register's Notice to Interested Persons	[ ] Notice of Petition for Termination of Personal Representative's Appointment
[ ] Notice of Proposed Payment to Personal Representative	[ ] Notice of Filing of Account
[ ] Notice of Proposed Payment to Attorney	[ ] Notice of Petition for Partition or Sale of Real Property
[ ] Notice of Personal Representative's Intention to Resign	[ ] Other:_____ _____ (describe specifically)

By signing this waiver, I understand that it will not be necessary for the personal representative or any other person required to do so to give notice to me of any of the matters indicated above.

I UNDERSTAND THAT I AM GIVING UP THE IMPORTANT RIGHT TO BE INFORMED OF THE PROGRESS OF THE ESTATE AS TO THE MATTERS INDICATED. I ALSO UNDERSTAND THAT I MAY FILE WITH THE REGISTER A REVOCATION OF THIS WAIVER OF NOTICE BUT THE REVOCATION WILL APPLY ONLY AFTER IT IS FILED AND SERVED ON THE PERSONAL REPRESENTATIVE.

Date: _____ _____
(Signature)

_____
Attorney

_____

Address

_____

_____
Telephone Number

_____
Facsimile Number

_____
E-mail Address

Certificate of Service

I hereby certify that on this _____ day of _____,
(month)

_____, I delivered or mailed, postage prepaid, a copy of ~~the~~
(year)

~~foregoing~~ this Waiver of Notice to _____

_____,
(name and address)

Personal Representative.

_____
(Signature)

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

REPORTER'S NOTE

To be consistent, the Rule Committee recommends that probate forms be changed to add lines indicating an attorney's facsimile number and e-mail address. This is useful information for the registers and for the court. The Committee also recommends amending the Certificate of Service to be consistent with changes to the affirmation clause. See the Reporter's note to the deletion of Rule 6-125.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 6-152 to add lines to the form for an attorney's facsimile number and e-mail address, as follows:

Rule 6-152. PROOF OF EXECUTION OF WILL

When required in administrative probate and when permitted by the court in judicial probate, proof of execution of a will shall be made by filing a statement in the following form:

[CAPTION]

PROOF OF EXECUTION OF WILL

I solemnly affirm under the penalties of perjury that I have personal knowledge that the will of _____ dated _____ was signed or acknowledged by the testator in the presence of the following witness(es): _____

_____

_____

_____

_____

who signed at the testator's request and in the testator's presence.

_____
Declarant

_____
Address

_____

_____
Date

_____
Attorney

_____
Address

_____

_____
Telephone Number

_____
Facsimile Number

_____
E-mail Address

(FOR REGISTER'S USE)

Date of Death _____

Date Will was admitted to probate _____

Cross reference: Code, Estates and Trusts Article, §§5-303 and 5-404 (b).

REPORTER'S NOTE

See the Reporter's note to Rule 6-126.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 6-153 to add a certain form of petition, to conform the affirmation clause to other affirmation clauses in Title 6, to add lines to the form of consent for an attorney's facsimile number and e-mail address, and to make stylistic changes, as follows:

Rule 6-153. ADMISSION OF COPY OF EXECUTED WILL

(a) Generally

An interested person, without notice to other interested persons, may file a petition for the admission of a copy of an executed will at any time before administrative or judicial probate if:

(1) the original executed will is alleged to be lost or destroyed;

(2) a duplicate reproduction of the original executed will, evidencing a copy of the original signatures of the decedent and the witnesses, is offered for admission; and

(3) all the heirs at law and all legatees named in the will have executed a consent ~~in the following form:~~ substantially in the form set forth in section (c) of this Rule.

(b) Form of Petition

A petition for the admission of a copy of an executed will

shall be substantially in the following form:

[CAPTION]

PETITION FOR ADMISSION OF COPY OF EXECUTED LAST WILL AND TESTAMENT

I, _____, the personal representative named in the will or _____ (state relationship to decedent) ask the court to admit the copy of the Last Will and Testament of _____, decedent, for administrative probate.

I have made a diligent search for the will, and I have been unable to locate it. A copy of the executed Last Will and Testament is being filed with this Petition. Consents have been filed by all heirs at law of the decedent and legatees named in the will. The original executed will is alleged to be:

[ ] Lost [ ] Destroyed [ ] Other

Please explain: _____

_____

_____.

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

_____
Petitioner/Personal Representative

_____
Attorney

_____

Address

_____

_____
Telephone Number

_____
Facsimile Number

_____
E-mail Address

(c) Form of Consent

[CAPTION]

CONSENT TO PROBATE OF COPY OF EXECUTED
LAST WILL AND TESTAMENT

The undersigned _____ and _____, being all the heirs at law of the decedent and all the legatees named in the will executed by the decedent on _____, hereby consent to the probate of a copy of that executed will, it having been determined, after an extensive search of the decedent's personal records, that an original of the will cannot be located. By signing this consent each of the undersigned affirms that it is his or her belief that the will executed by the decedent on _____, is the last valid will executed by the decedent and was not revoked and that the copy of the will, as submitted with the petition for its admission, represents a true and correct copy of the will.

We solemnly affirm under the penalties of perjury that the

~~facts set forth in this consent~~ contents of this document are true ~~and correct~~ to the best of our knowledge, information, and belief.

Date	Signature	Print Name and Relationship
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

_____
Attorney

_____
Address

_____

_____
Telephone Number

_____
Facsimile Number

_____
E-mail Address

REPORTER'S NOTE

A register of wills pointed out that although Rule 6-153 permits the filing of a petition for the admission of a copy of an executed will at any time before administrative or judicial probate when certain conditions are met, the Rule does not contain a form to be used when this petition is filed. The Rules Committee recommends the addition of a form of a petition for the admission of a copy of an executed will.

See the Reporter's note to the deletion of Rule 6-123 for the change to the affirmation clause.

See the Reporter's note to Rule 6-126 for the addition of lines to the form for the attorney's facsimile number and e-mail address.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 200 - SMALL ESTATE

AMEND Rule 6-202 to conform the affirmation clause to other affirmation clauses in Title 6 and to add lines to the form for an attorney's facsimile number and e-mail address, as follows:

Rule 6-202. LIST OF INTERESTED PERSONS

A list of interested persons shall be filed in the following form:

[CAPTION]

LIST OF INTERESTED PERSONS

Name (and age if under 18 years)	Last Known Address including Zip code	Specify: Heir/Legatee/Personal Representative	Relationship to Decedent

I solemnly affirm under the penalties of perjury that the contents of ~~the foregoing list of interested persons~~ this document

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

_____
Petitioner/Personal Representative

_____
Attorney

_____
Address

_____

_____
Telephone Number

_____
Facsimile Number

_____
E-mail Address

Instructions:

1. Interested persons include decedent's heirs (surviving spouse, children, and other persons who would inherit if there were no will) and, if decedent died with a will, the personal representative named in the will and all legatees (persons who inherit under the will). All heirs must be listed even if decedent dies with a will.

2. This list must be filed (a) within 20 days after appointment of a personal representative under administrative probate or (b) at the time of filing a Petition for Judicial Probate or a Petition for Administration of a Small Estate.

Cross reference: Code, Estates and Trusts Article, §§5-403 (a), 5-607, and 7-104.

REPORTER'S NOTE

See the Reporter's note to the deletion of Rule 6-123 for the change in the affirmation clause.

See the Reporter's note to Rule 6-126 for the addition of lines to the form for an attorney's facsimile number and e-mail address.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 200 - SMALL ESTATE

AMEND Rule 6-203 to delete and add language and to delete the form, as follows:

Rule 6-203. CONSENT TO APPOINTMENT OF PERSONAL REPRESENTATIVE

A consent to the appointment of another person as personal representative shall be in the ~~following~~ form~~:~~ set forth in Rule 6-313.

~~[CAPTION]~~

~~CONSENT TO APPOINTMENT OF PERSONAL REPRESENTATIVE OF SMALL ESTATE~~

~~I, _____, the personal representative named in the will OR _____ _____ _____ (state relationship to decedent or other basis for appointment) ask the court or register to appoint _____ _____ instead of me to serve as personal representative and consent to that appointment. I understand that if _____ is so appointed I may not withdraw this consent so long as _____ remains personal representative, except upon a showing of good cause.~~

DATE	SIGNATURE	NAME (typed or printed)

Attorney

Address

Telephone Number

Cross reference: Code, Estates and Trusts Article, §5-106 (b).

REPORTER'S NOTE

The Rules Committee recommends having one form for Consent to Appointment of a Personal Representative in both small and regular estates, instead of two separate forms in Rules 6-203 and 6-313. The two forms are identical, and it is not necessary to have one form for small estates and one for regular estates. The same suggestion was made for the form Appointment of Resident Agent in Rules 6-205 and 6-315.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 200 - SMALL ESTATE

AMEND Rule 6-205 to delete and add language and to delete the form, as follows:

Rule 6-205. APPOINTMENT OF RESIDENT AGENT

An appointment of a resident agent shall be in the ~~following~~ form set forth in Rule 6-315~~:~~.

~~[CAPTION]~~

~~APPOINTMENT OF RESIDENT AGENT~~

~~I appoint _____ as my resident agent on whom service of process may be made with the same effect as if it were served on me personally in the State of Maryland. This appointment shall remain in effect until the filing of a subsequent Appointment of Resident Agent.~~

~~Date: _____ _____~~
~~Personal Representative~~

~~I am a Maryland resident and accept the appointment as resident agent.~~

_____
~~Resident Agent~~

_____
~~Address~~

_____

_____
~~Telephone Number~~

_____
~~Attorney~~

_____
~~Address~~

_____

_____
~~Telephone Number~~

~~Cross reference: Code, Estates and Trusts Article, §5-105 (b)(6).~~

REPORTER'S NOTE

See the Reporter's note to Rule 6-203.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 300 - OPENING ESTATES

AMEND Rule 6-312 to add lines to the form for an attorney's facsimile number and e-mail address, as follows:

Rule 6-312. BONDS

(a) Form of Personal Representative's Bond

. . .

(b) Form of Nominal Bond

. . .

(c) Form of Waiver of Bond

Interested persons may waive the giving of a bond, other than the bond required by section (b) of this Rule, by filing their consent in the following form:

[CAPTION]

WAIVER OF BOND

We, interested persons with respect to the Estate of _____, consent that _____ shall serve as personal representative without a bond except as required by law.

DATE	SIGNATURE	NAME (typed or printed)
_____	_____	_____

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____
Attorney

_____
Address

_____

_____
Telephone Number

_____
Facsimile Number

_____
E-mail Address

(d) Enforcement

The liability of a surety on a bond may be enforced pursuant to Rule 1-404.

Cross reference: Code, Estates and Trusts Article, §6-102.

REPORTER'S NOTE

See the Reporter's note to Rule 6-126.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 300 - OPENING ESTATES

AMEND Rule 6-313 to add the word "I" in two places in the consent form, to delete the word "and" from the consent form, to add lines to the form for an attorney's facsimile number and e-mail address, and to add language indicating whether there is consent to waiver of the bond for the personal representative, as follows:

Rule 6-313. CONSENT TO APPOINTMENT OF PERSONAL REPRESENTATIVE

A consent to the appointment of another person as personal representative shall be in the following form:

[CAPTION]

CONSENT TO APPOINTMENT OF
PERSONAL REPRESENTATIVE

I, _____, the personal representative named in the will OR I, _____

_____
(state relationship to decedent or other basis for appointment)
ask the court or register to appoint _____ instead of me to serve as personal representative. ~~and~~ I consent to that appointment. I understand that if _____ _____ is so appointed I may not withdraw this consent so long as _____ remains

personal representative, except upon a showing of good cause.

I _____, further

[ ] consent that _____ shall serve as personal representative without a bond, except as required by law, or

[ ] do not consent that _____ shall serve as personal representative without a bond.

DATE	SIGNATURE	NAME (typed or printed)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

_____
Attorney

_____
Address

_____

_____
Telephone Number

_____
Facsimile Number

_____
E-mail Address

Cross reference: Code, Estates and Trusts Article, §5-106 (b).

REPORTER'S NOTE

The Rules Committee recommends adding the word "I" in the Consent to Appointment of Personal Representative form where persons, other than the personal representative named in the will, fill in their name and relationship to the decedent. This addition makes it clearer for pro se individuals to fill out the necessary information. The Committee also suggests separating the lengthy first sentence of the form into two sentences for clarity.

The Committee proposes language to be added to the consent form so that interested persons can indicate whether the personal representative can serve without a bond or not. This had been suggested by consultants to the Subcommittee, so that the form is more complete.

See the Reporter's note to Rule 6-126 for the addition of the attorney's facsimile number and e-mail address.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 300 - OPENING ESTATES

AMEND Rule 6-316 to conform the affirmation clause to other affirmation clauses in Title 6 and to add lines to the form for an attorney's facsimile number and e-mail address, as follows:

Rule 6-316. LIST OF INTERESTED PERSONS

A list of interested persons shall be filed in the following form:

[CAPTION]

LIST OF INTERESTED PERSONS

Name (and age if under 18 years)	Last Known Address including Zip Code	Specify: Heir/Legatee/ Personal Representative	Relationship to Decedent
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

I solemnly affirm under the penalties of perjury that the contents of ~~the foregoing list of interested persons~~ this document

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

_____
Petitioner/Personal Representative

_____
Attorney

_____
Address

_____

_____
Telephone Number

_____
Facsimile Number

_____
E-mail Address

Instructions:

1. Interested persons include decedent's heirs (surviving spouse, children, and other persons who would inherit if there were no will) and, if decedent dies with a will, the personal representative named in the will and all legatees (persons who inherit under the will). All heirs must be listed even if decedent died with a will.

2. This list must be filed (a) within 20 days after appointment of a personal representative under administrative probate or (b) at the time of filing a Petition for Judicial Probate or a Petition for Administration of a Small Estate.

Cross reference: Code, Estates and Trusts Article, §§5-403 (a), 5-607, and 7-104.

REPORTER'S NOTE

See the Reporter's note to the deletion of Rule 6-123 for

the change in the affirmation clause.

See the Reporter's note to Rule 6-126 for the addition of lines to the form for an attorney's facsimile number and e-mail address.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 300 - OPENING ESTATES

AMEND Rule 6-342 to add lines to the form for an attorney's facsimile number and e-mail address, as follows:

Rule 6-342. PERSONAL REPRESENTATIVE'S ACCEPTANCE AND CONSENT

Unless included on the petition for probate (Rule 6-301), an acceptance and consent shall be filed by the personal representative in the following form:

[CAPTION]

PERSONAL REPRESENTATIVE'S
ACCEPTANCE AND CONSENT

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

Date: _____ _____
Name

_____
Address

_____

_____
Attorney

_____
Address

_____

_____
Telephone Number

_____
Facsimile Number

_____
E-mail Address

Cross reference: Code, Estates and Trusts Article, §6-101.

REPORTER'S NOTE

See the Reporter's note to Rule 6-126.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-402 to conform the affirmation clause to other affirmation clauses in Title 6 and to add lines to the form for an attorney's facsimile address and e-mail address, as follows:

Rule 6-402. FORM OF INVENTORY

Within three months after appointment, the personal representative shall file with the register (1) an inventory consisting of a summary and supporting schedules in the forms set forth in this Rule and (2) any required appraisal in conformity with Rule 6-403.

(a) Form of Summary

[CAPTION]

Date of Death _____

INVENTORY

Summary

Schedule	Type of Property	Appraised Value
A	Real _____	$_____
B	Leasehold _____	$_____
C	Tangible personal _____	$_____
D	Corporate stocks _____	$_____
E	Bonds, notes, mortgages, debts due	

to the decedent _____ $_____

F Bank accounts, savings and loan accounts, cash _____ $_____

G All other interests _____ $_____

Total $_____

I solemnly affirm under the penalties of perjury that the contents of ~~the foregoing inventory~~ this document are true to the best of my knowledge, information, and belief and that any property valued by me which I have authority as personal representative to appraise has been valued completely and correctly in accordance with law.

Date: _____ _____

_____
Personal Representative(s)

_____
Attorney

_____
Address

_____

_____
Telephone Number

_____
Facsimile Number

_____
E-mail Address

(b) Form of Supporting Schedules

. . .

REPORTER'S NOTE

See the Reporter's note to the deletion of Rule 6-123 for the change to the affirmation clause.

See the Reporter's note to Rule 6-126 for the addition of lines to the form for an attorney's facsimile number and e-mail address.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-404 to conform the affirmation clause to other affirmation clauses in Title 6 and to add lines to the form for an attorney's facsimile number and e-mail address, as follows:

Rule 6-404. INFORMATION REPORT

Within three months after appointment, the personal representative shall file with the register an information report in the following form:

[CAPTION]

Date of Death _____

[ ] With [ ] Without Will

INFORMATION REPORT

1. a. At the time of death did the decedent have any interest as a joint owner (other than with a person exempted from inheritance tax by Code, Tax General Article, §7-203) in any real or leasehold property located in Maryland or any personal property, including accounts in a credit union, bank, or other financial institution?

[ ] No [ ] Yes If yes, give the following information as to all such jointly owned property:

Name, Address, and Relationship of Joint Owner	Nature of Property	Total Value of Property
_____	_____	_____
_____	_____	_____
_____	_____	_____

1. b. At the time of death did the decedent have any interest in any real or leasehold property located outside of Maryland either in the decedent's own name or as a tenant in common?

[ ] No [ ] Yes If yes, give the following information as to such property:

Address, and Nature of Property	Case Number, Names, and Location of Court Where Any Court Proceeding Has Been Initiated With Reference to the Property
_____	_____
_____	_____
_____	_____
_____	_____

2. Except for a bona fide sale or a transfer to a person exempted from inheritance tax pursuant to Code, Tax General Article, §7-203, within two years before death did the decedent make any transfer of any material part of the decedent's property in the nature of a final disposition or distribution, including any transfer that resulted in joint ownership of property?

[ ] No [ ] Yes If yes, give the following information as to each transfer.

Date of Transfer	Name, Address, Relationship of Transferee	Nature of Property Transferred	Total Value of Property
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

3. Except for interests passing to a person exempted by Code, Tax General Article, §7-203, at the time of death did the decedent have (a) any interest less than absolute in real or personal property over which the decedent retained dominion while alive, including a P.O.D. account, (b) any interest in any annuity or other public or private employee pension or benefit plan, (c) any interest in real or personal property for life or for a term of years, or (d) any other interest in real or personal property less than absolute, in trust or otherwise?

[ ] No [ ] Yes If yes, give the following information as to each such interest:

Description of Interest and Amount or Value	Date and Type of Instrument Establishing Interest	Name, Address, and Relationship of Successor, Owner, or Beneficiary

I solemnly affirm under the penalties of perjury that the contents of this ~~report~~ document are true to the best of my knowledge, information, and belief.

Date: _____ _____

_____
Personal Representative(s)

_____
Attorney

_____
Address

_____

_____
Telephone Number

_____
Facsimile Number

_____
E-mail Address

Cross reference: Code, Tax General Article, §§7-201 and 7-224. See Code, Estates and Trusts Article, §1-401 and Code, Financial Institutions Article, §1-204 concerning transfers on death of funds in multiple party accounts, including P.O.D. accounts. See in particular §1-204 (b)(8) and (b)(10), defining multiple party and P.O.D. accounts.

REPORTER'S NOTE

See the Reporter's note to the deletion of Rule 6-123 for the change to the affirmation clause.

See the Reporter's note to Rule 6-126 for the addition of lines to the form for an attorney's facsimile number and e-mail address.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-405 to conform the affirmation clause to other affirmation clauses in Title 6 and to add lines to the form for an attorney's facsimile number and e-mail address, as follows:

Rule 6-405. APPLICATION TO FIX INHERITANCE TAX ON NON-PROBATE ASSETS

An application to fix inheritance taxes on non-probate assets shall be filed with the register within 90 days after decedent's death, together with any required appraisal in conformity with Rule 6-403. The application shall be in the following form:

BEFORE THE REGISTER OF WILLS FOR _____,
MARYLAND

In the matter of: File No.

_____, Deceased

APPLICATION TO FIX INHERITANCE TAX
ON NON-PROBATE ASSETS

The applicant represents that:

1. The decedent, a resident of _____,
(county)

died on _____, _____.
(month) (day) (year)

2. The non-probate property subject to the inheritance tax in which the decedent and the recipient had interests, the nature of each interest (such as joint tenant, life tenant, remainderman of life estate, trustee, beneficiary, transferee), and the market value of the property at the date of death are:

PROPERTY	NATURE OF INTERESTS	DATE AND TYPE OF INSTRUMENT	MARKET VALUE
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

3. The name and address of the recipient of the property and the relationship to the decedent are: _____

_____.

4. Any liens, encumbrances, or expenses payable from the above property and their amounts are:

_____ $_____

_____ $_____

_____ $_____

5. Attached is a statement of the basis for valuation or, if required by law, an appraisal.

6. All other information necessary to fix inheritance tax is as follows: [ ] tax is payable from residuary estate pursuant to decedent's will; [ ] OTHER (describe): _____

_____

_____

_____

The applicant requests the Register of Wills to fix the amount of inheritance tax due.

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

Date: _____ _____
Applicant

_____
Attorney

_____
Address

_____

_____
Telephone Number

_____
Facsimile Number

_____
E-mail Address

(FOR APPLICANT'S USE - OPTIONAL)

Value of property as above ..... $_____

Less: Liens, encumbrances, and expenses as above .. $_____

Amount taxable ..... $_____

Direct Inheritance Tax due at ____% $_____

Collateral Inheritance Tax due at ____% $_____

Total tax due ..... $_____

Cross reference: Code, Tax-General Article, §§7-208 and 7-225 and Code, Estates and Trusts Article, §7-202.

REPORTER'S NOTE

See the Reporter's note to the deletion of Rule 6-123 for the change to the affirmation clause.

See the Reporter's note to Rule 6-126 for the addition of lines to the form for an attorney's facsimile number and e-mail address.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-411 to add lines to the form for an attorney's facsimile number and e-mail address, as follows:

Rule 6-411. ELECTION TO TAKE STATUTORY SHARE

(a) Form of Election

A surviving spouse may elect to take a statutory share by the timely filing of an election in the following form:

[CAPTION]

ELECTION TO TAKE STATUTORY SHARE OF ESTATE

I, _____,
surviving spouse of _____,
renounce all provisions of my spouse's will pertaining to myself and elect to take my statutory share of the estate.

Witness:

_____ _____
Surviving Spouse

Date: _____

_____
Attorney

_____
Address

_____

_____
Telephone Number

_____
Facsimile Number

_____
E-mail Address

Cross Reference: Code, Estates and Trusts Article, §3-203.

(b) Time Limitation for Making Election

. . .

(c) Extension of Time for Making Election

. . .

(d) Withdrawal

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 6-126 for the addition of lines to the form for the attorney's facsimile number and e-mail address.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-413 to conform the affirmation clause to other affirmation clauses in Title 6 and to modify the language of the Certificate of Service, as follows:

Rule 6-413. CLAIM AGAINST ESTATE - PROCEDURE

(a) Presentation of Claim

A claimant may make a claim against the estate, within the time allowed for presenting claims, (1) by serving it on the personal representative, (2) by filing it with the register and serving a copy on the personal representative, or (3) by filing suit. If the claim is filed prior to the appointment of the personal representative, the claimant may file the claim with the register in the county in which the decedent was domiciled or in any county in which the decedent resided on the date of the decedent's death or in which real property or a leasehold interest in real property of the decedent is located.

(b) Content of Claim

A claim against the decedent's estate shall indicate (1) the basis of the claim, (2) the name and address of the claimant, (3) the amount claimed, (4) if the claim is not yet due, the date when it will become due, (5) if the claim is contingent, the nature of the contingency, and (6) if the claim is secured, a

description of the security. Unless the claim is made by filing suit, it shall be verified.

(c) Form of Claim

A claim against a decedent's estate may be filed or made substantially in the following form:

In the Estate of: Estate No. _____

_____ Date _____

CLAIM AGAINST DECEDENT'S ESTATE

The claimant certifies that there is due and owing by the decedent in accordance with the attached statement of account or other basis for the claim the sum of $_____.

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

_____ _____

Name of Claimant

Signature of claimant or person authorized to make verifications on behalf of claimant

_____ _____

Name and Title of Person Signing Claim

Address

_____

_____

Telephone Number

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, _____,
(month) (year)

I [ ] delivered or [ ] mailed, first class, postage prepaid, a copy of ~~the foregoing~~ this Claim to the personal representative,

_____

_____.
(name and address)

_____
Signature of Claimant

Instructions:

1. This form may be filed with the Register of Wills upon payment of the filing fee provided by law. A copy must also be sent to the personal representative by the claimant.

2. If a claim is not yet due, indicate the date when it will become due. If a claim is contingent, indicate the nature of the contingency. If a claim is secured, describe the security.

(d) Disallowance of Claim or Petition for Determination of Validity

. . .

(e) Form of Disallowance of Claim

. . .

(f) Claimant's Petition

. . .

(g) Hearing

. . .

(h) Notice to Register of Suit

. . .

REPORTER'S NOTE

See the Reporter's note to the deletion of Rule 6-123 for the change to the affirmation clause. The Certificate of Service is recommended for change to be consistent with the change to the affirmation clause.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-415 to conform the affirmation clause to other affirmation clauses in Title 6 and to add to the form lines for an attorney's facsimile number and e-mail address, as follows:

Rule 6-415. PETITION AND ORDER FOR FUNERAL EXPENSES

When a petition for funeral expenses is required by law, it shall be filed in the following form:

[CAPTION]

PETITION AND ORDER FOR FUNERAL EXPENSES

I hereby request allowance of funeral expenses and I state that:

(1) The expenses are as follows (or as set forth in the attached statement or invoice): _____

_____.

(2) The estate is (solvent) (insolvent).

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

Date: _____ _____

_____

Personal Representative(s)

_____
Attorney

_____
Address

_____

_____
Telephone Number

_____
Facsimile Number

_____
E-mail Address

CERTIFICATE OF SERVICE

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

_____.
(name and address)

_____
Signature

ORDER

Upon a finding that $_____ is a reasonable amount for funeral expenses, according to the condition and circumstances of the decedent, it is this ____ day of _____,
(month)
_____,
(year)

ORDERED, by the Orphans' Court for _____ County, that this sum is allowed.

_____

_____

_____
JUDGES

Cross reference: Code, Estates and Trusts Article, §§7-401 (i) and 8-106. For limitations on the amount of allowable funeral expenses, see Code, Estates and Trusts Article, §8-106 (b).

REPORTER'S NOTE

See the Reporter's note to the deletion of Rule 6-123 for the change to the affirmation clause.

See the Reporter's note to Rule 6-126 for the addition of lines to the form for an attorney's facsimile number and e-mail address.

AMEND Rule 6-416 to refer to a different personal representative in subsection (b)(1)(A), to add a new subsection (b)(1)(B) pertaining to fees where the personal representative is an attorney, to add a certain cross reference, and to make stylistic changes, as follows:

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

(a) Subject to Court Approval

(1) Contents of Petition

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

(2) Filing - Separate or Joint Petitions

Petitions for attorney's fees and personal representative's commissions shall be filed with the court and

may be filed as separate or joint petitions.

(3) Notice

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

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

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

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

(4) Allowance by Court

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

(5) Exception

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

(6) Disposition

If timely exceptions are not filed, the order of the court allowing the attorney's fees or personal representative's

commissions becomes final. Upon the filing of timely exceptions, the court shall set the matter for hearing and notify the personal representative and other persons that the court deems appropriate of the date, time, place, and purpose of the hearing.

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

(1) Payment of Contingency Fee for Services Other Than Estate Administration

Payment of attorney's fees may be made without court approval if:

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

(B) the fee is paid to an attorney representing the estate in litigation under a contingency fee agreement signed by the current personal representative of the decedent's estate provided that the personal representative is not acting as the retained attorney and is not a member of the attorney's firm;

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

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

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

(2) Consent in Lieu of Court Approval

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

(A) the combined sum of all payments of attorney's fees and personal representative's commissions does not exceed the amounts provided in Code, Estates and Trusts Article, §7-601; and

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

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

IN THE ESTATE OF:

_____ Estate No. _____

CONSENT TO COMPENSATION FOR

PERSONAL REPRESENTATIVE AND/OR ATTORNEY

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

consent to these fees.

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

Based on this formula, the total allowable statutory maximum based on the gross estate known at this time is_____, LESS any personal representative's commissions and/or attorney's fees previously approved as required by law and paid. To date, $_____ in personal representative's commissions and $_____ in attorney's fees have been paid.

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

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

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

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

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

_____ _____ _____

_____ _____ _____

_____ _____
Attorney Personal Representative

_____ _____
Address Personal Representative

_____
Address

_____
Telephone Number

_____
Facsimile Number

_____
E-mail Address

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

(3) Designation of Payment

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

Cross reference: Code, Estates and Trusts Article, §§7-502, 7-601, 7-602, 7-603, and 7-604.

REPORTER'S NOTE

The Rules Committee recommends amending subsection (b)(1)(A) of Rule 6-416 to provide that court approval of payment of attorney's fees is not necessary when the attorney is representing the estate in litigation under a contingency fee agreement signed by the decedent or by a previous personal representative. The latter scenario had not been recognized in the current version of the Rule. Subsection (b)(1)(B) has been

amended to provide that court approval of attorney's fees is necessary when the personal representative is the retained attorney, or the retained attorney is a member of the firm of the personal representative who is also an attorney. This precludes an attorney who is also the personal representative from charging fees that are too high. Interested persons in an estate may not know to challenge the fees.

The Committee is also proposing the addition of a cross reference at the end of Rule 6-416 to draw attention to Code, Estates and Trusts Article, §7-603, which allows a personal representative or a person nominated as a personal representative to receive necessary expenses and disbursements from an estate if he or she defends or prosecutes a proceeding in good faith.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-417 to delete a reference to a certain Rule, as follows:

Rule 6-417. ACCOUNTS

. . .

(b) Contents of Account

A personal representative's account shall include the following items, to the extent applicable to the accounting period:

. . .

(9) The personal representative's verification ~~pursuant to Rule 6-123~~ that the account is true and complete for the period covered by the account; together with the personal representative's certification of compliance with the notice requirements set forth in section (d) of this Rule. The certification shall contain the names of the interested persons upon whom notice was served.

. . .

REPORTER'S NOTE

See the Reporter's note to the deletion of Rule 6-123.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

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

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

(a) Request

When the personal representative cannot obtain agreement from all interested persons entitled to distribution, or if the personal representative has reason to believe that there may be a person entitled to distribution whose name, address, or survival is unknown, the personal representative may file with the court a request for a meeting, under the supervision of the court, of all interested persons entitled to distribution. The request shall set forth the purpose of the meeting, may include the proposed distribution, and shall ask the court to set a date for the meeting. If the personal representative has reason to believe that there may be an interested person entitled to distribution whose name, address, or survival is unknown, the request shall be accompanied by an affidavit <u>of attempts to contact, locate, and identify substantially in the form set forth in Rule 6-125 (c)</u> so stating and setting forth the good faith efforts made to <u>contact, locate, and</u> identify ~~and locate~~ the person.

(b) Notice

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

(c) Appointment of Disinterested Persons

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

(d) Order

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

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

REPORTER'S NOTE

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

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-455 by adding language to Section 1. (c) of the form of Election of Personal Representative for Modified Administration pertaining to certain trusts that are residuary legatees or heirs of the decedent, by deleting Section 1. (d) of the form, by deleting language from and adding language to new Section 1. (d) of the form referring to all residuary legatees and heirs of the decedent, by adding language to Section 3. of the form pertaining to reporting after-discovered property of the decedent, by adding language to Section 4. of the form pertaining to distributing after-discovered property of the decedent, by adding lines to the form for an attorney's facsimile number and e-mail address, by deleting language from and adding language to the form for Consent to Election for Modified Administration pertaining to a trustee of a certain trust, by adding language to Section 1. of the form pertaining to after-discovered property of the decedent, by adding language to Section 3. of the form referring to a certain objection, by adding language to Section 6. of the form pertaining to distributing after-discovered property of the decedent, by adding language to subsection (d)(1) of the Rule pertaining to the distributing of after-discovered property, by adding language to Section 3. of the form for Final Report Under Modified Administration pertaining to distributing

after-discovered property, by adding lines to the Certificate of Service for an attorney's facsimile number and e-mail address, and by making stylistic changes, as follows:

Rule 6-455. MODIFIED ADMINISTRATION

(a) Generally

When authorized by law, an election for modified administration may be filed by a personal representative within three (3) months after the appointment of the personal representative.

(b) Form of Election

An election for modified administration shall be in the following form:

BEFORE THE REGISTER OF WILLS FOR _____, MARYLAND

ESTATE OF _____ Estate No. _____

ELECTION OF PERSONAL REPRESENTATIVE FOR

MODIFIED ADMINISTRATION

1. I elect Modified Administration. This estate qualifies for Modified Administration for the following reasons:

(a) The decedent died on _____ [ ] with a will or [ ] without a will.

(b) This Election is filed within 3 months from the date of my appointment which was on _____.

(c) [ ] Each of the residuary legatees named in the will or [ ] each of the heirs of the intestate decedent is either:

[ ] The decedent's personal representative ~~or~~ [ ] an individual or an entity exempt from inheritance tax in the decedent's estate under §7-203 (b), (e), and (f) of the Tax - General Article and [ ] trusts under which each person who has a current interest in the trust is an individual or entity exempt from inheritance tax in the decedent's estate under §7-203 (b), (e), and (f) of the Tax-General Article.

~~(d) Each trustee of every trust that is a residuary legatee is one or more of the following: the decedent's [ ] personal representative, [ ] surviving spouse, [ ] child.~~

~~(e)~~ (d) Consents of ~~the persons referenced in 1 (c)~~ all residuary legatees of a testate decedent and the heirs at law of an intestate decedent [ ] are filed herewith or [ ] were filed previously.

~~(f)~~ (e) The estate is solvent and the assets are sufficient to satisfy all specific legacies.

~~(g)~~ (f) Final distribution of the estate can be made within 12 months after the date of my appointment.

2. Property of the estate is briefly described as follows:

Description	Estimated Value
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

3. I acknowledge that I must file a verified Final Report Under Modified Administration no later than 10 months after the date of appointment and that, upon request of any interested person, I must provide a full and accurate Inventory and Account to all interested persons. I acknowledge that if I discover property of the decedent after the time for filing a verified Final Report Under Modified Administration, I must file the verified Report with respect to the after-discovered property within 60 days of the discovery of the property.
4. I acknowledge the requirement under Modified Administration to make full distribution within 12 months after the date of appointment, unless I discover property of the decedent after the time for making full distribution, in which case I must make final distribution of the after-discovered property within 90 days of the discovery of the property.
5. I acknowledge and understand that Modified Administration shall continue as long as all the requirements are met.

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

_____	_____
Attorney	Personal Representative
_____	_____
Address	Personal Representative

_____
Address

_____
Telephone Number

_____
Facsimile Number

_____
E-mail Address

(c) Consent

An election for modified administration may be filed if all the residuary legatees of a testate decedent and the heirs at law of an intestate decedent consent in the following form:

BEFORE THE REGISTER OF WILLS FOR _____, MARYLAND

ESTATE OF _____ Estate No. _____

CONSENT TO ELECTION FOR

MODIFIED ADMINISTRATION

I am a [ ] residuary legatee, who is the decedent's personal representative or an individual or an entity exempt from inheritance tax under §7-203 (b), (e), and (f) of Code, Tax General Article, [ ] an heir of the decedent who died intestate, and I am the decedent's personal representative, ~~or~~ an individual or an entity exempt from inheritance tax under §7-203 (b), (e), and (f), [ ] or a trustee of a trust ~~that is a residuary legatee who is the decedent's personal representative, surviving spouse, or child~~ under which each person who has a current

interest in the trust is an individual or entity exempt from inheritance tax in the decedent's estate under §7-203 (b), (e), and (f) of the Tax-General Article.

1. Instead of filing a formal Inventory and Account, the personal representative will file a verified Final Report Under Modified Administration no later than 10 months after the date of appointment, unless the personal representative discovers property of the decedent after the time for filing a verified Final Report Under Modified Administration in which case the personal representative must file the verified Report with respect to the after-discovered property within 90 days of the discovery of the property.
2. Upon written request to the personal representative by any legatee not paid in full or any heir-at-law of a decedent who died without a will, a formal Inventory and Account shall be provided by the personal representative to the legatees or heirs of the estate.
3. At any time during administration of the estate, I may revoke Modified Administration by filing a written objection to Modified Administration with the Register of Wills. Once filed, the objection is binding on the estate and cannot be withdrawn.
4. If Modified Administration is revoked, the estate will proceed under Administrative Probate and the personal

representative shall file a formal Inventory and Account, as required, until the estate is closed.

5. Unless I waive notice of the verified Final Report Under Modified Administration, the personal representative will provide a copy of the Final Report to me, upon its filing which shall be no later than 10 months after the date of appointment.

6. Final Distribution of the estate will occur not later than 12 months after the date of appointment of the personal representative, unless the personal representative discovers property of the decedent after the time for making full distribution, in which case the personal representative must make final distribution of the after-discovered property within 90 days of the discovery of the property.

_____	_____
Signature of Residuary Legatee or Heir	State Relationship to Decedent
_____	
Type or Print Name	
_____	_____
Signature of Residuary Legatee or Heir	State Relationship to Decedent
_____	
Type or Print Name	
_____	_____
Signature of Trustee	Signature of Trustee

_____ _____

Type or Print Name Type or Print Name

(d) Final Report

(1) Filing

A verified final report shall be filed no later than 10 months after the date of the personal representative's appointment, unless the personal representative discovers property of the decedent after the time for filing a verified final report in which case the personal representative must file the verified report with respect to the after-discovered property within 90 days of the discovery of the property.

(2) Copies to Interested Persons

Unless an interested person waives notice of the verified final report under modified administration, the personal representative shall serve a copy of the final report on each interested person.

(3) Contents

A final report under modified administration shall be in the following form:

BEFORE THE REGISTER OF WILLS FOR _____, MARYLAND

ESTATE OF _____ Estate No. _____

Date of Death _____ Date of Appointment of Personal Repre-sentative _____

FINAL REPORT UNDER MODIFIED ADMINISTRATION

(Must be filed within 10 months after the date of appointment)

I, Personal Representative of the estate, report the following:

1. The estate continues to qualify for Modified Administration as set forth in the Election for Modified Administration on file with the Register of Wills.

2. Attached are the following Schedules and supporting attachments:

Total Schedule A: Reportable Property ..... . $ _____

Total Schedule B: Payments and Disbursements .. $(_____)

Total Schedule C: Distribution of Net Reportable Property ..... $ _____

3. I acknowledge that:

(a) Final distributions shall be made within 12 months after the date of my appointment as personal representative, unless I discover property of the decedent after the time for making final distributions in which case I must make final distribution of the after-discovered property within 90 days of the discovery of the property.

(b) If Modified Administration is revoked, the estate shall proceed under Administrative Probate, and I will file a formal Inventory and Account, as required, until the estate is closed.

I solemnly affirm under the penalties of perjury that the

contents of ~~the foregoing~~ this document are true to the best of my knowledge, information, and belief and that any property valued by me which I have authority as personal representative to appraise has been valued completely and correctly in accordance with law.

_____	_____
Attorney Signature	Personal Representative Date
_____	_____
Address	Personal Representative Date
_____	_____
Address	Personal Representative Date

_____
Telephone Number

_____
Facsimile Number

_____
E-mail Address

CERTIFICATE OF SERVICE OF

FINAL REPORT UNDER MODIFIED ADMINISTRATION

I hereby certify that on this ____ day of _____, I delivered or mailed, postage prepaid, a copy of the foregoing Final Report Under Modified Administration and attached Schedules to the following persons:

Names	Addresses
_____	_____
_____	_____
_____	_____

_____ _____

_____ _____
Attorney Personal Representative

_____ _____
Address Personal Representative

_____
~~City, State, Zip Code~~ Address

_____
Telephone Number

_____
Facsimile Number

_____
E-mail Address

_____

FOR REGISTER OF WILLS USE

Distributions subject to collateral _____ Tax thereon _____
tax at _____ %

Distribution subject to collateral _____ Tax thereon _____
tax at _____ %

Distribution subject to direct tax _____ Tax thereon _____
at _____ %

Distribution subject to direct tax _____ Tax thereon _____

Exempt distributions to _____ _____
(Identity of the recipient)

Exempt distributions to _____ _____
(Identity of the recipient)

Exempt distributions to _____ _____
(Identity of the recipient)

Total Inheritance Tax due _____

Total Inheritance Tax paid _____

Gross Estate _____ Probate Fee & Costs Collected _____

FINAL REPORT UNDER MODIFIED ADMINISTRATION

SUPPORTING SCHEDULE A

REPORTABLE PROPERTY

ESTATE OF _____ Estate No. _____

Item No.	Description	Basis of Valuation	Value

TOTAL REPORTABLE PROPERTY OF THE DECEDENT $ _____

(Carry forward to Schedule C)

INSTRUCTIONS

ALL REAL AND PERSONAL PROPERTY MUST BE INCLUDED AT DATE OF DEATH VALUE. THIS DOES NOT INCLUDE INCOME EARNED DURING ADMINISTRATION OR CAPITAL GAINS OR LOSSES REALIZED FROM THE SALE OF PROPERTY DURING ADMINISTRATION. ATTACHED APPRAISALS OR COPY OF REAL PROPERTY ASSESSMENTS AS REQUIRED:

1. Real and leasehold property: Fair market value must be established by a qualified appraiser. For decedents dying on or after January 1, 1998, in lieu of a formal appraisal,

real and leasehold property may be valued at the full cash value for property tax assessment purposes as of the most recent date of finality. This does not apply to property tax assessment purposes on the basis of its use value.

2. The personal representative may value: Debts owed to the decedent, including bonds and notes; bank accounts, building, savings and loan association shares, money and corporate stocks listed on a national or regional exchange or over the counter securities.
3. All other interests in tangible or intangible property: Fair market value must be established by a qualified appraiser.

ATTACH ADDITIONAL SCHEDULES AS NEEDED

FINAL REPORT UNDER MODIFIED ADMINISTRATION

SUPPORTING SCHEDULE B

Payments and Disbursements

ESTATE OF _____ Estate No. _____

Item No.	Description	Amount Paid

Total Disbursements: $ _____

(Carry forward to Schedule C)

INSTRUCTIONS

1. Itemize all liens against property of the estate including mortgage balances.
2. Itemize sums paid (or to be paid) within twelve months from the date of appointment for: debts of the decedent, taxes due by the decedent, funeral expenses of the decedent, family allowance, personal representative and attorney compensation, probate fee and other administration expenses of the estate.

ATTACH ADDITIONAL SCHEDULES AS NEEDED

FINAL REPORT UNDER MODIFIED ADMINISTRATION

SUPPORTING SCHEDULE C

Distributions of Net Reportable Property

1. SUMMARY OF REPORTABLE PROPERTY

Total from Schedule A ..... _____

Total from Schedule B ..... _____

Total Net Reportable Property ..... _____

(Schedule A minus Schedule B)

2. SPECIFIC BEQUESTS (If Applicable)

Name of Legatee or Heir	Distributable Share of Reportable Estate	Inheritance Tax Thereon

3. DISTRIBUTION OF BALANCE OF ESTATE

Name of Legatee or Heir	Distributable Share of Reportable Estate	Inheritance Tax Thereon
Total Reportable Distributions		$ _____
Inheritance Tax		$ _____

_____

ATTACH ADDITIONAL SCHEDULES AS NEEDED

(4) Inventory and Account

The provisions of Rule 6-402 (Inventory) and Rule 6-417 (Account) do not apply.

(e) Revocation

(1) Causes for Revocation

A modified administration shall be revoked by:

(A) the filing of a timely request for judicial probate;

(B) the filing of a written objection by an interested person;

(C) the personal representative's filing of a withdrawal of the election for modified administration;

(D) the court, on its own initiative, or for good cause shown by an interested person or by the register;

(E) the personal representative's failure to timely file the final report and make distribution within 12 months after the date of appointment, or to comply with any other provision of this Rule or Code, Estates and Trusts Article, §§5-701 through 5-710.

(2) Notice of Revocation

The register shall serve notice of revocation on each interested person.

(3) Consequences of Revocation

Upon revocation, the personal representative shall file a formal inventory and account with the register pursuant to Rules 6-402 and 6-417. The inventory and account shall be filed within the time provided by Rules 6-402 and 6-417, or, if the deadline for filing has passed, within 30 days after service of the register's notice of revocation.

Source: This Rule is new.

REPORTER'S NOTE

Chapter 645, Laws of 2013 (HB 858) changed a requirement for filing an election for modified administration. Previously, the election could be filed if all residuary legatees and heirs of a decedent included all trustees of each trust that is a residuary legatee that were limited to the decedent's personal representative surviving spouse, and children. This has been changed to the election being filed if all residuary legatees named in the will or all trusts under which each person who has a current interest in the trust is an individual or entity exempt from inheritance tax in the decedent's state under certain provisions of the Tax-General Article of the Code.

House Bill 858 also added a new procedure for reporting and distributing property discovered by the personal representative after the time for filing the verified final report under modified administration. Chapter 435, Laws of 2014 (HB 1004) clarified that a modified administration of an estate shall be revoked by an interested person filing a written objection to modified administration, instead of simply filing a written objection.

The Rules Committee recommends changing Rule 6-455 to conform to the statutory changes.

See the Reporter's note to the deletion of Rule 6-123 for the change to the affirmation clauses in the forms.

See the Reporter's note to Rule 6-126 for the addition of lines for the attorney's facsimile number and e-mail address.

The signature provisions were modified to be consistent with similar provisions in other forms.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 500 - MISCELLANEOUS PROVISIONS

AMEND Rule 6-501 to conform the affirmation clause to other affirmation clauses in Title 6 and to add to the form lines for an attorney's facsimile number and e-mail address, as follows:

Rule 6-501. APPLICATION BY FOREIGN PERSONAL REPRESENTATIVE TO SET INHERITANCE TAX

(a) Form of Application

An application by a foreign personal representative to set inheritance tax shall be filed with the register for the county where the largest part in value of the decedent's Maryland property is located according to the following form:

BEFORE THE REGISTER OF WILLS FOR _____, MARYLAND

In the Estate of: File No. _____

_____

APPLICATION BY FOREIGN PERSONAL REPRESENTATIVE
TO SET INHERITANCE TAX

The Application of

_____, _____
Name Address

_____

_____, _____

Name Address

_____

Each of us states:

1. I am the qualified foreign personal representative of the Estate of _____
(name of decedent)

who died domiciled in _____ on
(state or country)

_____ (with) (without) a will.
(date)

2. Real and leasehold property owned by the decedent in Maryland and the market value at the decedent's date of death are:

_____ $_____

_____ $_____

_____ $_____

3. Tangible personal property in Maryland owned by the decedent and taxable in Maryland and the market value at the decedent's date of death are:

_____ $_____

_____ $_____

_____ $_____

4. Any liens, encumbrances, and expenses payable out of Maryland property and their amounts are:

_____ $_____

_____ $_____

_____ $_____

5. Attached are:

(a) copy of appointment and will, if any, authenticated under Title 28, U.S.C.A. §1738;

(b) appointment of Maryland resident agent;

(c) list of recipients of Maryland property, their interests in the property, and their relationship to the decedent;

(d) notice to creditors of appointment with respect to the decedent's real or leasehold property in Maryland; and

(e) appraisal or other basis for valuation of real or leasehold property, or of tangible personal property that is taxable in Maryland. (For real and leasehold property give a description sufficient to identify the property and the title reference by liber and folio.)

I request the Register of Wills to set the amount of inheritance tax due.

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

Date: _____ _____
Applicant

_____
Applicant

_____
Attorney

_____
Address

_____

_____
Telephone Number

_____
Facsimile Number

_____
E-mail Address

(FOR APPLICANT'S USE - OPTIONAL)

Value of Property as above .....$_____

Less: Liens, encumbrances and
expenses as above .....$_____

Amount Taxable .....$_____

Direct Inheritance Tax due at ____% .....$_____

Collateral Inheritance Tax due at ____% .....$_____

Total Tax due .....$_____

(b) Form of Notice of Appointment of Foreign Personal Representative

. . .

(c) Publication – Certification

. . .

REPORTER'S NOTE

See the Reporter's note to the deletion of Rule 6-123 for

the change to the affirmation clause.

See the Reporter's note to Rule 6-126 for the addition of lines to the form for an attorney's facsimile number and e-mail address.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 10-103 by deleting the reference to Rule 10-703 from section (c) and by adding language providing for a certain exception in section (g), as follows:

Rule 10-103. DEFINITIONS

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

. . .

(c) Fiduciary

"Fiduciary" means (1) a guardian of the property of a minor or disabled person, (2) a guardian of the person of a minor or disabled person to the extent that the guardian exercises control over any property of the minor or disabled person, (3) a trustee acting under any inter vivos or testamentary trust over which the court has been asked to assume or has assumed jurisdiction, (4) a person administering an estate under appointment by a court as a "committee," "conservator," or the like, and (5) a personal representative of a decedent to the extent provided in ~~Rules 10-703 and~~ Rule 10-711.

. . .

(g) Minor

"Minor" means ~~a person~~ an individual who is under the age of eighteen, except that, in a proceeding under Code, Family Law Article, §1-201 (b)(10), "minor" includes an unmarried individual under the age of 21.

. . .

Source: This Rule is derived as follows:

. . .

Section (g) is in part derived from former Rule R70 e and is in part new.

. . .

REPORTER'S NOTE

An attorney from the Office of the Attorney General pointed out that the reference to Rule 10-703 in Rule 10-103 (c) is inconsistent with Code, Estates and Trusts Article, §7-401, which allows a personal representative to settle claims without a court order. Rule 10-703 requires the fiduciary (personal representative) to mail a copy of the petition and a show cause order when authorizing or notifying a compromise or settlement of a claim or matter relating to a fiduciary estate. The reference to Rule 10-703 in Rule 10-103 (c) seems to require that a show cause order be issued. The Rules Committee therefore recommends deleting the reference to Rule 10-703 in Rule 10-103.

An attorney pointed out that Chapter 96, Laws of 2014 (HB 315) changed Code, Family Law Article, §1-201 to provide that in a guardianship of an immigrant child who is unmarried, the court retains jurisdiction over the guardianship until the child reaches his or her 21st birthday. This affects the definition of the term "minor" in Rule 10-103 (g) because a minor is defined to be under the age of 18. The Committee recommends adding language to section (g) noting this exception.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 - GENERAL PROVISIONS

ADD new Rule 10-111, as follows:

Rule 10-111. PETITION FOR GUARDIANSHIP OF MINOR

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

[CAPTION]

In the Matter of _____ (Name of Minor)

In the _____Court for _____ (County)

_____ (Docket reference)

PETITION FOR GUARDIANSHIP OF MINOR

Note: This form is to be used where the only ground for the petition is minority.

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

The petitioner, _____ (name), _____ (age) whose address is _____,

and whose telephone number is _____,

represents to the court that:

1. The minor _____, age ____,

born on the _____ day of _____, _____ ,
(month) (year)

a [ ] male or [ ] female child of _____

and _____, resides at

_____.

A birth certificate of the minor is attached.

2. If the minor does not reside in the jurisdiction in which this petition is filed, then state the place in this jurisdiction where the minor is currently located _____

_____.

3. The relationship of petitioner to the minor is _____

_____.

4. Complete Section 4 if the petitioner is asking the court to appoint <u>the petitioner</u> as the guardian.

(Check <u>only</u> one of the following boxes)

[ ] I have not been convicted of a crime listed in Code, Estates and Trusts Article, §11-114.

[ ] I was convicted of such a crime, namely _____

_____

_____, in _____, but the
(year)

following good cause exists for me to be appointed as guardian

_____

_____.

5. *Complete Section 5 if the petitioner is asking the court to appoint <u>an individual other than the petitioner</u> as the guardian.*

The name of the prospective guardian is _____ and that individual's age is _____. The relationship of that individual to the minor is _____.

(Check only one of the following boxes)

[ ] _____ has not been convicted
(Name of prospective guardian)

of a crime listed in Code, Estates and Trusts Article, §11-114.

[ ] _____ was convicted of such a
(Name of prospective guardian)

crime, namely _____

_____, in _____, but the following good cause exists for the individual to be appointed as guardian _____

_____.

6. State the name and address of an additional person on whom service shall be made on behalf of the minor, including a minor who is at least ten years of age: _____

_____

_____.

7. The following is a list of the names, addresses, and telephone numbers of all interested persons (see Code, Estates and Trusts Article, §13-101 (j)).

List of Interested Persons

Name	Address	Telephone Number
Parents:	_____	_____

	Name	Address	Telephone Number
	_____	_____	_____
Siblings:	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
Any Other Heirs at Law:	_____	_____	_____
Guardian (If appointed):	_____	_____	_____
Any Person Holding a Power of Attorney of the Minor:	_____	_____	_____
Minor's Attorney:	_____	_____	_____
Any Other Person Having Assumed Responsibility for the Minor:	_____	_____	_____
Any Government Agency Paying Benefits to or for the Minor:	_____	_____	_____
Any Person Having an Interest in the Property of the Minor:	_____	_____	_____

	Name	Address	Telephone Number
All Other Persons Exercising Control over the Minor or the Minor's Property:	_____	_____	_____
A Person or Agency Eligible to Serve as Guardian of the Person of the Minor:	_____	_____	_____

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

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

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

_____

_____

_____

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

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

11. The petitioner's interest in the property of the minor listed in 10. is _____

_____.

12. (a) All other proceedings regarding the minor (including any proceedings in juvenile court) are, as follows:

_____

_____

_____

(b) All proceedings regarding the petitioner and prospective guardian filed in this court or any other court are, as follows:

_____

_____

_____

13. All exhibits required by the Instructions below are attached.

WHEREFORE, Petitioner requests that this court issue an order to direct all interested persons to show cause why a guardian of the

[ ] person [ ] property [ ] person and property

of the minor should not be appointed, and (if applicable)

_____ should not be
(Name of prospective guardian)

appointed as the guardian.

_____ _____
Attorney's Signature Petitioner's Name

_____
Attorney's Name

_____
Address

_____
Telephone Number

_____
Facsimile Number

_____
E-mail Address

Petitioner solemnly affirms under the penalties of perjury that the contents of this document are true to the best of Petitioner's knowledge, information, and belief.

_____
Petitioner's Name

_____
Petitioner's Signature

INSTRUCTIONS

1. The required exhibits are as follows:

(a) A copy of any instrument nominating a guardian [Code, Estates and Trusts Article, §13-701 and Maryland Rule 10-301 (d)];

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

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

REPORTER'S NOTE

The Rules Committee proposes the addition of a new form of petition of a guardianship of a minor, new Rule 10-111. This form is based upon a draft submitted by a committee of registers of wills, Orphans' Court judges, and members of the bar, including members of the Estate and Trust Law Section of the Maryland State Bar Association. Currently, someone petitioning to be the guardian of the person of a minor is required to file a petition, the contents of which are described in section (c) of Rule 10-201, and someone petitioning to be the guardian of the property of a minor is required to file a petition, the contents of which are described in section (c) of Rule 10-301. The Committee felt it would be easier and more uniform if the petitions were filed using a specific form. Because Rules 10-201 and 10-301 also address guardianships of the person or property or both of an alleged disabled person, the Committee believes that it would be more consistent to also include a similar form for guardianships of alleged disabled persons. This would be in Rule 10-112. A master in Baltimore City suggested changes to Rule 10-112, and Rule 10-111 conforms to these changes. The adoption of these forms would mean that the contents provisions of Rules 10-201 and 10-301 no longer would be necessary.

Code, Estates and Trusts Article, §11-114 was added in 2014 (Chapter 291, Laws of 2014 (SB 321)). It sets out a list of crimes, which, if committed, would exclude someone from serving as a guardian of the person unless good cause is shown. The Committee recommends including in the petition forms in Rules 10-111 and 10-112 a question to a petitioner who is petitioning to be a guardian of the person or of the property of a minor or disabled person, asking whether the petitioner has been convicted of a crime listed in Code, Estates and Trusts Article, §11-114 and if so, what the petitioner's good cause is to show why he or

she should be a guardian. If the petitioner is asking the court to name an individual other than the petitioner, the information regarding criminal convictions must be supplied as to that individual. These questions are similar to the questions asked of a petitioner who is asking to be a personal representative of an estate pursuant to Rule 6-122.

The committee of registers of wills, Orphans' Court judges, and members of the bar suggested that the list of interested persons be a separate document. An estates and trusts attorney asked that the list include a verification section at the end. The Rules Committee recommends that the list of interested persons be included in the petition for guardianship of a minor, so that the verification at the end of the petition applies to the information provided in the list.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 - GENERAL PROVISIONS

ADD new Rule 10-112, as follows:

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

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

[CAPTION]

In the Matter of	In the Circuit Court for
_____ (Name of Alleged Disabled Individual	_____ (County)
	_____ (Docket reference)

PETITION FOR GUARDIANSHIP OF

ALLEGED DISABLED PERSON

Note: This form is to be used where the subject of the petition is an individual, regardless of the individual's age, who has a disability other than minority.

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

The petitioner, _____, _____
(name) (age)

whose address is _____,

and whose telephone number is _____,

represents to the court that:

1. The alleged disabled person _____,

age ___, born on the _____ day of _____, _____,
(month) (year)

a [ ] male or [ ] female resides at _____

_____.

2. If the alleged disabled person does not reside in the jurisdiction in which this petition is filed, then state the place in this jurisdiction where the alleged disabled person is currently located _____

_____.

3. The relationship of petitioner to the alleged disabled person is _____.

4. Complete Section 4 if the petitioner is asking the court to appoint <u>the petitioner</u> as the guardian.

(Check <u>only</u> one of the following boxes)

[ ] I have not been convicted of a crime listed in Code, Estates and Trusts Article, §11-114, or

[ ] I was convicted of such a crime, namely _____

_____, in _____, but the
(year)

following good cause exists for me to be appointed as guardian

_____

_____.

5. Complete Section 5 is the petitioner is asking the court to appoint <u>an individual other than the petitioner</u> as the guardian.

The name of the prospective guardian is _____ and that individual's age is _____. The relationship of that individual to the alleged disabled person is _____.

(Check only one of the following boxes)

[ ] _____ has not been convicted
(Name of prospective guardian)

of a crime listed in Code, Estates and Trusts Article, §11-114.

[ ] _____ was convicted of such a crime, namely _____

_____, in _____, but the
(year)

following good cause exists for the individual to be appointed as guardian _____

_____.

6. If the alleged disabled person resides with petitioner, then state the name and address of an additional person on whom initial service shall be made:_____

_____

_____.

7. The following is a list of the names, addresses, and telephone numbers of all interested persons (see Code, Estates and Trusts Article, §13-101 (j)):

	Name	Address	Telephone Number
Person or Health Care Agent Designated in Writing by Alleged Disabled Person:	_____	_____	_____

	Name	Address	Telephone Number
Spouse:	_____	_____	_____
Parents:	_____	_____	_____
	_____	_____	_____
Adult Children:	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
Adult Grandchildren*****:	_____	_____	_____
	_____	_____	_____
Siblings*****:	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
Any Other Heirs at Law:	_____	_____	_____
Guardian (If appointed):	_____	_____	_____
Any Person Holding a Power of Attorney of the Alleged Disabled Person:	_____	_____	_____

	Name	Address	Telephone Number
Alleged Disabled Person's Attorney:	_____	_____	_____
Any Other Person Having Assumed Responsibility for the Alleged Disabled Person:	_____	_____	_____
Any Government Agency Paying Benefits to or for the Alleged Disabled Person:	_____	_____	_____
Any Person Having an Interest in the Property of the Alleged Disabled Person:	_____	_____	_____
All Other Persons Exercising Control over the Alleged Disabled Person or the Person's Property:	_____	_____	_____

A Person or Agency Eligible to Serve as Guardian of the Person of the Alleged Disabled Person (Choose A or B below):

A. Local Commission on Aging and Retirement Education (if Alleged Disabled Person is Age 65 or over):	_____	_____	_____
B. Local Department of Social Services if Alleged Disabled Person is Under Age 65):	_____	_____	_____

* Note: Adult grandchildren and siblings need not be listed unless there is no spouse and there are no parents or adult children.

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

Name	Address	Approximate Dates
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

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

_____

_____

_____

10. (a) Guardianship of the Person is sought because

_____
(Name of Alleged Disabled Person)

cannot make or communicate responsible decisions concerning health care, food, clothing, or shelter, because of mental disability, disease, habitual drunkenness, addiction to drugs, or other addictions. State the relevant facts:

_____

_____

_____

(b) Describe less restrictive alternatives that have been attempted and have failed (see Code, Estates and Trusts Article, §13-705 (b)):

_____

_____

_____

11. (a) Guardianship of the Property is sought because _____ cannot manage property
(Name of Alleged Disabled Person)
and affairs effectively because of physical or mental disability, disease, habitual drunkenness, addiction to drugs or other addictions, imprisonment, compulsory hospitalization, confinement, detention by a foreign power, or disappearance. State the relevant facts:

_____

_____

_____

(b) Describe less restrictive alternatives that have been attempted and have failed (see Code, Estates and Trusts Article, §13-201):

_____

_____

_____

12. If this Petition is for Guardianship of the Property,

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

Property	Location	Value	Sole Owner, Joint Owner (specify type), Life Tenant, Trustee, Custodian, Agent, etc.
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

13. The petitioner's interest in the property of the alleged disabled person listed in 12. is _____ _____.

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

_____ _____
Name Address

_____
Court

15. All other proceedings regarding the alleged disabled person (including criminal) are as follows:

_____

_____

_____

16. All exhibits required by the Instructions below are attached.

WHEREFORE, Petitioner requests that this court issue an order to direct all interested persons to show cause why a guardian of the

[ ] person [ ] property [ ] person and property

of the alleged disabled person should not be appointed, and (if applicable) _____ should not
(Name of prospective guardian)

be appointed as the guardian.

_____ _____
Attorney's Signature Petitioner's Name

_____
Attorney's Name

_____
Address

_____
Telephone Number

_____
Facsimile Number

_____
E-mail Address

Petitioner solemnly affirms under the penalties of perjury that the contents of this document are true to the best of

Petitioner's knowledge, information, and belief.

_____
Petitioner's Name

_____
Petitioner's Signature

INSTRUCTIONS

1. The required exhibits are as follows:

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

   (b) A copy of any power of attorney (including a durable power of attorney for health care) which the alleged disabled person has given to someone;

   (c) Signed and verified certificates of two physicians licensed to practice medicine in the United States who have examined the alleged disabled person, or of one licensed physician, who has examined the alleged disabled person, and one licensed psychologist or certified clinical social worker, who has seen and evaluated the alleged disabled person. An examination or evaluation by at least one of the health care professionals must have occurred within 21 days before the filing of the petition (see Code, Estates and Trusts Article, §13-103 and §1-102 (a) and (b)).

   (d) If the petition is for the appointment of a guardian of an alleged disabled person who is a beneficiary of the Department of Veterans Affairs, then in lieu of the certificates required by (c) above, a certificate of the Secretary of that Department or an authorized representative of the Secretary setting forth the fact that the person has been rated as disabled by the Department.

2. Attach additional sheets to answer all the information requested in this petition, if necessary.

REPORTER'S NOTE

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

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 200 - GUARDIAN OF PERSON

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

Rule 10-201. PETITION FOR APPOINTMENT OF A GUARDIAN OF THE PERSON

(a) Who may File

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

(b) Form of Petition

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

~~(b)~~ (c) Venue

(1) Resident

If the minor or alleged disabled person is a resident of Maryland, the petition shall be filed in the county where (A) the

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

(2) Nonresident

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

~~(c) Contents~~

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

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

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

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

~~(4) The reasons why the court should appoint a guardian of the person and, if the subject of the petition is a disabled~~

~~person, allegations demonstrating an inability of that person to make or communicate responsible decisions concerning the person, including provisions for health care, food, clothing, or shelter, because of mental disability, disease, habitual drunkenness or addiction to drugs, and a description of less restrictive alternatives that have been attempted and have failed.~~

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

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

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

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

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

~~(8) The name, address, telephone number, and nature of~~

~~interest of all other interested persons and all other persons exercising control of the minor or alleged disabled person, to the extent known or reasonably ascertainable.~~

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

~~(10) A statement that the certificates required by Rule 10-202 are attached, or, if not, an explanation of their absence.~~

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

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

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

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

[CAPTION]

DESIGNATION OF A GUARDIAN OF THE PERSON BY A MINOR

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

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

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

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

I solemnly affirm under the penalties of perjury that the contents of this document are true based upon my personal knowledge.

_____

Signature of Minor Date

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

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

REPORTER'S NOTE

See the Reporter's note to Rule 10-111 as to the form of the petition and to explain the deletion of section (c) of this Rule.

The Rules Committee recommends the addition of a form, "Designation of a Guardian of the Person by a Minor" to be consistent with Code, Estates and Trusts Article, §13-702. This form is based upon a draft submitted by a committee of registers of wills, Orphans' Court judges and members of the bar, including members of the Estate and Trust Law Section of the Maryland State Bar Association.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 200 - GUARDIAN OF PERSON

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

Rule 10-202. CERTIFICATES AND CONSENTS

(a) Certificates

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

Except as provided in ~~section (d)~~ subsection (a)(4) of this Rule, if guardianship of the person of a disabled person is sought, the petitioner shall file with the petition signed and verified certificates of ~~(1)~~ (A) two physicians licensed to practice medicine in the United States who have examined the disabled person, or ~~(2)~~ (B) one licensed physician ~~or~~ who has examined the disabled person and one licensed psychologist or certified clinical social worker who has seen and evaluated the disabled person. An examination or evaluation by at least one of the health care professionals ~~under this subsection~~ shall ~~occur~~ have been within 21 days before the filing of the petition.

~~(b)~~ (2) Contents

Each certificate shall state: ~~(1)~~ (A) the name, address, and qualifications of the person who performed the examination or evaluation, ~~(2)~~ (B) a brief history of the person's involvement

with the disabled person, ~~(3)~~ (C) the date of the last examination or evaluation of the disabled person, and ~~(4)~~ (D) the person's opinion as to: ~~(A)~~ (i) the cause, nature, extent, and probable duration of the disability, ~~(B)~~ (ii) whether institutional care is required, and ~~(C)~~ (iii) whether the disabled person has sufficient mental capacity to understand the nature of and consent to the appointment of a guardian.

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

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

If the petition is not accompanied by the required certificate and the petition alleges that the disabled person is residing with or under the control of a person who has refused to permit examination by a physician or evaluation by a psychologist or certified clinical social worker, and that the disabled person may be at risk unless a guardian is appointed, the court shall defer issuance of a show cause order. The court shall instead issue an order requiring that the person who has refused to permit the disabled person to be examined or evaluated appear personally on a date specified in the order and show cause why the disabled person should not be examined or evaluated. The order shall be personally served on that person and on the disabled person.

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

If the court finds after a hearing that examinations are necessary, it shall appoint two physicians or one physician and one psychologist or certified clinical social worker to conduct

the examinations or the examination and evaluation and file their reports with the court. If both health care professionals find the person to be disabled, the court shall issue a show cause order requiring the alleged disabled person to answer the petition for guardianship and shall require the petitioner to give notice pursuant to Rule 10-203. Otherwise, the petition shall be dismissed.

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

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

(b) Consent to Guardianship of a Minor

(1) Generally

If guardianship of the person of a minor child is sought, consent of each parent shall be obtained if possible. If a parent's consent cannot be obtained because the parent cannot be contacted, located, or identified, the petitioner shall file an affidavit of attempts to contact, locate, or identify substantially in the form set forth in Rule 10-203. If the

failure to obtain consent is for some other reason, an affidavit shall be filed which states why the parent's consent could not be obtained.

Cross reference: For a hearing when a parent objects to a guardianship, see Rule 10-205. For procedures for a child in need of assistance, see Code, Courts Article, §3-801 et seq.

(2) Form of Parent's Consent to Guardianship

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

[CAPTION]

PARENT'S CONSENT TO GUARDIANSHIP OF A MINOR

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

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

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

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

2. I understand that the reason the guardianship is needed is _____

_____

and if the need for the guardianship is expected to end before the child reaches the age of majority _____

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

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

_____ that the Petition for
(minor's name)

Guardianship be granted.

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

I solemnly affirm under the penalties of perjury that the contents of this document are true based on my personal knowledge.

_____
Signature of Parent Date

_____

_____
Address

_____
Telephone Number

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

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

REPORTER'S NOTE

To ensure that efforts are made to obtain parental consent when a petition for guardianship of the person of a minor has been filed, the Rules Committee recommends the addition of a form "Parent's Consent to Guardianship of a Minor." This form was drafted by a committee of registers of wills.

If a parent cannot be located, contacted, or identified, section (b) of the Rule requires that the petitioner file an affidavit of attempts to contact, locate, or identify. A proposed amendment to Rule 10-203 provides a form affidavit for that purpose. If a parent's consent cannot be obtained for some other reason, the petitioner must state why consent cannot be obtained.

The Rules Committee considered how to address instances where a parent refuses to consent to a guardianship, including those in which a petition alleging that a child is a "Child in

Need of Assistance (CINA)" could be appropriate. Research has indicated that this issue is not directly addressed in the laws. Rule 10-203 provides that after a petition for guardianship of the person has been filed, a copy of a show cause order shall be served on a parent having care or custody of a minor person and on any other interested persons. Rule 10-205 provides that if a response is filed to the show cause order objecting to the relief requested, the court shall set the matter for trial and give notice to all persons who have responded. Accordingly, the Committee proposes that a cross reference to Rule 10-205 and to Code, Courts Article, §3-801, which covers CINA cases, be added.

See the Reporter's note to Rule 6-122 for an explanation of the language of the affirmation clause.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 200 - GUARDIAN OF PERSON

AMEND Rule 10-203 by adding a form of affidavit of attempts to contact, locate, and identify interested persons, by deleting the word "Circuit" from the caption of the Notice to Interested Persons, and by making stylistic changes, as follows:

Rule 10-203. SERVICE; NOTICE

(a) Service on Minor or Alleged Disabled Person

The petitioner shall serve a show cause order issued pursuant to Rule 10-104 on the minor or alleged disabled person and on the parent, guardian, or other person having care or custody of the minor or alleged disabled person. Service shall be in accordance with Rule 2-121 (a). If the minor or alleged disabled person resides with the petitioner, service shall be made upon the minor or disabled person and on such other person as the court may direct. Service upon a minor under the age of ten years may be waived provided that the other service requirements of this section are met. The show cause order served on a disabled person shall be accompanied by an "Advice of Rights" in the form set forth in Rule 10-204.

(b) Notice to Other Persons

(1) To Attorney

Unless the court orders otherwise, the petitioner shall

mail a copy of the petition and show cause order by ordinary mail to the attorney for the minor or alleged disabled person.

(2) To Interested Persons

Unless the court orders otherwise, the petitioner shall mail by ordinary mail and by certified mail to all other interested persons a copy of the petition and show cause order and a "Notice to Interested Persons."

(c) Affidavit of Attempts to Contact, Locate, and Identify Interested Persons

An affidavit of attempts to contact, locate, and identify interested persons shall be substantially in the following form:

[CAPTION]

AFFIDAVIT OF ATTEMPTS TO CONTACT, LOCATE, AND IDENTIFY INTERESTED PERSONS

I, _____, am: (check one)

[ ] a party

[ ] a person interested in the above-captioned matter

[ ] an attorney.

I have reason to believe that the persons listed below are persons interested in the estate of _____. (Provide any information you have).

Name	Relationship	Addresses
_____	_____	_____
_____	_____	_____
_____	_____	_____

_____ _____ _____

_____ _____ _____

I have made a good faith effort to contact the persons listed above by the following means: _____

_____.

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

_____ _____
Signature Date

~~(c)~~ (d) Notice to Interested Persons

The Notice to Interested Persons shall be in the following form:

In the Matter of

In the ~~Circuit~~ _____ Court for

_____ _____
(Name of minor or alleged disabled person) (County)

_____
(docket reference)

NOTICE TO INTERESTED PERSONS

A petition has been filed seeking appointment of a guardian of the person of _____, who is alleged to be a minor or disabled person.

You are an "interested person," that is, someone who should

receive notice of this proceeding because you are related to or otherwise concerned with the welfare of this person.

If the court appoints a guardian for the person, that person will lose certain valuable rights to make individual decisions.

Please examine the attached papers carefully. If you object to the appointment of a guardian, please file a response in accordance with the attached show cause order. (Be sure to include the case number). If you wish otherwise to participate in this proceeding, notify the court and be prepared to attend any hearing.

Each certificate filed pursuant to Rule 10-202 that is attached to the petition will be admissible as substantive evidence without the presence or testimony of the certifying health care professional unless you file a request that the health care professional appear to testify. The request must be filed at least 10 days before the trial date, unless the trial date is less than 10 days from the date your response is due. If the trial date is less than 10 days from the date your response is due, the request may be filed at any time before trial.

If you believe you need further legal advice about this matter, you should consult your attorney.

Source: This Rule is in part derived from former Rule R74 and Code, Estates and Trusts Article, §1-103 (b) and is in part new.

REPORTER'S NOTE

In 2010, the General Assembly amended Code, Estates and Trusts Article, §13-105 to give concurrent jurisdiction over guardianships of the person of a minor to the circuit and

orphans' courts. The Rules Committee recommends amending Rule 10-203 by deleting the word "Circuit" and adding in its place a blank for filling in the name of the appropriate court in the notice to interested persons that is sent out when a petition for a guardianship of the person has been filed.

See the Reporter's note to Rule 6-125 for an explanation about the form added to section (c).

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 200 - GUARDIAN OF PERSON

AMEND Rule 10-206 to change the title of the Rule, to amend section (a) to require an annual report of Guardian of Minor, to provide that the current "Annual Report of Guardian" form applies to guardianships of disabled persons, to add the word "caption" before the "Order" section of the form, to add a new form for the Annual Report of a Guardian of a Minor, to conform the affirmation clauses to other affirmation clauses in Title 10, and to make stylistic changes, as follows:

Rule 10-206. ANNUAL REPORT - GUARDIANSHIP OF A MINOR OR DISABLED PERSON

(a) Report Required

~~A guardian, other~~ Other than a temporary guardian, a guardian of the person of a minor or disabled person shall file an annual report in the action. The reporting year shall end on (1) the anniversary of the date the court assumed jurisdiction over the person or (2) any other date approved by the trust clerk or the court.

Cross reference: Code, Estates and Trusts Article, §13-708 (b)(7).

(b) Time for Filing

The report shall be filed not later than 60 days after the end of the reporting year, unless the court for good cause shown

shall extend the time.

(c) Copies to Interested Persons

The guardian shall furnish a copy of the report to any interested person requesting it, unless the court orders otherwise.

(d) Court Approval

The court shall review the report and either enter an order accepting the report and continuing the guardianship or take other appropriate action.

(e) Form of Annual Report of Guardian of Disabled Person

The guardian's report shall be in substantially the following form:

[CAPTION]

ANNUAL REPORT OF _____, GUARDIAN OF THE PERSON OF_____ , WHO IS DISABLED

1. The name and permanent residence of the disabled person are:_____.

2. The disabled person currently resides or is physically present in:

____ own home

____ guardian's home

____ nursing home

____ hospital or medical facility

____ foster or boarding home

____ relative's home: _____ relationship

____ other

(If other than disabled person's permanent home, state the name

and address of the place where the disabled person lives _____

_____.)

3. The disabled person has been in the current location since _____. If the person has moved within the past year, the
(date)

reasons for the change are: _____

_____.

4. The physical and mental condition of the disabled person is as follows: _____

_____.

5. During the past year, the disabled person's physical or mental condition has changed in the following respects: _____

_____

_____.

6. The disabled person is presently receiving the following care: _____

_____.

7. I have applied funds as follows from the estate of the disabled person for the purpose of support, care, or education:

_____

_____.

8. The plan for the disabled person's future care and well-being, including any plan to change the person's location, is:

_____

_____.

9. [ ] I have no serious health problems that affect my

ability to serve as guardian.

[ ] I have the following serious health problems that may affect my ability to serve as guardian: _____

_____.

10. This guardianship

[ ] should be continued.

[ ] should not be continued, for the following reasons:

_____

_____.

11. My powers as guardian should be changed in the following respects and for the following reasons: _____

_____

_____.

12. The court should be aware of the following other matters relating to this guardianship: _____

_____

_____.

I solemnly affirm under the penalties of perjury that the contents of this ~~report~~ document are true to the best of my knowledge, information, and belief.

_____ _____
Date Guardian's Signature

_____
Guardian's Name (typed or printed)

_____
Street Address or Box Number

_____
City and State

_____
Telephone Number

[CAPTION]

ORDER

The foregoing Annual Report of a Guardian having been filed and reviewed, it is by the Court, this ___ day of _____, _____,
(month) (year)

ORDERED, that the report is accepted, and the guardianship is continued.

(or)

ORDERED, that a hearing shall be held in this matter on _____.
(date)

_____
JUDGE

(f) Form of Annual Report of Guardian of Minor

[CAPTION]

ANNUAL REPORT OF _____, GUARDIAN OF THE PERSON OF _____, WHO IS A MINOR

1. The name and permanent residence of the minor are:

_____.

2. The minor currently resides or is physically present in:

____ own home ____ hospital or medical facility

____ foster or boarding home ____ relative's home: _____ relationship

____ guardian's home ____ other

(If other than minor's permanent home, state the name and address of the place where the minor lives _____

_____.)

3. The minor has been in the current location since _____. If the person has moved within the past year, the (date)

reasons for the change are: _____

_____.

4. The physical and mental condition of the minor is as follows: _____

_____.

5. During the past year, the minor's physical or mental condition has changed in the following respects: _____

_____

_____.

6. The minor is presently receiving the following care:

_____

_____.

7. I have applied funds as follows from the estate of the minor for the purpose of support, care, or education:

_____

_____.

8. The plan for the minor's future care and well-being,

including any plan to change the person's location, is: _____

_____.

9. [ ] I have no serious health problems that affect my ability to serve as guardian.

[ ] I have the following serious health problems that may affect my ability to serve as guardian: _____

_____.

10. This guardianship

[ ] should be continued.

[ ] should not be continued, for the following reasons: _____

_____.

11. My powers as guardian should be changed in the following respects and for the following reasons: _____

_____.

12. The court should be aware of the following other matters relating to this guardianship: _____

_____.

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

_____ _____

Date Guardian's Signature

_____
Guardian's Name (typed or printed)

_____
Street Address or Box Number

_____
City and State

_____
Telephone Number

[CAPTION]

ORDER

The foregoing Annual Report of a Guardian having been filed and reviewed, it is by the Court, this ___ day of _____, _____,
(month) (year)

ORDERED, that the report is accepted, and the guardianship is continued.

(or)

ORDERED, that a hearing shall be held in this matter on _____.
(date)

_____
JUDGE

Source: This Rule is new and is derived as follows:
Section (a) is derived from Code, Estates and Trusts Article, §13-708 (b)(7) and former Rule V74 c 2 (b).
Section (b) is derived from former Rule V74 c 2 (b).
Section (c) is patterned after Rule 6-417 (d).
Sections (d) and (e) are new.
Section (f) is new.

REPORTER'S NOTE

Guardians of disabled persons are required by statute to file an annual report informing the court of the status of the guardianship. An attorney has suggested that there be a similar report on the status of minor persons who are the subject of a guardianship, noting that the court should also be monitoring guardianships of minors. The Rules Committee recommends amending Rule 10-206 to make it applicable to guardianships of minors and to add a form of Annual Report of Guardian of Minor.

A clerk has suggested that the word "Caption" be added before the word "Order" in the order forms. The addition of the word indicates that the order should be on a separate piece of paper, making it more convenient for the clerks to use and docket the form separately.

See the Reporter's note to the deletion of Rule 6-123 for the change to the affirmation clause.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 200 - GUARDIAN OF PERSON

AMEND Rule 10-207 by changing an internal reference, as follows:

Rule 10-207. RESIGNATION OF GUARDIAN OF THE PERSON AND APPOINTMENT OF SUBSTITUTED OR SUCCESSOR GUARDIAN

. . .

(b) Venue

The petition to resign or to appoint a substituted or successor guardian shall be filed in the court that has assumed jurisdiction over the guardianship. If jurisdiction has not been assumed, the petition shall be filed pursuant to Rule 10-201 ~~(b)~~ (c).

. . .

REPORTER'S NOTE

The proposed amendment to Rule 10-207 conforms an internal reference to proposed changes to Rule 10-201.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 200 - GUARDIAN OF PERSON

AMEND Rule 10-208 by changing an internal reference, as follows:

Rule 10-208. REMOVAL FOR CAUSE OR OTHER SANCTIONS

. . .

(b) On Petition of Interested Persons

An interested person may file a petition to remove a guardian of the person. The petition shall be filed in the court that has assumed jurisdiction or, if jurisdiction has not been assumed, pursuant to Rule 10-201 ~~(b)~~ (c). The petition shall state the reasons why the guardian should be removed.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 10-208 conforms an internal reference to proposed changes to Rule 10-201.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 300 - GUARDIAN OF PROPERTY

AMEND Rule 10-301 by adding a new section (b) pertaining to the form of petition, by deleting current section (c), by adding a new section (e) containing a form for designation of a guardian of the property by a minor or disabled person, by adding a cross reference at the end of the Rule, and by making stylistic changes, as follows:

Rule 10-301. PETITION FOR APPOINTMENT OF A GUARDIAN OF PROPERTY

(a) Who May File

Any interested person may file a petition requesting a court to appoint a guardian of the property of a minor or an alleged disabled person.

(b) Form of Petition

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

~~(b)~~ (c) Venue

(1) Resident

If the minor or alleged disabled person is a resident of Maryland, the petition shall be filed in the county where the

minor or alleged disabled person resides, even if the person is temporarily absent.

(2) Nonresident

If the minor or disabled person does not reside in this State, the petition shall be filed in the county in which a petition for guardianship of the person may be filed, or in the county where any part of the property is located. For purposes of determining the situs of property, the situs of tangible personal property is its location; the situs of intangible personal property is the location of the instrument, if any, evidencing a debt, obligation, stock or chose in action, or the residence of the debtor if there is no instrument evidencing a debt, obligation, stock, or chose in action; and the situs of an interest in property held in trust is located where the trustee may be sued.

~~(c) Contents~~

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

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

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

~~(3) Whether the person who is the subject of the petition is a minor or an alleged disabled person and, if an alleged disabled~~

~~person, a brief description of the alleged disability;~~

~~(4) The reasons why the court should appoint a guardian of the property and, if the subject of the petition is an alleged disabled person, allegations demonstrating an inability of the alleged disabled person to manage the person's property and affairs effectively because of physical or mental disability, disease, habitual drunkenness, addiction to drugs, imprisonment, compulsory hospitalization, confinement, detention by a foreign power, or disappearance;~~

~~Cross reference: Code, Estates and Trusts Article, §13-201 (b) and (c).~~

~~(5) An identification of any instrument nominating a guardian for the minor or alleged disabled person or constituting a durable power of attorney;~~

~~Cross reference: Code, Estates and Trusts Article, §13-207 (a) (2) and (5).~~

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

~~(7) The name, age, sex, and address of the minor or alleged disabled person, the name and address of the persons with whom the minor or alleged disabled person resides, and if the minor or alleged disabled person resides with the petitioner, the name and~~

~~address of another person on whom service can be made;~~

~~(8) To the extent known or reasonably ascertainable, the name, address, telephone number, and nature of interest of all interested persons and all others exercising any control over the property of the estate;~~

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

~~(10) The nature, value, and location of the property of the minor or alleged disabled person;~~

~~(11) A brief description of all other property in which the minor or alleged disabled person has a concurrent interest with one or more individuals;~~

~~(12) A statement that the exhibits required by section (d) of this Rule are attached or, if not attached, the reason that they are absent; and~~

~~(13) A statement of the relief sought.~~

(d) Required Exhibits

The petitioner shall attach to the petition as exhibits (1) a copy of any instrument nominating a guardian; (2) (A) the certificates required by Rule 10-202, or (B) if guardianship of the property of a disabled person who is a beneficiary of the United States Department of Veterans Affairs is being sought, in lieu of the requirements of Rule 10-202, a certificate of the Secretary of that Department or an authorized representative of the Secretary stating that the person has been rated as disabled

by the Department in accordance with the laws and regulations governing the Department of Veterans Affairs; and (3) if the petition is for the appointment of a guardian for a minor who is a beneficiary of the Department of Veterans Affairs, a certificate of the Secretary of that Department or any authorized representative of the Secretary, in accordance with Code, Estates and Trusts Article, §13-802.

(e) Designation of a Guardian of the Property by a Minor or Disabled Person

After the 16th birthday of a minor or disabled person, a minor or disabled person may designate a guardian of the property of the minor or disabled person substantially in the following form:

[CAPTION]

DESIGNATION OF A GUARDIAN OF THE PROPERTY

BY A MINOR OR DISABLED PERSON

I, _____, a minor child or disabled person having attained my 16th birthday, declare:

1. I am aware of the Petition of _____ (Petitioner's name) to become the guardian of my property.

2. I hereby designate _____ as the guardian of my property.

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

I solemnly affirm under the penalties of perjury that the

contents of this document are true based upon my personal knowledge.

Signature of Minor or Disabled Person	Date

Cross reference: See Code, Estates and Trusts Article, §13-207.

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

REPORTER'S NOTE

See the Reporter's note to Rule 10-111 as to the form of the petition and to explain the deletion of section (c) of this Rule.

The Rules Committee recommends the addition of a form "Designation of a Guardian of the Property by a Minor or Disabled Person" to be consistent with Code, Estates and Trusts Article, §13-207. The form is based on a similar form for guardianships of the person of a minor drafted by a committee of registers of wills, Orphans' Court judges, and members of the bar, including members of the Estate and Trust Law Section of the Maryland State Bar Association.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 600 - ABSENT OR UNKNOWN PERSONS

AMEND Rule 10-601 to add language pertaining to a certain affidavit to and to delete a word from subsection (c)(6), as follows:

Rule 10-601. PETITION FOR ASSUMPTION OF JURISDICTION - PERSON WHOSE IDENTITY OR WHEREABOUTS IS UNKNOWN

(a) Who May File

A fiduciary or interested person may file a petition requesting a court to assume jurisdiction over the fiduciary estate for the purpose of determining its distribution if the petitioner believes that there may be a person whose identity or present whereabouts is unknown who is entitled to share in the estate.

(b) Venue

The petition shall be filed in the court which has assumed jurisdiction over the fiduciary estate, or if jurisdiction has not been assumed, then in the county where any part of the property to be distributed is located or where the fiduciary, if any, resides, is regularly employed, or maintains a place of business.

(c) Contents of Petition

In addition to any other material allegations, the

petition shall contain at least the following information:

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

(2) The nature, value, and location of any property comprising the fiduciary estate.

(3) The reasons for seeking the assumption of jurisdiction by the court and the proposed distribution.

(4) An identification of any instrument creating the fiduciary estate, with a copy attached to the petition, if possible, and, if not, an explanation of its absence.

(5) The reason it is believed that there may be a person whose identity or whereabouts is unknown.

(6) ~~Facts~~ An affidavit of attempts to contact, locate, and identify filed substantially in the form set forth in Rule 10-203 showing that the petitioner has searched diligently for the person whose identity or whereabouts is unknown.

Committee note: For substantive law on absent persons, see Uniform Absent Persons Act, Code, Courts Article, §§3-101 to 3-110. For substantive law on abandoned property, see Uniform Disposition of Abandoned Property Act, Code, Commercial Law Article, §§17-301 to 17-324.

Source: This Rule is in part derived from former Rules V71, V79, and R77 and is in part new.

REPORTER'S NOTE

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

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 600 - ABSENT OR UNKNOWN PERSONS

AMEND Rule 10-602 to add language pertaining to a certain affidavit to section (b), as follows:

Rule 10-602. NOTICE

(a) Known Persons

Unless the court orders otherwise, the petitioner shall give notice to those persons whose identity and interest in the property are known and to any others designated by the court by mailing to them by ordinary mail and by certified mail a copy of the petition and a show cause order issued pursuant to Rule 10-104.

(b) Unknown Persons

If the court is satisfied <u>from an affidavit of attempts to contact, locate, and identify filed by the petitioner in the form set forth in Rule 10-203</u> that reasonable efforts have been made to ascertain the identity or whereabouts of a person, the court shall order that notice to those persons whose identity or whereabouts are unknown shall be made in the manner provided by Rule 2-122.

Source: This Rule is derived from former Rule V79 b and c and from Code, Estates and Trusts Article, §1-103 (b).

REPORTER'S NOTE

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

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 700 - FIDUCIARY ESTATES INCLUDING GUARDIANSHIPS OF THE PROPERTY

AMEND Rule 10-705 by changing a certain monetary amount in and adding language to section (a), by adding new sections (e), (f), and (g) pertaining to certain deposits of cash belonging to a minor or disabled person who is the subject of a guardianship, by adding a certain cross reference at the end of the Rule, and by making stylistic changes, as follows:

Rule 10-705. RESTRICTED ACCOUNTS

(a) Petition for Restricted Accounts

When a fiduciary estate consists entirely of cash in an amount not exceeding ~~$75,000~~ $200,000, a fiduciary may petition the court for an order authorizing the deposit of cash in a ~~federally insured~~ financial institution that is federally insured or is regulated by the Commissioner of Financial Regulation in a single restricted account titled substantially in the following form: "A.B., (fiduciary), withdrawals subject to the order of the Circuit Court for _____ County."

(b) Orders Authorizing Withdrawals

The court may require a separate order prior to each withdrawal. The court may enter a continuing order authorizing

withdrawals up to a specified amount. The continuing order may be for a definite period of time, not to exceed one year, and may on petition be renewed annually.

(c) Proof of Restricted Account

The fiduciary shall promptly provide proof of the opening of a restricted account to the trust clerk, who shall make note of it in the file.

(d) When Accounting not Required

If all of the assets of a fiduciary estate are deposited in a single restricted account in an amount not exceeding $10,000, no annual accounting is required unless the court orders otherwise.

(e) Cash Exceeding $200,000

If the amount of cash belonging to a minor or disabled person exceeds $200,000, any excess amount shall be deposited into additional restricted accounts.

(f) Aggregate Amount

The aggregate amount deposited in any financial institution may not exceed $200,000.

(g) Acceptable Financial Institutions

The deposits may be made into any type of account, including a certificate of deposit, in a financial institution that accepts deposits and is federally insured or is regulated by the Commissioner of Financial Regulation.

Cross reference: For accounting requirements, see Rule 10-706. Code, Estates and Trusts Article, §13-209.1.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule V75 a and b.
Section (b) is derived from former Rule V75 c.
Section (c) is derived from former Rule V75 d.
Section (d) is derived from former Rule V74 c 2 (e).
Section (e) is new.
Section (f) is new.
Section (g) is new.

REPORTER'S NOTE

Chapter 196, Laws of 2013 (SB 168) added a new provision, Code, Estates and Trusts Article, §13-209.1, which allows guardians of the property of a minor or disabled person to deposit up to $200,000 into restricted accounts in financial institutions that are federally insured or are regulated by the Commissioner of Financial Regulation. The Rules Committee recommends amending Rule 10-705 to comport with this statute.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 700 - FIDUCIARY ESTATES INCLUDING GUARDIANSHIPS OF THE PROPERTY

AMEND Rule 10-707 to modify the affirmation clause in the form and to add lines to the form for an attorney's facsimile number and e-mail address, as follows:

Rule 10-707. INVENTORY AND INFORMATION REPORT

(a) Duty to File

Within 60 days after jurisdiction has been assumed or a fiduciary has been appointed, the fiduciary shall file an inventory and information report in substantially the following form:

Part I.

[CAPTION]

INVENTORY

The FIDUCIARY ESTATE now consists of the following assets:

(attach additional sheets, if necessary; each item listed shall be valued by the fiduciary at its fair market value, as of the date of the appointment of the fiduciary or the assumption of jurisdiction by the court; unless the court otherwise directs, it shall not be necessary to employ an appraiser to make any valuation; state amount of any mortgages, liens, or other indebtedness, but do not deduct when determining estimated fair market value)

A. REAL ESTATE

(State location, liber/folio, balance of mortgage, and name of

lender, if any)

	ESTIMATED FAIR MARKET VALUE
_____	$ _____
_____	_____
_____	_____
TOTAL	$ _____

B. CASH AND CASH EQUIVALENTS

(State name of financial institution, account number, and type of account)

	PRESENT FAIR MARKET VALUE
_____	$ _____
_____	_____
_____	_____
TOTAL	$ _____

C. PERSONAL PROPERTY

(Itemize motor vehicles, regardless of value; describe all other property generally if total value is under $1500; state amount of any lien; itemize, if total value is over $1500)

	ESTIMATED FAIR MARKET VALUE
_____	$ _____
_____	$ _____
_____	$ _____
TOTAL	$ _____

D. STOCKS

(State number and class of shares, name of corporation)

	PRESENT FAIR MARKET VALUE
_____	$ _____
_____	_____
_____	_____
TOTAL	$ _____

E. BONDS
(State face value, name of issuer, interest rate, maturity date)

	PRESENT FAIR MARKET VALUE
_____	$ _____
_____	_____
_____	_____
TOTAL	$ _____

F. OTHER
(Describe generally, e.g., debts owed to estate, partnerships, cash value of life insurance policies, etc.)

	ESTIMATED FAIR MARKET VALUE
_____	$ _____
_____	$ _____
_____	$ _____
TOTAL	$ _____

Part II.

INFORMATION REPORT

(1) Are there any assets in which the minor or disabled person holds a present interest of any kind together with another person in any real or personal property, including accounts in a credit union, bank, or other financial institution?

[ ] No [ ] Yes If yes, give the following information as to all such property:

Name, Address, and Relationship of Co-Owner	Nature of Property	Description of Interest	Total Value of Property
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

(2) Does the minor or disabled person hold an interest less than absolute in any other property which has not been disclosed in question (1) and has not been included in the inventory (e.g., interest in a trust, a term for years, a life estate)?

[ ] No [ ] Yes If yes, give the following information as to each such interest:

Description of Interest and Amount or Value	Date and Type of Instrument Establishing Interest
_____	_____
_____	_____

_____ _____

VERIFICATION:

I solemnly affirm under the penalties of perjury that the contents of this ~~inventory and information report~~ document are true ~~and complete~~ to the best of my knowledge, information, and belief.

_____	_____
Date	Date
_____	_____
Signature of Fiduciary	Signature of Fiduciary
_____	_____
Address	Address
_____	_____
Telephone Number	Telephone Number

_____
Name of Fiduciary's Attorney

_____
Address

_____
Telephone Number

_____
Facsimile Number

_____
E-mail Address

(b) Examination Not Required

Unless the court otherwise directs, it shall not be necessary that the assets listed in the report be exhibited to or

examined by the court, the trust clerk, or auditor.

(c) Notice

Unless the court orders otherwise, the trust clerk or fiduciary shall furnish a copy of the report to any interested person who has made a request for it.

Source: This Rule is derived as follows:
Section (a) is in part derived from former Rule V74 b 1 and 2 and is in part new.
Section (b) is derived from former Rule V74 b 3.
Section (c) is new.

REPORTER'S NOTE

See the Reporter's note to the deletion of Rule 6-123 for the change to the affirmation clause.

See the Reporter's note to Rule 6-126 for the addition of lines to the form for the attorney's facsimile number and e-mail address.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 700 - FIDUCIARY ESTATES INCLUDING GUARDIANSHIPS OF THE PROPERTY

AMEND Rule 10-708 to revise the form of the fiduciary's account, to modify the affirmation clause in the form, and to add to the form lines for an attorney's facsimile number and e-mail address, as follows:

Rule 10-708. FIDUCIARY'S ACCOUNT AND REPORT OF TRUST CLERK

(a) Form of Account

The Fiduciary's Account shall be filed in substantially the following form:

[CAPTION]

FIDUCIARY'S ACCOUNT

I, _____, make this [ ] periodic [ ] final Fiduciary's Account for the period from

_____ to _____ .

~~Part I. The FIDUCIARY ESTATE now consists of the following assets: (attach additional sheets, if necessary; state amount of any mortgages, liens, or other indebtedness, but do not deduct when determining estimated fair market value)~~

~~A. REAL ESTATE~~

~~(State location, liber/folio, balance of mortgage, and name of lender, if any)~~

~~ESTIMATED FAIR MARKET VALUE~~

_____ $_____

_____ _____

_____ _____

_____ _____

TOTAL $_____

B. CASH AND CASH EQUIVALENTS

(State name of financial institution, account number, and type of account)

PRESENT FAIR MARKET VALUE

_____ $_____

_____ $_____

_____ $_____

TOTAL $_____

C. PERSONAL PROPERTY

(Itemize motor vehicles, regardless of value; describe all other property generally if total value is under $1500; state amount of any lien; itemize, if total value is over $1500)

ESTIMATED FAIR MARKET VALUE

_____ $_____

_____ $_____

_____ $_____

TOTAL $_____

D. STOCKS

(State number and class of shares, name of corporation)

PRESENT FAIR MARKET VALUE

_____ $_____

_____ $_____

_____ $_____

TOTAL $_____

E. BONDS

(State face value, name of issuer, interest rate, maturity date)

PRESENT FAIR MARKET VALUE

_____ $_____

_____ $_____

_____ $_____

TOTAL $_____

F. OTHER

(Describe generally, e.g., debts owed to estate, partnerships, cash value of life insurance policies, etc.)

ESTIMATED FAIR MARKET VALUE

_____ $_____

_____ $_____

_____ $_____

TOTAL $_____

Part II. The following income was collected and disbursements were made: (attach additional sheets, if necessary)

A. INCOME

(State type, e.g. pensions, social security, rent, annuities, dividends, interest, refunds)

AMOUNT

_____ $_____

_____ $_____

_____ $_____

_____ $_____

_____ $_____

_____ $_____

_____ $_____

TOTAL $_____

B. DISBURSEMENTS
(State to whom paid and purpose of payment)

AMOUNT

_____ $_____

_____ $_____

_____ $_____

_____ $_____

_____ $_____

_____ $_____

_____ $_____

TOTAL $_____

C. SUMMARY

Total Income ..... $_____

Total Disbursements ..... $(_____)

Net Income/(Loss) ..... $_____

Part III. The following changes in the assets of the Fiduciary Estate have occurred since the last account: (attach additional sheets, if necessary)

A. ASSETS ADDED

Date	Description of Transaction	Gross Purchase Price	Value at date of acquisition if other than by purchase

B. ASSETS DELETED

Date	Description of Transaction	Gross Sale Proceeds	Selling Costs	Carrying Value	Gain (loss)

A Summary of the Fiduciary Estate is as follows:

Type of Property	Value reported on last Fiduciary Account	Value reported on this Fiduciary Account
A. Real Estate	$_____	$_____
B. Cash and Cash Equivalents	$_____	$_____
C. Personal Property	$_____	$_____
D. Stocks	$_____	$_____
E. Bonds	$_____	$_____
F. Other	$_____	$_____
Total	$_____	$_____

The Fiduciary bond, if any, has been filed in this action in the amount of $_____.

The Fiduciary Estate consists of the following assets as [ ] reported on the Fiduciary's Inventory [ ] carried forward from last Fiduciary Account:

A. REAL ESTATE	$_____
B. CASH & CASH EQUIVALENTS	$_____
C. PERSONAL PROPERTY	$_____
D. STOCKS	$_____
E. BONDS	$_____
F. OTHER	$_____
TOTAL	$_____

The following changes in the assets of the Fiduciary Estate have occurred since the last account: (Please include real or personal property that was bought, sold, transferred, exchanged, or disposed of and any loans that were taken out on any asset in the estate. Attach additional sheets, if necessary.)

A. INCOME

Date Received	Type of Income (e.g., pension, social security, rent, annuity, dividend, interest, refund)	Source	Amount
_____	_____	_____	$_____
_____	_____	_____	$_____
_____	_____	_____	$_____
_____	_____	_____	$_____
_____	_____	_____	$_____

_____ _____ _____ $_____

TOTAL $_____

B. DISBURSEMENTS

Date of Payment	To Whom Paid	Purpose of Payment	Amount
_____	_____	_____	$_____
_____	_____	_____	$_____
_____	_____	_____	$_____
_____	_____	_____	$_____
_____	_____	_____	$_____
_____	_____	_____	$_____

TOTAL $_____

C. ASSETS ADDED

Date	Description of Transaction	Gross Purchase Price	Value at date of acquisition if other than by purchase
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

D. ASSETS DELETED

Date	Description of Transaction	Gross Sale Proceeds	Selling Costs	Carrying Value	Gain or (Loss)
____	_____	_____	_____	_____	_____
____	_____	_____	_____	_____	_____

_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

SUMMARY

Total Income ..... $ _____

Total Disbursements ..... $ (_____)

Total Assets Added ..... $ _____

Total Assets Deleted ..... $ (_____)

Total Changes ..... $ _____

A Summary of the Fiduciary Estate to be carried forward to next account:

A. REAL ESTATE ..... $ _____

B. CASH & CASH EQUIVALENTS ..... $ _____

C. PERSONAL PROPERTY ..... $ _____

D. STOCKS ..... $ _____

E. BONDS ..... $ _____

F. OTHER ..... $ _____

TOTAL ..... $ _____

The Fiduciary bond, if any, has been filed in this action in the amount of $ _____.

VERIFICATION:

I solemnly affirm under the penalties of perjury that the

contents of this ~~account~~ document are true ~~and complete~~ to the best of my knowledge, information, and belief.

_____	_____
Date	Date
_____	_____
Signature of Fiduciary	Signature of Fiduciary
_____	_____
Address	Address
_____	_____
Telephone Number	Telephone Number

_____
Name of Fiduciary's Attorney

_____
Address

_____
Telephone Number

_____
Facsimile Number

_____
E-mail Address

(b) Report of the Trust Clerk and Order of Court

The Report of the Trust Clerk and Order of Court shall be filed in substantially the following form:

REPORT OF TRUST CLERK AND ORDER OF COURT

I, the undersigned Trust Clerk, certify that I have examined the attached Fiduciary's Account in accordance with the Maryland Rules.

Matters to be called to the attention of the Court are as follows:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____ _____
Date Signature of Trust Clerk

_____ _____
Address of Trust Clerk Telephone No. of Trust Clerk

ORDER

The foregoing Fiduciary's Account having been filed and reviewed, it is by the Court, this ____ day of _____(month),_____(year),

ORDERED, that the attached Fiduciary's Account is accepted.

(or)

ORDERED, that a hearing shall be held in this matter on

_____(date).

_____
JUDGE

Source: This Rule is new.

REPORTER'S NOTE

The Rules Committee recommends modifying the form in Rule 10-708 to (1) include a question about which assets in the fiduciary estate were reported on the inventory form and which were carried forward from the last account, (2) eliminate the question about estimated fair market value of real estate, cash, personal property, stocks, and bonds, (3) include a question about changes in the assets of the fiduciary estate, and (4) reorganize the form and make it easier to read. The modifications to the form were suggested by a committee composed of registers of wills, Orphans' Court judges as well as members of the bar and of the Estate and Trust Law Section of the Maryland State Bar Association. The Rules Committee agrees with the recommendations of the Subcommittee.

The Committee also recommends adding the column "Date Received" to Section A., Income, and Section B., Disbursements, as well as a column for "Source" in Section A.

See the deletion of Rule 6-123 for the change to the affirmation clause near the end of the form.

See the Reporter's note to Rule 6-126 for an explanation of the addition of lines in the form for an attorney's facsimile number and e-mail address.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 700 - FIDUCIARY ESTATES INCLUDING GUARDIANSHIPS OF THE PROPERTY

AMEND Rule 10-711 by changing an internal reference, as follows:

Rule 10-711. RESIGNATION OF FIDUCIARY AND APPOINTMENT OF SUBSTITUTED OR SUCCESSOR FIDUCIARY

. . .

(b) Venue

(1) Guardianships of the Property

The petition to resign or to appoint a substituted or successor fiduciary shall be filed in the court that has assumed jurisdiction over the guardianship. If jurisdiction has not been assumed, the petition shall be filed pursuant to Rule 10-301 ~~(b)~~ (c).

(2) Other Fiduciary Proceedings

The petition shall be filed in the court that has assumed jurisdiction over the fiduciary estate, or if jurisdiction has not been assumed, in the county in which the property is situated, or where the fiduciary resides, is regularly employed, or maintains a place of business.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 10-711 conforms an internal reference to proposed changes to Rule 10-301.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 700 - FIDUCIARY ESTATES INCLUDING GUARDIANSHIPS OF THE PROPERTY

AMEND Rule 10-712 by changing an internal reference, as follows:

Rule 10-712. REMOVAL FOR CAUSE OR OTHER SANCTIONS

. . .

(c) Venue

(1) Guardianships of the Property

The petition shall be filed in the court that has already assumed jurisdiction or, if jurisdiction has not been assumed, pursuant to Rule 10-301 ~~(b)~~ (c).

(2) Other Fiduciary Proceedings

The petition shall be filed in the court that has already assumed jurisdiction or, if jurisdiction has not been assumed, in the county in which the property is situated, or where the fiduciary resides, is regularly employed, or maintains a place of business.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 10-712 conforms an internal reference to proposed changes to Rule 10-301.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 600 - ATTORNEY TRUST ACCOUNTS

AMEND Rule 16-602 to add "credit union" to the definition of "financial institution," as follows:

Rule 16-602. DEFINITIONS

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

a. Approved Financial Institution

"Approved financial institution" means a financial institution approved by the Commission in accordance with these Rules.

b. Attorney

"Attorney" means any person admitted by the Court of Appeals to practice law.

c. Attorney Trust Account

"Attorney trust account" means an account, including an escrow account, maintained in a financial institution for the deposit of funds received or held by an attorney or law firm on behalf of a client or third person.

d. Bar Counsel

"Bar Counsel" means the person appointed by the Commission as the principal executive officer of the disciplinary system

affecting attorneys. All duties of Bar Counsel prescribed by these Rules shall be subject to the supervision and procedural guidelines of the Commission.

e. Client

"Client" includes any individual, firm, or entity for which an attorney performs any legal service, including acting as an escrow agent or as a legal representative of a fiduciary. The term does not include a public or private entity of which an attorney is a full-time employee.

f. Commission

"Commission" means the Attorney Grievance Commission of Maryland, as authorized and created by Rule 16-711 (Attorney Grievance Commission).

g. Financial Institution

"Financial institution" means a bank, credit union, trust company, savings bank, or savings and loan association authorized by law to do business in this State, in the District of Columbia, or in a state contiguous to this State, the accounts of which are insured by an agency or instrumentality of the United States.

h. IOLTA

"IOLTA" (Interest on Lawyer Trust Accounts) means interest on attorney trust accounts payable to the Maryland Legal Services Corporation Fund under Code, Business Occupations and Professions Article, §10-303.

i. Law Firm

"Law firm" includes a partnership of attorneys, a

professional or nonprofit corporation of attorneys, and a combination thereof engaged in the practice of law. In the case of a law firm with offices in this State and in other jurisdictions, the Rules in this Chapter apply only to the offices in this State.

Source: This Rule is derived from former Rule BU2.

REPORTER'S NOTE

The Credit Union Share Insurance Fund Parity Act, Pub. L. No. 113-252, 128 Stat. 2893 (2014) amended the Federal Credit Union Act (12 U.S.C. 1787 (k)) to expand federal deposit insurance to include IOLTAs and similar escrow accounts housed within credit unions. Rule 16-602 g. is proposed to be amended accordingly to add "credit union" to the definition of "financial institution."

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-333 to correct an internal reference, as follows:

Rule 1-333. COURT INTERPRETERS

. . .

(d) Removal from Proceeding

A court interpreter may be removed from a proceeding by a judge or judicial appointee within the meaning of Rule ~~18-200.3 (a)(1)~~ 16-814 (a)(1), who shall then notify the Maryland Administrative Office of the Courts that the action was taken.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 1-333 corrects an internal reference to a proposed revised Rule [Rule 18-200.3] so that the reference is to a Rule that is currently in effect [Rule 16-814 (a)(1)].

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 700 - CLAIMS FOR ATTORNEYS' FEES AND RELATED EXPENSES

AMEND Rule 2-703 to correct a reference in a Committee note, as follows:

Rule 2-703. ATTORNEYS' FEES ALLOWED BY LAW

. . .

(f) Determination of Award

. . .

(3) Factors to be Considered

. . .

Committee note: The factors listed in subsection (f)(3) of this Rule have been approved by the Court of Appeals in statutory fee-shifting cases, where the "lodestar method" is applied in determining an award. See *Monmouth Meadows v. Hamilton*, 416 Md. 325, 333-34 (2010). See Rule ~~2-704 (f)~~ 2-705 (f) for the factors to be applied in contractual fee-shifting actions.

(g) Judgment

. . .

REPORTER'S NOTE

The proposed amendment to Rule 2-703 corrects a reference to Rule 2-704 (f) in a Committee note. The correct reference is to Rule 2-705 (f).

MARYLAND RULES OF PROCEDURE

TITLE 14 - SALES OF PROPERTY

CHAPTER 500 - TAX SALES

AMEND Rule 14-503 to correct internal references, as follows:

Rule 14-503. PROCESS

(a) Notice to Defendants Whose Whereabouts are Known

Upon the filing of the complaint, the clerk shall issue a summons as in any other civil action. The summons, complaint, and exhibits, including the notice prescribed by Rule 14-502 ~~(b)(3)~~ (c)(3), shall be served in accordance with Rule 2-121 on each defendant named in the complaint whose whereabouts are known.

(b) Notice to Defendants Whose Whereabouts are Unknown, Unknown Owners, and Unnamed Interested Persons

When the complaint includes named defendants whose whereabouts are unknown, unknown owners, or unnamed persons having or claiming to have an interest in the property, the notice filed in accordance with Rule 14-502 ~~(b)(3)~~ (c)(3), after being issued and signed by the clerk, shall be served in accordance with Rule 2-122.

(c) Posting of Property

Upon the filing of the complaint, the plaintiff shall cause a notice containing the information required by Rule 14-502 ~~(b)(3)~~ (c)(3) to be posted in a conspicuous place on the

property. The posting may be made either by the sheriff or by a competent private person, appointed by the plaintiff, who is 18 years of age or older, including an attorney of record, but not a party to the action. A private person who posts the notice shall file with the court an affidavit setting forth the name and address of the affiant, the caption of the case, the date and time of the posting, and a description of the location of the posting and shall attach a photograph of the location showing the posted notice.

. . .

REPORTER'S NOTE

In sections (a), (b), and (c) of Rule 14-503 references to "Rule 14-502 (b)(3)" are corrected to read "Rule 14-502 (c)(3)."

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 800 - MISCELLANEOUS

AMEND Rule 16-801 by deleting references to the Maryland Register; by adding provisions pertaining to the posting of proposed and recent adopted Rules changes on the Judiciary website; by adding certain provisions pertaining to reports of the Rules Committee, public comment on proposed Rules changes, and public hearings as well as other meetings of the Court of Appeals regarding Rules changes; and by modifying provisions pertaining to the effective date of Rules changes; as follows:

Rule 16-801. PROMULGATION OF RULES

~~a.~~ (a) Promulgation by Rules Order

Rules of the Court of Appeals shall be promulgated by a Rules Order approved by a majority of the members of the Court of Appeals.

~~b.~~ (b) Rules Committee

To assist the Court of Appeals in developing rules in the exercise of its rule-making power, the Court has appointed a standing committee on rules of practice and procedure, usually and herein referred to as the "Rules Committee," composed of judges, lawyers and persons familiar with judicial administration appointed for a three year term or at the Court's pleasure. The Court has also appointed a member of the bar to serve as Reporter

to the Rules Committee, and from time to time, such assistant or special reporters as may be required to assist the Rules Committee in discharging its assigned responsibilities. Unless otherwise determined by the Court of Appeals, every suggestion for the adoption, amendment, or rescission of a rule shall be referred to the Rules Committee for consideration. The Rules Committee may also consider rules changes on its own initiative, and shall make its recommendations with respect to rules changes to the Court of Appeals by two or more written reports each year, submitted on or before March 31 and September 30. ~~A copy of each report shall be transmitted to the Maryland Register for publication under a thirty day notice of proposed rules changes soliciting public comment.~~

~~Cross reference: See §§13-301 to 13-303 of the Courts Article of the Annotated Code of Maryland.~~

~~Committee note: The Rules Committee was originally appointed by order of the Court of Appeals dated January 22, 1946, to succeed an ad hoc predecessor Committee on Rules of Practice and Procedure appointed by order of the Court dated March 5, 1940.~~

~~c. Publication of Rules Changes~~

~~Unless the Court of Appeals determines that some emergency requires the promulgation of a rules change to take effect prior to either of the dates specified in section d of this Rule, a copy of every Rules Order adopting, amending, or rescinding a rule shall be published in the Maryland Register at least thirty days before its effective date under a notice of rules changes, and may also be published in such other publication as the Court of Appeals may direct. A Rules Order adopting or amending a rule~~

~~in the form previously published in the Maryland Register as a proposed rule change shall cite the number and page of the Maryland Register on which the proposed rules change appears, and in that case the text of the rule adopted or amended need not be re-published with the order of adoption or amendment. If, however, the Court of Appeals should further amend a rule proposed for adoption or amendment during the course of the rule-making process, either in response to comment received, or of its own motion, the full text of the rule or amendment as adopted and showing such further amendment shall be republished with the Rules Order.~~

~~If the Court of Appeals determines that an emergency exists and that a rules change is required to take effect prior to either of the dates specified in section d of this Rule, it shall direct such special publication as it considers appropriate to notify the judiciary, the clerks and members of the bar.~~

~~d. Effective Date of Rules Changes~~

~~Unless the Court of Appeals determines that an emergency exists, and otherwise directs, rules changes shall become effective not earlier than the first day of January or the first day of July, whichever first occurs after the entry and appropriate publication of the order promulgating the rules changes.~~

(c) Report of Rules Committee

All recommendations by the Standing Committee on Rules of Practice and Procedure for new Rules or changes to existing Rules

shall be transmitted to the Court of Appeals in a consecutively numbered report or supplement thereto setting forth the changes proposed and the reasons for the proposed changes. A proposed new Rule shall show in plain type the text of the proposed Rule. Proposed amendments to existing Rules shall show in plain type the current Rule with proposed deletions indicated by strikeouts and proposed additions indicated by underlined language.

(d) Posting of Report; Opportunity for Comment

The Reporter to the Committee shall cause all reports and supplements to them that transmit proposed additions or changes to the Maryland Rules, together with the text of the changes proposed, to be posted for comment on the Judiciary website. Unless otherwise directed by the Court of Appeals, the comment period ordinarily shall be 30 days.

(e) Written Comments

Unless otherwise directed or approved by the Court of Appeals, comments to proposed additions or changes shall (1) be in writing, (2) identify the individual or group making the comment, and (3) be sent to the Reporter to the Committee within the time specified in the notice posted on the Judiciary website. At the conclusion of the comment period, the Reporter shall collect and promptly transmit the comments to the Court. Comments not sent to the Reporter in accordance with this section ordinarily will not be considered by the Court.

(f) Court Proceedings

(1) Generally

(A) The Court of Appeals shall conduct all proceedings involving the exercise of its authority under Maryland Constitution, Article IV, Section 18 (a) to adopt or modify Rules of Procedure at a meeting open to the public. The meeting may consist of a public hearing pursuant to subsection (f)(2) of this Rule or be limited to specific presentations invited by the Court and discussion and voting by the Court. The meeting may be in the courtroom, in the Court's conference room, or at any other suitable place designated by the Court. Advance notice of the meeting shall be given in the manner designated by the Court.

(B) The Clerk of the Court shall serve as recording secretary at all public hearings and open meetings. The Clerk shall monitor an audio recording of the proceedings, which the Clerk shall retain as a permanent record and make available upon request. Recording of the proceedings by other persons in attendance is prohibited.

(C) In order to furnish easy access to Rules proceedings, doors to the court or conference room shall remain open at all times during all public hearings and open meetings.

(2) Public Hearing

(A) Unless, for good cause, the Court of Appeals orders otherwise, the Court, upon the expiration of any comment period, shall hold a public hearing on all proposed additions or changes to the Maryland Rules.

(B) Persons desiring to be heard shall notify the Clerk of the Court at least two days before the hearing of their desire to

be heard and of the amount of time requested to address the Court. The Court may prescribe a shorter period for oral presentation and may pose questions to the person addressing the Court.

(3) Extended Coverage

(A) In this Rule, "extended coverage" has the meaning set forth in Rule 16-109 (a).

(B) Ordinarily, extended coverage will be permitted at a public hearing conducted pursuant to subsection (f)(2) of this Rule, provided that a request for such coverage is made to the Clerk of the Court at least five days before the hearing. For good cause shown, the Court may honor a request that does not comply with the requirements of this subsection.

(C) Absent exceptional circumstances, extended coverage shall not be permitted during open meetings that are not public hearings conducted pursuant to subsection (f)(2) of this Rule. If extended coverage is sought, a written request setting forth the exceptional circumstances warranting extended coverage shall be made to the Clerk at least five days before the meeting coverage. A decision by the Court denying extended coverage is not intended to restrict the right of the media to report the proceedings.

(D) Extended coverage under this Rule is subject to the operational requirements set forth in Rule 16-109.

(g) Rules Order

New Rules and the amendment or rescission of existing Rules

adopted by the Court of Appeals shall be by a Rules Order of the Court.

(h) Effective Date

(1) Stated in Rules Order

The Rules Order shall state the effective date of the changes and the extent to which those changes will apply to proceedings pending on that date.

(2) Minimum Delay; Exception

Unless the Court of Appeals determines that, due to exigent circumstances, Rules changes should take effect sooner, Rules changes shall become effective no earlier than the later of:

(A) thirty days after posting of the Rules Order on the Judiciary website, or

(B) the first day of January or the first day of July next succeeding posting of the Rules Order on the Judiciary website, whichever first occurs.

(i) Posting of Rules Order and Rules Changes

(1) Generally

A copy of every Rules Order shall be posted on the Judiciary website. The Court may direct that other forms of public notice also be given.

(2) Text of Rules Changes

The full text of any new Rules and any amendments to existing Rules, showing deleted language by strikeouts and new language by underlining, shall be posted on the Judiciary website

with the Rules Order.

~~h.~~ (j) Record of Rules

The Clerk of the Court of Appeals shall maintain a separate record designated as the "Maryland Rules of Procedure," which shall contain all Rules and amendments adopted by the Court.

Source: This Rule is derived, in part, from former Rule 1225 and in part from Internal Operating Rules of the Court of Appeals 1 through 10.

REPORTER'S NOTE

Chapter 124, Laws of 2014 (SB 69), permits proposed and recently adopted Rules changes to be posted on the Judiciary's website, in lieu of being published in the Maryland Register. Proposed amendments to current Rule 16-801 incorporate into the Rule procedures for the website posting.

Also included in the proposed amendments to the Rule are provisions pertaining to reports of the Rules Committee, public comments on proposed Rules changes, public hearings and other open meetings of the Court of Appeals regarding Rules changes, and the effective date of Rules changes. The additional provisions are based on comparable provisions in proposed revised Rule 16-801, which tentatively has been approved by the Court of Appeals as part of its consideration of the pending 178th Report of the Rules Committee (Part 1).