STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

NOTICE OF PROPOSED RULES CHANGES

The Rules Committee has submitted its Two Hundred and First Report to the Court of Appeals, transmitting thereby proposed new Rules 3-623, 4-333, 9-204.1, 9-204.2 and 10-106.1, proposed amendments to current Rules 2-124, 2-512, 2-601, 2-623, 2-625, 2-632, 2-645, 3-124, 3-623, 3-632, 3-645, 4-245, 4-345, 6-171, 6-417, 9-203, 9-204, 9-205, 10-106, 10-106.1, 10-110, 10-111, 10-112, 10-206, 10-209, 10-403, 10-404, 10-707, 10-708, 16-907, 17-205, 17-206, 17-304, 17-405, 17-603, 18-603, and 19-301.8 and proposed amendments to Appendix: Maryland Guidelines for Court Appointed Attorneys in Guardianship Proceedings.

The Committee's Two Hundred and First 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 October 15, 2019 any written comments they may wish to make to:

Sandra F. Haines, Esq.

Reporter, Rules Committee

2011-D Commerce Park Drive

Annapolis, Maryland 21401

Suzanne Johnson
Clerk
Court of Appeals of Maryland

September 12, 2019

The Honorable Mary Ellen Barbera,
Chief Judge
The Honorable Robert N. McDonald,
The Honorable Shirley M. Watts
The Honorable Michele D. Hotten
The Honorable Joseph M. Getty
The Honorable Brynja M. Booth,
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 Two Hundred First Report, and recommends that the Court adopt the new Rules and amendments to existing Rules transmitted with this Report. The Report consists of eight categories of proposed changes.

Category 1 consists of proposed new Rule 4-333, which would implement 2019 Md. Laws, Ch. 702 (Code, Criminal Procedure Article, § 8-301.1), attached as **Appendix 1**. The statute permits a court, on motion by the State, to vacate a criminal conviction or a probation before judgment (PBJ) entered in a criminal case, upon findings that:

(1) newly discovered evidence that could not have been discovered in time to move for a new trial under Rule 4-331 (c) creates a substantial or significant probability that the result in the case would have been different; or

(2) the prosecutor received new information after entry of the conviction or PBJ that calls into question the integrity of the conviction or PBJ; and

(3) the interest of justice and fairness justifies vacating the conviction or PBJ.

The Rule tracks the procedures set forth in the statute but fills in some additional details. For example:

(1) Although the statute speaks of a motion by "the State," the Committee and its consultants believed that the intent was that the motion could be filed only by the office that prosecuted the case that led to the conviction or PBJ -- the State's Attorney or, when authorized, the Attorney General or the State Prosecutor. The defendant has no right to file a motion under § 8-301.1. The Committee believed, however, that the defendant may have a right to seek relief under other statutes or Rules, and, if the defendant does so, those proceedings may be consolidated with the one under § 8-301.1. A Committee note to that effect is proposed under section (e) of the Rule.

(2) Because the statute permits the motion to be filed "at any time after" entry of the conviction or PBJ but requires that it be filed in "the court with jurisdiction over the case," it is possible that the case may be on appeal to the Court of Special Appeals or Court of Appeals when the motion is filed, which can create some practical and legal issues regarding the taking of evidence and potential mootness. A Committee note is added suggesting that the appellate court consider remanding the case for the trial court to resolve the motion. That would allow the trial court to take the necessary evidence and make its findings, which, if the court grants the motion, may moot the appeal. It is not clear whether this would be a problem when a *de novo* appeal from a District Court conviction or PBJ is pending in a Circuit Court.

(3) The judgment of conviction or PBJ may encompass more than one crime (or count), and it is possible that the prosecutor may seek vacation of fewer than all of them. Language is added throughout the Rule to take account of that prospect.

(4) The statute requires that the State "shall notify the defendant in writing of the filing of the motion," but the Committee was advised that it may be impossible to locate some of the defendants, particularly if a substantial amount of time has elapsed since the conviction or PBJ was entered. The view was expressed -- and the Committee agreed -- that, when the

prosecutor is convinced that the conviction or PBJ was wrongly entered, the prosecutor should be able to proceed, provided an adequate attempt was made to locate the defendant, but that, if the court denies the motion, the denial should be without prejudice to refile. The Rule also sets forth what must be in the notice to the defendant.

(5) The statute requires that, prior to a hearing on the motion, any victim or victim's representative be notified in accordance with Code, Criminal Procedure Article, § 11-104 or § 11-503. The Rule specifies what must be in the notice and, in a Committee Note, urges that reasonable efforts should be made to locate victims or their representatives, beyond merely relying on the last known address in a court record. If a defendant, a victim, or a victim's representative is not present for the hearing, the Rule requires the prosecutor to state on the record the efforts made to provide notice.

(6) There is one gap in the statute that the Committee did not feel could be addressed by Rule, namely, what, if any, impact a vacation of the conviction or PBJ might have on actions that occurred while the conviction or PBJ was in effect, such as the payment by the defendant of restitution to a victim or costs assessed against him/her. The Committee was advised that, in most cases, though perhaps not in all, if the conviction or PBJ is vacated, the State would then *nol pros* the charging document. It is not clear whether an action would lie to recoup those payments.

Category 2 consists amendments to Rules 2-601 (a), 2-623, 3-623, 2-625, 3-625, 2-632, 3-632, 2-645, and 3-645, dealing with civil judgments.

Rule 2-601(a)(1) requires each civil judgment to be "set forth on a separate document and include a statement of an allowance of costs as determined in conformance with Rule 2-603." Sometimes, however, costs have not yet been determined when the judgment document is filed or for other reasons the judge or clerk who signs the document neglects to include such a statement.

The question has been raised whether, in that event, the judgment is final under Rule 2-602, at least where costs were sought. In *Mattison v. Gelber*, 202 Md. App. 44 (2011), the Court of Special Appeals, after tracing the history of Rule 2-

601 (a)(1), held that the absence of a statement of costs does not affect the finality of the judgment, but the Committee believes it would be helpful to litigants, judges, and clerks (1) to delete the **requirement** that costs be included in the judgment document, (2) to state that they **should** be included in that document, and (3) to add a Committee note that calls attention to *Mattison* and makes clear that the absence of such a provision does not preclude the judgment from being final.

Rules 2-625 and 3-625 provide that, subject to renewal, a money judgment expires 12 years from the date of entry or from the most recent renewal. Provisions of the Md. Code, however, make clear that an unrenewed money judgment held by the State does not expire after 12 years. *See* Code, Courts Article, 5-102(c); C*omptroller of Md. v. Shipe*, 221 Md. App. 425 (2015); and *Central Collection Unit v. Buckingham*, 214 Md. App. 672 (2013). The Committee proposes that a Committee note be added to both Rules calling attention to § 5-102 and to the two cases.

Rule 2-623 deals with foreign judgments presented for recording and indexing in a Maryland court. The proposed amendments to that Rule take account of affidavit and notice provisions in Code, Courts Article, § 11-803. There currently is no counterpart to that Rule for the District Court, but foreign judgments are presented to the District Court, so the Committee proposes a comparable new Rule 3-623. Identical amendments are proposed to Rules 2-632 and 3-632 to take account of provisions in Code, Courts Article, § 11-804 dealing with a stay of enforcement of a foreign judgment.

The proposed amendments to Rules 2-645 and 3-645, which deal with the garnishment of property other than wages, were recommended by the Maryland Bankers Association. The Committee was advised that there are many instances in which a bank receives a writ of garnishment of an account or other property of a customer, places a hold on the account or property as required (including on funds or property added during the life of the writ), files an answer confessing the funds or property, and then nothing happens. Neither the judgment debtor nor the judgment creditor seeks to enforce or dismiss the writ, and it remains dormant. The Committee recommends that, if there is no further filing within 120 days after the garnishee's answer is filed, after proper notice to both the judgment debtor and the judgment creditor, the garnishee be able to terminate the writ so the funds or property may be released.

Category 3 consists of an amendment or Rule 9-203 (b). That Rule sets forth the form of financial statement required in order to determine proper child support under the Child Support Guidelines. The amendment is needed to conform to a statutory change (2019 Laws of Maryland, Ch. 436).

Category 4 consists of amendments to Rules 9-204 and 9-205 and new Rules 9-204.1 and 9-204.2, dealing with parenting plans in cases involving issues of parenting time (physical custody) and decision-making authority (legal custody). These changes were recommended by the Domestic Law Committee of the Judicial Council. The thrust of the changes is to require the parents to make a reasonable effort to determine for themselves what arrangements are practical and in the best interest of their child(ren), to develop a written parenting plan for consideration by the court, and to give some guidance to them in addressing those issues. The amendments to Rule 9-205, which deals with mediation in divorce and child access cases, permits a mediator to assist the parties in developing a parenting plan. These proposals are modeled, to some extent, on the marital property statement required under Rule 9-207. The Committee was advised that most States have enacted similar requirements.

Category 5 consists of a new Rule 10-106.1, the renumbering of current Rule 10-106.1, and amendments to current Rules 10-106, 10-110, 10-111, 10-112, 10-206, 10-209, 10-403, 10-404, 10-707, 10-708, and 16-907, and the Appendix: *Maryland Guidelines for Court-Appointed Attorneys in Guardianship Proceedings*, all dealing with guardianship proceedings. These changes emanated from recommendations by the Guardianship and Vulnerable Adult Work Group of the Judicial Council.

The proposed changes to Rule 10-106 – a text amendment and a new Committee Note – address a practice by some courts of requiring an attorney for a minor or alleged disabled person to file an investigative report with the court. Concern was expressed that placing such a duty on an attorney for the subject of the guardianship may intrude on the attorney-client privilege and create a conflict of interest. The court does have the power to appoint an independent investigator, and the attorney for the subject may, of course, present relevant information to the court on the client's behalf that does not contravene the privilege (*see* proposed new Rule 10-106.1 and Rules 10-205 and 10-304), but the Committee believes that the court should not require the attorney to make a report.

New Rule 10-106.1 (Pre-Hearing Statement) is intended to give the court a sense of what the issues are likely to be and to make the hearing on the petition more focused and efficient. Rule 10-106.2 is simply a renumbering of current Rule 10-106.1. The amendment to Rule 10-403 (d) conforms the Rule to a statutory requirement in Code, Estates and Trusts Article, § 13-904(f)(2). Conforming amendments are added as well to a cross-reference at the end of the Rule and in the Committee Note in Rule 10-404.

With one important exception, the proposed amendments to Rule 10-110 require, when guardianship of more than one alleged disabled person or minor is sought, that separate petitions be filed for each such individual. The Committee was advised that, in some instances, the guardianship of several individuals has been sought through a single petition and that has caused reporting and tracking problems when the court reports guardianship case information to the F.B.I. for use in the National Instant Criminal Background Check System (NICS). NICS needs the information to determine who may be disqualified from possessing firearms. The exception is that a single petition may be used with respect to a guardianship of minors who are full siblings. That is currently the practice in the Circuit Court for Anne Arundel County. Even in that situation, however, a separate order will be required for each minor because the conditions of the guardianship and its ultimate termination may differ from one child to another.

The proposed amendments to Rules 10-111 and 10-112, which set out the forms for guardianship petitions, are mostly clarifying or conforming in nature.

Rule 10-206(e) currently sets out the form of the guardian's annual report. The Committee proposes to delete the form from the Rule and provide that it shall substantially conform to the form approved by the State Court Administrator and published on the Judiciary website. As a matter of proposed policy, the Committee believes that many (but not all) of the forms now set forth in Rules can as easily be developed by Forms Committees that operate under the umbrella of the Judicial Council, subject to approval by the State Court Administrator and publication on the Judiciary website, so that changes to them can be made more easily without invoking the more cumbersome Rules process. Similar amendments are proposed for Rules 10-707 (Information and Inventory Report) and 10-708 (Fiduciary's Account and Report of Trust Clerk).

In Rule 10-209, the Committee proposes to delete the requirement for termination of a guardianship due to the death of the subject that a certified copy of the death certificate accompany the petition. The Committee was advised by the Guardianship and Vulnerable Adults Workgroup of the Judicial Council Domestic Law Committee that a *certified* copy is unnecessary.

As a result of the changes to these guardianship Rules and some previously adopted, the guardianship court will be getting additional sensitive information that will find its way into case records. The Guardianship and Vulnerable Adults Workgroup has expressed a need to provide better protection of the confidentiality of some of that information. At its most recent meeting on September 5, 2019, the Rules Committee approved a general revision of the access Rules in Title 16, Chapter 900, which include the proposed changes submitted in this Report. Those changes will be submitted to the Court in a later, separate Report, but it will be several months before the Court will be able to consider that Report, and the Workgroup has requested more immediate protection for certain case records in guardianship cases. The Committee recommends that current Rule 16-907 be amended to provide that protection by shielding all guardianship records other than docket entries and orders entered by the court.

The current Guidelines for attorneys representing minors and disabled persons in guardianship proceedings apply only to court-appointed attorneys. The amendments expand the scope of the Guidelines to all attorneys for those individuals and conform the Guidelines to the proposed amendments to Rule 10-106.

Category 6 consists of proposed amendments to Rules 17-205, 17-206, 17-304, 17-405, and 17-603. The proposed amendments are the same for each of those Rules. They require that court-designated mediators and settlement conference presiders comply with applicable standards adopted by Administrative Order of the Court of Appeals and posted in the Judiciary website. Standards for court-appointed ADR practitioners have been developed by the ADR Committee of the Judicial Council. They are not part of the Rules but are presented to the Court on behalf of the ADR Committee as **Appendix 2** to this Report.

Category 7 consists of amendments to Rule 6-417 adding a Committee note to subsection (b)(4) calling attention to a statutory waiver of certain fees and clarifying in sections (d)

and (f) that exceptions to an account may be filed within 20 days after the order approving the account is docketed. Clarifying and conforming amendments to Rule 6-171 also are proposed.

Category 8 consists of housekeeping amendments (1) to cross references following Rules 2-124, 2-512 (c), and 3-124; (2) to Rule 4-345, by adding a cross reference to *State v. Brown*, 464 Md. 237 (2019); (3) to Rule 18-603 by removing surplus language from section (b); and (4) to Rule 19-301.8 to correct a stylistic error. Amendments are made to Rule 4-245 to provide that certain notices be substantially in a form approved by the State Court Administrator and posted on the Judiciary website.

For the guidance of the Court and the public, following each proposed new Rule and amendment to each current Rule 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:cmp
cc: Suzanne C. Johnson, Clerk

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 300 – TRIAL AND SENTENCING

ADD new Rule 4-333, as follows:

Rule 4-333. MOTION TO VACATE JUDGMENT OF CONVICTION OR PROBATION BEFORE JUDGMENT

(a) Scope

This Rule applies to a motion by a State's Attorney pursuant to Code, Criminal Procedure Article, § 8-301.1 to vacate a judgment of conviction or the entry of a probation before judgment entered in a case prosecuted by that office.

Committee note: Rule 4-102 (l) defines "State's Attorney" as "a person authorized to prosecute an offense." That would include the State Prosecutor and the Attorney General with respect to cases they prosecuted.

(b) Filing

The motion shall be filed in the criminal action in which the judgment of conviction or probation before judgment was entered. If the action is then pending in the Court of Appeals or Court of Special Appeals, that Court may stay the appeal and remand the case to the trial court for it to consider the State's Attorney's motion.

Committee note: Code, Criminal Procedure Article, § 8-301.1 (a) permits the State's Attorney to file the motion "at any time after the entry of a probation before judgment or judgment of

conviction," and permits "the court with jurisdiction over the case" to act on it. If an appeal is pending in the Court of Appeals or Court of Special Appeals when the motion is filed, that Court would have jurisdiction over the case but no practical ability to take evidence with regard to the State's Attorney motion. If the appeal is successful, it could make the motion moot, but if the motion were to be granted and the State's Attorney then enters a *nolle prosequi*, the appeal may become moot, at least with respect to the judgments vacated. The simplest solution in most cases would be for the appellate court to remand the case for the trial court to consider the motion. Rule 8-604 (d) permits the appellate courts to remand cases "where justice will be served by permitting further proceedings."

(c) Timing

The motion may be filed at any time after entry of the judgment of conviction or probation before judgment.

(d) Content

The motion shall be in writing, signed by the State's Attorney, and state:

(1) the file number of the action;

(2) the current address of the defendant or, if the State's Attorney after due diligence is unable to ascertain the defendant's current address, a statement to the effect and a statement of the defendant's last known address;

(3) each offense included in the judgment of conviction or probation before judgment that the State's Attorney seeks to have vacated;

Committee note: This Rule anticipates that the State's Attorney may seek to vacate the entire judgment of conviction or probation before judgment or only parts of it.

(4) whether any sentence or probation before judgment includes an order of restitution to a victim and, if so, the name of the victim, the amount of restitution ordered, and the amount that remains unpaid;

(5) if the judgment of conviction or probation before judgment was appealed or was the subject of a motion or petition for post judgment relief, (A) the court in which the appeal or motion or petition was filed, (B) the case number assigned to the proceeding, if known, (C) a concise description of the issues raised in the proceeding, (D) the result, and (E) the date of disposition;

(6) a particularized statement of the grounds upon which the motion is based;

(7) if the request for relief is based on newly discovered evidence, (A) how and when the evidence was discovered, (B) why it could not have been discovered earlier, (C) if the issue of whether the evidence could have been discovered in time to move for a new trial pursuant to Rule 4-331 was raised or decided in any earlier appeal or post-judgment proceeding, the court and case number of the proceeding and the decision on that issue, and (D) that the newly discovered evidence creates a substantial or significant probability that the result would have been different with respect to the conviction or probation before

judgment, or part thereof, that the State's Attorney seeks to vacate, and the basis for that statement;

(8) if the basis for the motion is new information received by the State's Attorney after the entry of the judgment of conviction or probation before judgment, a summary of that information and how it calls into question the integrity of the judgment of conviction or probation before judgment, or part thereof, that the State's Attorney seeks to vacate;

(9) that, based upon the newly discovered evidence or new information received by the State's Attorney, the interest of justice and fairness justifies vacating the judgment of conviction or probation before judgment or part thereof that the State's Attorney seeks to vacate and the basis for that statement; and

(10) that a hearing is requested.

(e) Notice to Defendant

Upon the filing of the motion, the State's Attorney shall send a copy of it to the defendant, together with a notice informing the defendant of the right: (1) to file a response within 30 days after the notice was sent; (2) to seek the assistance of an attorney regarding the proceeding; and (3) if a hearing is set, to attend the hearing.

Committee note: Although the defendant may not seek affirmative relief under this Rule, nothing in the Rule precludes the defendant from contemporaneously seeking affirmative relief

under any other applicable Rule. The court, on motion, may consolidate the two proceedings.

(f) Initial Review of Motion

Before a hearing is set, the court shall make an initial review of the motion. If the court finds that the motion does not comply with section (d) of this Rule or that, as a matter of law, it fails to assert grounds on which relief may be granted, the court may dismiss the motion, without prejudice, without holding a hearing. Otherwise, the court shall direct that a hearing on the motion be held.

(g) Notice of Hearing

(1) To Defendant

The clerk shall send written notice of the date, time, and location of the hearing to the defendant.

(2) To Victim or Victim's Representative

Pursuant to Code, Criminal Procedure Article, § 8-301.1(d), the State's Attorney shall send written notice of the hearing to each victim or victim's representative, in accordance with Code, Criminal Procedure Article, § 11-104 or § 11-503. The notice shall contain a brief description of the proceeding and inform the victim or victim's representative of the date, time, and location of the hearing and the right to attend the hearing.

Committee note: Because a motion under Code, Criminal Procedure Article, § 8-301.1 may be filed years after the judgment of conviction or probation before judgment was entered, locating defendants, victims, and victim's representatives may be

difficult. Reasonable efforts, beyond merely relying on the last known address in a court record, should be made by the State to locate defendants, victims, and victims' representatives and provide the required notices.

(h) Conduct of Hearing

(1) Absence of Defendant, Victim, or Victim's Representative

If the defendant or a victim or victim's representative entitled to notice under section (g) of this Rule is not present at the hearing, the State's Attorney shall state on the record the efforts made to contact that person and provide notice of the hearing.

(2) Burden of Proof

The State's Attorney has the burden of proving grounds for vacating the judgment of conviction or probation before judgment.

(3) Disposition

If the court finds that the State's Attorney has proved grounds for vacating the judgment of conviction or probation before judgment and that the interest of justice and fairness justifies vacating the judgment of conviction or probation before judgment, the court shall vacate the judgment of conviction or probation before judgment. Otherwise, the court shall deny the motion and advise the parties of their right to appeal. If the motion is denied and the defendant did not receive actual notice of the proceedings, the court's denial

shall be without prejudice to refile the motion when the defendant has been located and can receive actual notice. The court shall state its reasons for the ruling on the record.

Cross reference: For the right of a victim or victim's representative to address the court during a sentencing or disposition hearing, see Code, Criminal Procedure Article §11-403.

(i) Post-Disposition Action by State's Attorney

Within 30 days after the court enters an order vacating a judgment of conviction or probation before judgment as to any count, the State's Attorney shall either enter a *nolle prosequi* of the vacated count or take other appropriate action as to that count.

Source: This Rule is new.

REPORTER'S NOTE

Code, Criminal Procedure Article § 8-301.1 was added by Chapter 702, 2019 Laws of Maryland (HB 874). The new statute authorizes a court with jurisdiction over a case to vacate a probation before judgment or conviction, on motion of the State. The bill establishes requirements for filed motions, requires notification of the defendant and the victim or the victim's representative, and authorizes a defendant to file a response to the motion.

Proposed new Rule 4-333 sets forth procedural requirements pertaining to the new statute.

Section (a) provides the scope of Rule 4-333. The Committee note following section (a) makes clear that the term "State's Attorney" includes the State Prosecutor and the Attorney General.

Section (b) requires that the motion be filed in the criminal action in which the judgment of conviction or probation

before judgment was entered. See Code, Criminal Procedure Article, § 8-301.1(a). The Committee note following section (b) addresses the filing of a motion to vacate when an appeal is pending in the Court of Appeals or the Court of Special Appeals.

Section (c) states that the motion may be filed at any time after entry of the judgment of conviction or probation before judgment. See Code, Criminal Procedure Article, § 8-301.1(a).

Section (d) sets forth the required contents of the State's Attorney's motion to vacate and identifies the two grounds upon which a motion may be based. The first ground is when there is newly discovered evidence that could not have been discovered by due diligence in time to move for a new trial and creates a substantial or significant possibility that the result would have been different. See Code, Criminal Procedure Article, § 8-301.1(a)(1)(i). The second ground is when the State's Attorney has received new information after the entry of a probation before judgment or judgment of conviction that calls into question the integrity of the probation before judgment or conviction. See Code, Criminal Procedure Article, § 8-301.1(a)(1)(ii). The State's Attorney must also state that the interest of justice and fairness justifies vacating the probation before judgment or conviction. See Code, Criminal Procedure Article, § 8-301.1(a)(2).

Section (e) contains provisions pertaining to notice to the defendant. See Code, Criminal Procedure Article, § 8-301.1(c). § 8-301.1(c)(2) states:

> The defendant may file a response to the motion within 30 days after receipt of the notice required under this subsection or within the period of time that the court orders.

Because of uncertainty in determining the date of "receipt of the notice" -- or whether the notice ever was received -- the Committee recommends including in the notification to the defendant the right to file a response within 30 days after the notice is "sent," which is a more readily ascertainable date. Although, for case management purposes, it is preferable for any response to be filed by that date, the Rule does not prohibit the filing of a response after the date.

A Committee note following section (e) addresses affirmative relief that the defendant may seek in a

contemporaneously filed proceeding, which may, on motion, be consolidated with a proceeding under this Rule.

Section (f) requires the court to make an initial review of the motion to determine whether a hearing will be held. See Code, Criminal Procedure Article, § 8-301.1(e).

Section (g) pertains to notices of the hearing that must be sent to the defendant and to the victim or victim's representative. See Code, Criminal Procedure Article, § 8-301.1(d). A Committee note following section (g) recognizes the difficulties that may be encountered in locating defendants, victims, and victim's representatives when the motion is filed many years after the judgment of conviction or probation before judgment was entered.

Section (h) governs conduct of the hearing.

Subsection (h)(1) requires that the State's Attorney state on the record the efforts made to contact a defendant, victim, or victim's representative who is not present at the hearing.

Subsection (h)(2) states that it is the State's Attorney's burden to prove grounds for vacating the judgment of conviction or probation before judgment. See Code, Criminal Procedure Article, § 8-301.1(g).

Subsection (h)(3) governs disposition of the motion. If the court finds that the State's Attorney has met the burden of proof and that the interest of justice and fairness justifies vacating the judgment of conviction or probation before judgment, the court is required to vacate the conviction or probation before judgment. Otherwise, the court must deny the motion and advise the parties of their right to appeal. The court is required to state its reasons on the record. See Code, Criminal Procedure Article, § 8-301.1(f). If the court denies the State's Attorney's motion, and the defendant had not received actual notice of the proceedings, the denial is without prejudice.

A cross reference to Code, Criminal Procedure Article §11-403 is included after section (h) to highlight the right of the victim or victim's representative to address the court during a sentencing or disposition hearing.

Section (i) governs post-disposition action by the State's Attorney. Under this section, the State's Attorney is required

to enter a nolle prosequi of the vacated count or take other appropriate action as to that count within 30 days after the court enters an order vacating the judgment of conviction of probation before judgment.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 2-601 by adding language to subsection (a)(1) to clarify that each judgment should include a statement of an allowance of costs and by adding a Committee note following subsection (a)(1), as follows:

Rule 2-601. ENTRY OF JUDGMENT

(a) Separate Document—Prompt Entry

(1) Each judgment shall be set forth on a separate document and should include a statement of an allowance of costs as determined in conformance with Rule 2-603.

Committee note: The failure of the separate document to include an allowance or assessment of costs does not preclude the document from constituting a final and appealable judgment. See *Mattison v. Gelber*, 202 Md. App. 44 (2011).

. . .

REPORTER'S NOTE

The proposed amendments to Rule 2-601 resolve an ambiguity as to whether a document that fails to include a statement of an allowance of costs could constitute a judgment. The addition of the word "should" in subsection (a)(1) and a Committee note that follows this subsection makes clear that the failure of a separate document to include an allowance or assessment costs does not preclude the document from constituting a final and appealable judgment.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 2-623 by making stylistic changes to section (a); by adding a provision to section (a) that implements the affidavit and notice requirements for foreign judgments pursuant to Code, Courts Article, §11-803; and by expanding the existing cross reference, as follows:

Rule 2-623. RECORDING OF A JUDGMENT OF ANOTHER COURT AND DISTRICT COURT NOTICE OF LIEN

(a) Judgment of Another Court

(1) Generally

Subject to subsection (a)(2) of this Rule, ~~Upon~~ upon receiving a copy of a judgment of another court, certified or authenticated in accordance with these ~~rules~~ Rules or statutes of this State, or of the United States, the clerk shall record and index the judgment if it was entered by ~~(1)~~(A) the Court of Appeals, ~~(2)~~(B) the Court of Special Appeals, ~~(3)~~(C) another circuit court of this State, ~~(4)~~(D) a court of the United States, or ~~(5)~~(E) any other court whose judgments are entitled to full faith and credit in this State. Upon recording a judgment received from a person other than the clerk of the

court of entry, the receiving clerk shall notify the clerk of the court of entry.

(2) Foreign Judgment

At the time a foreign judgment as defined in Code, Courts Article, §11-801 is filed, the judgment creditor shall file an affidavit in compliance with Code, Courts Article, §11-803 (a). Upon receipt of the affidavit, the clerk shall mail to the judgment debtor the notice required by Code, Courts Article, §11-803 (b) and make a docket entry notation of the mailing.

Cross reference: For enforcement of foreign judgments, see Code, Courts Article, §§ 11-801 through 11-807. For provisions governing the stay of enforcement of a judgment, see Rule 2-632.

(b) District Court Notice of Lien

Upon receiving a certified copy of a Notice of Lien from the District Court pursuant to Rule 3-621, the clerk shall record and index the notice in the same manner as a judgment.

Source: This Rule is in part derived from former Rule 619 a and in part new.

REPORTER'S NOTE

Amendments to section (a) of Rule 2-623 implement the affidavit and notice requirements for foreign judgments pursuant to Code, Courts Article, §11-803 of the Uniform Enforcement of Foreign Judgments Act. A practitioner brought to the attention of the Judgments Subcommittee that currently, Rule 2-623 does not address notice to the judgment debtor when a foreign judgment is recorded in the State. However, Code, Courts

Article, §11-803 does. The proposed amendments to section (a) of Rule 2-632 resolve any ambiguity regarding the filing and notice requirements for foreign judgments under the statute and the Rule.

Additionally, the cross reference following section (a) is expanded to include a reference to Rule 2-632, which governs stays of enforcing a judgment in Maryland. This amendment is proposed in conjunction with a proposed amendment to Rule 2-632, which makes clear that stays of foreign judgments are governed by Code, Courts Article, §11-804.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 600 – JUDGMENT

ADD new Rule 3-623, as follows:

Rule 3-623. RECORDING OF FOREIGN JUDGMENTS

(a) Generally

Subject to section (b) of this Rule, upon receiving for recordation a copy of a foreign judgment, as defined by Code, Courts Article, §11-801, that is certified or authenticated in accordance with these Rules or statutes of this State, or of the United States, the clerk shall record and index the judgment. Upon recording a foreign judgment received from a person other than the clerk of the court of entry, the receiving clerk shall notify the clerk of the court of entry.

Cross reference: For the authority to file a foreign judgment in the District Court, see Code, Courts Article, §11-802 (a)(1)(ii) and (iii).

(b) Affidavit and Notice Requirements

At the time a foreign judgment is filed, the judgment creditor shall file an affidavit in compliance with Code, Courts Article, §11-803 (a). Upon receipt of the affidavit, the clerk shall mail to the judgment debtor the notice required by Code,

Courts Article, §11-803 (b) and make a docket entry notation of the mailing.

Cross reference: For enforcement of foreign judgments, see Code, Courts Article, §§ 11-801 through 11-807. For provisions governing the stay of enforcement of a judgment, see Rule 3-632.

Source: This Rule is new.

REPORTER'S NOTE

New Rule 3-623 is proposed in conjunction with proposed amendments to Rule 2-623, which governs the recording of a judgment of another court in a circuit court.

Section (a) of Rule 3-623 sets forth the procedure for recording foreign judgments filed in the District Court, as authorized by Code, Courts Article, §11-802 (a)(1)(i) and (ii).

Section (b) implements the affidavit and notice requirements for foreign judgments pursuant to Code, Courts Article, §11-803 of the Uniform Enforcement of Foreign Judgments Act.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 2-625 by adding a Committee note, as follows:

Rule 2-625. EXPIRATION AND RENEWAL OF MONEY JUDGMENT

A money judgment expires 12 years from the date of entry or most recent renewal. At any time before expiration of the judgment, the judgment holder may file a notice of renewal and the clerk shall enter the judgment renewed.

Committee note: This Rule does not extinguish an unrenewed judgment held by the State. *See* Code, Courts Article §5-102; *Comptroller of Md. v. Shipe*, 221 Md. App. 425 (2015); and *Central Collection Unit v. Buckingham*, 214 Md. App. 672 (2013).

Source: This Rule is new.

REPORTER'S NOTE

The Rules Committee proposes the addition of a Committee note following Rules 2-625 and 3-625 to make clear that the twelve-year limitations period for judgments does not extinguish unrenewed judgments held by the State. Rules 2-625 and 3-625 implement the twelve-year limitations period found in Code, Courts Article §5-102. Code, Courts Article §5-102 expressly provides that the twelve-year limitation period for action on specialties does not apply to specialties taken for the use of the State.

In *Central Collection Unit v. Buckingham*, 214 Md. App. 672 (2013), the Court of Special Appeals was called on to decide whether Rule 2-625 applies to a money judgment held by the State. The Court noted that while the Code, Courts Article §5-102 expressly exempts judgments held by the State from the

twelve-year limitations period, Rule 2-625 does not. The Court ultimately held that Rule 2–625 does not extinguish an unrenewed judgment held by the State after twelve years. That principle was reiterated in *Comptroller of Md. v. Shipe*, 221 Md. App. 425 (2015). In *Shipe*, the Court of Special Appeals held that a tax lien having the full force and effect of a judgment lien, would exempt the State from the twelve-year limitation period.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 3-625 by adding a Committee note, as follows:

Rule 3-625. EXPIRATION AND RENEWAL OF MONEY JUDGMENT

A money judgment expires 12 years from the date of entry or most recent renewal. At any time before expiration of the judgment, the judgment holder may file a notice of renewal and the clerk shall enter the judgment renewed. Upon request of the judgment holder, the clerk shall transmit a copy of the notice of renewal to each clerk to whom a certified copy of the judgment was transmitted pursuant to Rules 3-621(c)(1) and 3-622 and to each circuit court clerk to whom a Notice of Lien was transmitted pursuant to Rule 3-621, and the receiving clerk shall enter the judgment or Notice of Lien renewed.

Committee note: This Rule does not extinguish an unrenewed judgment held by the State. *See* Code, Courts Article §5-102; *Comptroller of Md. v. Shipe*, 221 Md. App. 425 (2015); and *Central Collection Unit v. Buckingham*, 214 Md. App. 672 (2013).

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's Note to the proposed amendment to Rule 2-625.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 2-632 by adding new section (g) clarifying that stays of foreign judgments are governed by Code, Courts Article, §11-804; by re-lettering current section (g) as new section (h); and updating the source note, as follows:

Rule 2-632. STAY OF ENFORCEMENT

. . .

(g) Foreign Judgment

A stay of enforcement of a foreign judgment, as defined in Code, Courts Article, §11-801, is governed by Code, Courts Article, §11-804.

~~(g)~~ (h) Power of Appellate Court Not Limited

The provisions of this Rule do not limit any power of an appellate court to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

Source: This Rule is derived as follows:

. . .

Section (g) is new.

Section ~~(g)~~ (h) is derived from the 1961 version of Fed. R. Civ. P. 62 (g).

REPORTER'S NOTE

Proposed amendments to Rule 2-632 make clear that a stay of a foreign judgment, as defined by Code, Courts Article, §11-801 is governed by Code, Courts Article, §11-804. This amendment is proposed in conjunction with proposed amendments to Rule 2-623, which, in part, implement the affidavit and notice requirements for foreign judgments pursuant to Code, Courts Article, §11-803 of the Uniform Enforcement of Foreign Judgments Act.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 3-632 by adding new section (f) clarifying that a stay of enforcement of a foreign judgment is governed by Code, Courts Article, §11-804; by re-lettering current section (f) as new section (g); and by updating the source note, as follows:

Rule 3-632. STAY OF ENFORCEMENT

(a) Automatic

Except as otherwise provided in this Rule, enforcement of a money judgment is automatically stayed until the expiration of ten days after its entry.

Cross reference: For the definition of "money judgment," see Rule 1-202.

(b) Discretionary

In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay enforcement of a judgment pending the disposition of a motion for a new trial filed pursuant to Rule 3-533, a motion to alter or amend a judgment filed pursuant to Rule 3-534, or a motion to revise a judgment filed pursuant to Rule 3-535.

(c) Multiple Claims

When a court has entered a final judgment under the conditions stated in Rule 3-602, the court may stay enforcement of that judgment until the entering of a subsequent judgment and may prescribe such conditions as are necessary to secure the benefit of the judgment to the party in whose favor the judgment is entered.

(d) Pending Appeal

Except as provided in this section and in section (e) of this Rule, a stay pending appeal is governed by the procedures set forth in Rules 8-422 through 8-424. References in those rules to the Court of Special Appeals shall be regarded as references to the circuit court having jurisdiction of the appeal. If the court determines that because of the nature of the action enforcement of the judgment should not be stayed by the filing of a supersedeas bond or other security, it may enter an order denying a stay or permitting a stay only on the terms stated in the order.

(e) Injunction Pending Appeal

When an appeal is taken from an order or a judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the adverse party.

(f) Foreign Judgment

A stay of enforcement of a foreign judgment, as defined in Code, Courts Article, §11-801, is governed by Code, Courts Article, §11-804.

~~(f)~~ (g) Power of Appellate Court Not Limited

The provisions of this Rule do not limit any power of an appellate court to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

Cross reference: For provisions concerning stays of judgments in municipal infraction cases, see Code, Article 23A, § 3(b)(7).

Source: This Rule is derived as follows:
Section (a) is derived from the 1961 version of Fed. R. Civ. P. 62 (a).
Section (b) is derived from the 1961 version of Fed. R. Civ. P. 62 (b).
Section (c) is derived from former M.D.R. 605 b and the 1961 version of Fed. R. Civ. P. 62 (h).
Section (d) is in part new and in part derived from former Rule 1017 e.
Section (e) is derived from the 1961 version of Fed. R. Civ. P. 62 (c).
Section (f) is new.
Section ~~(f)~~ (g) is derived from the 1961 version of Fed. R. Civ. P. 62 (g).

REPORTER'S NOTE

Amendments to Rule 3-632 are proposed in conjunction with proposed new Rule 3-623, which governs the recording of foreign

judgments in the District Court. Proposed amendments to Rule 3-632 make clear that a stay of enforcement of a foreign judgment, as defined in Code, Courts Article, §11-801 is governed by Code, Courts Article, §11-804.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 2-645 by adding language to subsection (c)(2) requiring a writ of garnishment of property to direct the garnishee to hold the property of each judgment debtor in its possession, subject to further proceedings or to termination of the writ; by adding subsection (c)(6) requiring that the writ of garnishment notify the judgment debtor that the garnishee may file a notice of intent to terminate the garnishment at any time more than 120 days after the garnishee files an answer, if no further filings concerning the writ of garnishment are made with the court; by making stylistic changes to section (k); and by adding subsection (k)(2) establishing a process by which a garnishee may terminate a writ of garnishment, as follows:

Rule 2-645. GARNISHMENT OF PROPERTY—GENERALLY

(a) Availability

Subject to the provisions of Rule 2-645.1, this Rule governs garnishment of any property of the judgment debtor, other than wages subject to Rule 2-646 and a partnership interest subject to a charging order, in the hands of a third person for the purpose of satisfying a money judgment. Property

includes any debt owed to the judgment debtor, whether immediately payable or unmatured.

(b) Issuance of Writ

The judgment creditor may obtain issuance of a writ of garnishment by filing in the same action in which the judgment was entered a request that contains (1) the caption of the action, (2) the amount owed under the judgment, (3) the name and last known address of each judgment debtor with respect to whom a writ is requested, and (4) the name and address of the garnishee. Upon the filing of the request, the clerk shall issue a writ of garnishment directed to the garnishee.

(c) Content

The writ of garnishment shall:

(1) contain the information in the request, the name and address of the person requesting the writ, and the date of issue,

(2) direct the garnishee to hold, subject to further proceedings or to termination of the writ, the property of each judgment debtor in the possession of the garnishee at the time of service of the writ and all property of each debtor that may come into the garnishee's possession after service of the writ,

(3) notify the garnishee of the time within which the answer must be filed and that the failure to do so may result in judgment by default against the garnishee,

(4) notify the judgment debtor and garnishee that federal and state exemptions may be available,

(5) notify the judgment debtor of the right to contest the garnishment by filing a motion asserting a defense or objection~~.~~, and

(6) notify the judgment debtor that, if the garnishee files an answer pursuant to section (e) of this Rule and no further filings concerning the writ of garnishment are made with the court within 120 days following the filing of the answer, the garnishee may file a notice of intent to terminate the writ of garnishment pursuant to subsection (k)(2) of this Rule.

Committee note: A writ of garnishment may direct a garnishee to hold the property of more than one judgment debtor if the name and address of each judgment debtor whose property is sought to be attached is stated in the writ.

(d) Service

The writ shall be served on the garnishee in the manner provided by Chapter 100 of this Title for service of process to obtain personal jurisdiction and may be served in or outside the county. Promptly after service upon the garnishee, the person making service shall mail a copy of the writ to the judgment debtor's last known address. Proof of service and mailing shall be filed as provided in Rule 2-126. Subsequent pleadings and papers shall be served on the creditor, debtor, and garnishee in the manner provided by Rule 1-321.

(e) Answer of Garnishee

The garnishee shall file an answer within the time provided by Rule 2-321. The answer shall admit or deny that the garnishee is indebted to the judgment debtor or has possession of property of the judgment debtor and shall specify the amount and nature of any debt and describe any property. The garnishee may assert any defense that the garnishee may have to the garnishment, as well as any defense that the judgment debtor could assert. After answering, the garnishee may pay any garnished indebtedness into court and may deliver to the sheriff any garnished property, which shall then be treated as if levied upon by the sheriff. A garnishee who has filed an answer admitting indebtedness to the judgment debtor or possession of property of the judgment debtor is not required to file an amended answer solely because of an increase in the garnishee's indebtedness to the judgment debtor or the garnishee's receipt of additional property of the debtor.

(f) When No Answer Filed

If the garnishee fails to file a timely answer, the judgment creditor may proceed pursuant to Rule 2-613 for a judgment by default against the garnishee.

(g) When Answer Filed

If the garnishee files a timely answer, the matters set forth in the answer shall be treated as established for the

purpose of the garnishment proceeding unless the judgment creditor files a reply contesting the answer within 30 days after its service. If a timely reply is not filed, the court may enter judgment upon request of the judgment creditor, the judgment debtor, or the garnishee. If a timely reply is filed to the answer of the garnishee, the matter shall proceed as if it were an original action between the judgment creditor as plaintiff and the garnishee as defendant and shall be governed by the rules applicable to civil actions.

(h) Interrogatories to Garnishee

The judgment creditor may serve interrogatories directed to the garnishee pursuant to Rule 2-421. The interrogatories shall contain a notice to the garnishee that, unless answers are served within 30 days after service of the interrogatories or within the time for filing an answer to the writ, whichever is later, the garnishee may be held in contempt of court. The interrogatories shall also inform the garnishee that the garnishee must file a notice with the court pursuant to Rule 2-401 (d) at the time the answers are served. If the garnishee fails to serve timely answers to interrogatories, the court, upon petition of the judgment creditor and proof of service of the interrogatories, may enter an order in compliance with Rule 15-206 treating the failure to answer as a contempt and may

require the garnishee to pay reasonable attorney's fees and costs.

(i) Release of Property; Claim by Third Person

Before entry of judgment, the judgment debtor may seek release of the garnished property in accordance with Rule 2-643, except that a motion under Rule 2-643 (d) shall be filed within 30 days after service of the writ of garnishment on the garnishee. Before entry of judgment, a third person claimant of the garnished property may proceed in accordance with Rule 2-643 (e).

(j) Judgment

The judgment against the garnishee shall be for the amount admitted plus any amount that has come into the hands of the garnishee after service of the writ and before the judgment is entered, but not to exceed the amount owed under the creditor's judgment against the debtor and enforcement costs.

(k) Termination of Writ

(1) Upon Entry of Judgment

Upon entry of a judgment against the garnishee pursuant to section (j) of this Rule, the writ of garnishment and the lien created by the writ shall terminate and the garnishee shall be under no obligation to hold any additional property of the debtor that may come into its possession after the judgment was entered.

(2) By the Garnishee

If the garnishee has filed an answer and no further filing concerning the writ of garnishment is made within 120 days after the filing of the answer, the garnishee may file, at any time more than 120 days after the filing of the answer, a notice of intent to terminate the writ of garnishment. The notice shall (A) contain a statement that a party may object to termination of the writ by filing a response within 30 days after service of the notice and (B) be served on the judgment debtor and the judgment creditor. If no response is filed within 30 days after service of the notice, the garnishee may file a termination of the garnishment, which shall release the garnishee from any further obligation to hold any property of the debtor.

Committee note: The methods of termination of a writ of garnishment provided in section (k) of this Rule are not exclusive. Section (k) does not preclude a garnishee or other party from filing a motion for a court order terminating a writ of garnishment on any other appropriate basis.

(l) Statement of Satisfaction

Upon satisfaction by the garnishee of a judgment entered against it pursuant to section (j) of this Rule, the judgment creditor shall file a statement of satisfaction setting forth the amount paid. If the judgment creditor fails to file the statement of satisfaction, the garnishee may proceed under Rule 2-626.

Source: This Rule is derived as follows:
Section (a) is new but is consistent with former Rules G47 a and G50 a.
Section (b) is new.
Section (c) is new.
Section (d) is in part derived from former Rules F6 c and 104 a (4) and is in part new.
Section (e) is in part new and in part derived from former Rule G52 a and b.
Section (f) is new.
Section (g) is new.
Section (h) is derived from former Rule G56.
Section (i) is new.
Section (j) is new.
Section (k) is new.
Section (l) is new.

REPORTER'S NOTE

Attorneys on behalf of the Maryland Bankers Association and practitioners who engage in collection actions have advised the Judgments Subcommittee that hundreds of garnishment of property proceedings remain stagnant well after an answer to the writ of garnishment is filed by the garnishee. The writs remain unresolved because neither the judgment creditor nor the judgment debtor nor the garnishee seeks further resolution of the matter. Amendments to Rules 2-645 and 3-645 establish an identical process, in the District Court and the circuit courts, by which a writ of garnishment of property may be terminated by the garnishee subject to the writ. The following proposed amendments have been incorporated in both Rule 2-645 and Rule 3-645:

Proposed amendments to subsection (c)(2) require that additional language be contained in a writ of garnishment of property. Specifically, the writ must direct the garnishee to hold, subject to further proceedings "or to termination of the writ," the property of each judgment debtor in the possession of the garnishee at the time of service of the writ and all property of each debtor that may come into the garnishee's possession after service of the writ.

New subsection (c)(6) requires that a writ of garnishment of property notify the judgment debtor that, if the garnishee files an answer to the writ and no further filings concerning

the writ are made with the court within 120 days following the filing of the answer, the garnishee may file a notice of intent to terminate the writ of garnishment pursuant to subsection (k)(2). The proposed time period of 120 days is the same time period provided in Rule 2-643 (c)(6) for the court to order the release of property from a levy if there has been no sale of the levied property.

Current section (k) is proposed to be divided into two new subsections. Subsection (k)(1) contains the current language of section (k), which addresses termination of the writ upon entry of judgment. Subsection (k)(2) sets forth a new process by which a garnishee may terminate a writ of garnishment.

Subsection (k)(2) authorizes the garnishee to file a notice of intent to terminate the garnishment, if the garnishee has filed an answer and no further filing concerning the writ of garnishment is made within 120 days thereafter. The notice of intent to terminate the garnishment is required to contain a statement that a party may object to termination of the writ by filing a response within 30 days after service of the notice. Accordingly, the notice is required to be served upon the judgment debtor and judgment creditor.

Subsection (k)(2) further authorizes the garnishee to file a termination of the garnishment, which will release the garnishee from any further obligation to hold any property of the debtor, provided that no response to the notice is filed within 30 days after service of the notice. On the other hand, if a response to the garnishee's notice of intent to terminate the garnishment is filed, then the garnishee may not file a termination of the garnishment.

The proposed Committee note following section (k) makes clear that the methods of terminating a garnishment set forth in section (k) is not exclusive, and that section (k) does not preclude a garnishee or other party from filing a motion to seek an order of court terminating a writ of garnishment on any other appropriate basis.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 3-645 by adding language to subsection (c)(2) requiring a writ of garnishment of property to direct the garnishee to hold the property of each judgment debtor in its possession, subject to further proceedings or to termination of the writ; by adding subsection (c)(6) requiring that the writ of garnishment notify the judgment debtor that the garnishee may file a notice of intent to terminate the garnishment at any time more than 120 days after the garnishee files an answer, if no further filings concerning the writ of garnishment are made with the court; by making stylistic changes to section (k); and by adding subsection (k)(2) establishing a process by which a garnishee may terminate a writ of garnishment, as follows:

Rule 3-645. GARNISHMENT OF PROPERTY—GENERALLY

(a) Availability

Subject to the provisions of Rule 3-645.1, this Rule governs garnishment of any property of the judgment debtor, other than wages subject to Rule 3-646 and a partnership interest subject to a charging order, in the hands of a third person for the purpose of satisfying a money judgment. Property

includes any debt owed to the judgment debtor, whether immediately payable or unmatured.

(b) Issuance of Writ

The judgment creditor may obtain issuance of a writ of garnishment by filing in the same action in which the judgment was entered a request that contains (1) the caption of the action, (2) the amount owed under the judgment, (3) the name and last known address of each judgment debtor with respect to whom a writ is requested, and (4) the name and address of the garnishee. Upon the filing of the request, the clerk shall issue a writ of garnishment directed to the garnishee.

(c) Content

The writ of garnishment shall:

(1) contain the information in the request, the name and address of the person requesting the writ, and the date of issue,

(2) direct the garnishee to hold, subject to further proceedings or to termination of the writ, the property of each judgment debtor in the possession of the garnishee at the time of service of the writ and all property of each debtor that may come into the garnishee's possession after service of the writ,

(3) notify the garnishee of the time within which the answer must be filed and that failure to do so may result in judgment by default against the garnishee,

(4) notify the judgment debtor and garnishee that federal and state exemptions may be available,

(5) notify the judgment debtor of the right to contest the garnishment by filing a motion asserting a defense or objection~~.~~, and

(6) notify the judgment debtor that, if the garnishee files an answer pursuant to section (e) of this Rule and no further filings concerning the writ of garnishment are made with the court within 120 days following the filing of the answer, the garnishee may file a notice of intent to terminate the writ of garnishment pursuant to subsection (k)(2) of this Rule.

Committee note: A writ of garnishment may direct a garnishee to hold the property of more than one judgment debtor if the name and address of each judgment debtor whose property is sought to be attached is stated in the writ.

(d) Service

The writ shall be served on the garnishee in the manner provided by Chapter 100 of this Title for service of process to obtain personal jurisdiction and may be served in or outside the county. Promptly after service upon the garnishee, the person making service shall mail a copy of the writ to the judgment debtor's last known address. Proof of service and mailing shall be filed as provided in Rule 3-126. Subsequent pleadings and papers shall be served on the creditor, debtor, and garnishee in the manner provided by Rule 1-321.

(e) Answer of Garnishee

The garnishee shall file an answer within 30 days after service of the writ. The answer shall admit or deny that the garnishee is indebted to the judgment debtor or has possession of property of the judgment debtor and shall specify the amount and nature of any debt and describe any property. The garnishee may assert any defense that the garnishee may have to the garnishment, as well as any defense that the judgment debtor could assert. After answering, the garnishee may pay any garnished indebtedness into court and may deliver to the sheriff any garnished property, which shall then be treated as if levied upon by the sheriff. A garnishee who has filed an answer admitting indebtedness to the judgment debtor or possession of property of the judgment debtor is not required to file an amended answer solely because of an increase in the garnishee's indebtedness to the judgment debtor or the garnishee's receipt of additional property of the debtor.

(f) When No Answer Filed

If the garnishee fails to file a timely answer, the judgment creditor may proceed pursuant to Rule 3-509 for a judgment by default against the garnishee.

(g) When Answer Filed

If the garnishee files a timely answer, the matters set forth in the answer shall be treated as established for the

purpose of the garnishment proceeding unless the judgment creditor files a reply contesting the answer within 30 days after its service. If a timely reply is not filed, the court may enter judgment upon request of the judgment creditor, the judgment debtor, or the garnishee. If a timely reply is filed to the answer of the garnishee, the matter shall proceed as if it were an original action between the judgment creditor as plaintiff and the garnishee as defendant and shall be governed by the rules applicable to civil actions.

(h) Interrogatories to Garnishee

The judgment creditor may serve interrogatories directed to the garnishee pursuant to Rule 3-421. The interrogatories shall contain a notice to the garnishee that, unless answers are served within 30 days after service of the interrogatories or within the time for filing an answer to the writ, whichever is later, the garnishee may be held in contempt of court. The interrogatories shall also inform the garnishee that the garnishee must file a notice with the court pursuant to Rule 3-401 (b). If the garnishee fails to serve timely answers to interrogatories, the court, upon petition of the judgment creditor and proof of service of the interrogatories, may enter an order in compliance with Rule 15-206 treating the failure to answer as a contempt and may require the garnishee to pay reasonable attorney's fees and costs.

(i) Release of Property; Claim by Third Person

Before entry of judgment, the judgment debtor may seek release of the garnished property in accordance with Rule 3-643, except that a motion under Rule 3-643 (d) shall be filed within 30 days after service of the writ of garnishment on the garnishee. Before entry of judgment, a third person claimant of the garnished property may proceed in accordance with Rule 3-643 (e).

(j) Judgment

The judgment against the garnishee shall be for the amount admitted plus any amount that has come into the hands of the garnishee after service of the writ and before the judgment is entered, but not to exceed the amount owed under the creditor's judgment against the debtor and enforcement costs.

(k) Termination of Writ

(1) Upon Entry of Judgment

Upon entry of a judgment against the garnishee pursuant to section (j) of this Rule, the writ of garnishment and the lien created by the writ shall terminate and the garnishee shall be under no obligation to hold any additional property of the debtor that may come into its possession after the judgment was entered.

(2) By the Garnishee

If the garnishee has filed an answer and no further filing concerning the writ of garnishment is made within 120 days after the filing of the answer, the garnishee may file, at any time more than 120 days after the filing of the answer, a notice of intent to terminate the writ of garnishment. The notice shall (A) contain a statement that a party may object to termination of the writ by filing a response within 30 days after service of the notice and (B) be served on the judgment debtor and the judgment creditor. If no response is filed within 30 days after service of the notice, the garnishee may file a termination of the garnishment, which shall release the garnishee from any further obligation to hold any property of the debtor.

Committee note: The methods of termination of a writ of garnishment provided in section (k) of this Rule are not exclusive. Section (k) does not preclude a garnishee or other party from filing a motion for a court order terminating a writ of garnishment on any other appropriate basis.

(l) Statement of Satisfaction

Upon satisfaction by the garnishee of a judgment entered against it pursuant to section (j) of this Rule, the judgment creditor shall file a statement of satisfaction setting forth the amount paid. If the judgment creditor fails to file the statement of satisfaction, the garnishee may proceed under Rule 3-626.

Source: This Rule is derived as follows:

Section (a) is new but is consistent with former M.D.R. G47 a and G50 a.
Section (b) is new.
Section (c) is new.
Section (d) is in part derived from former M.D.R. F6 c and 104 a (iii) and is in part new.
Section (e) is in part new and in part derived from former M.D.R. G52 a and b.
Section (f) is new.
Section (g) is new.
Section (h) is derived from former M.D.R. G56.
Section (i) is new.
Section (j) is new.
Section (k) is new.
Section (l) is new.

REPORTER'S NOTE

See the Reporter's note to Rule 2-645.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

CHAPTER 200 – DIVORCE, ANNULMENT, ALIMONY,

CHILD SUPPORT, AND CHILD CUSTODY

AMEND Rule 9-203 (b) by revising the definition of "Extraordinary Medical Expenses," as follows:

Rule 9-203. FINANCIAL STATEMENTS

. . .

(b) Financial Statement--Child Support Guidelines

If the establishment or modification of child support in accordance with the guidelines set forth in Code, Family Law Article, §§ 12-201--12-204 is the only support issue in the action and no party claims an amount of support outside of the guidelines, the financial statement required by section (f) of Rule 9-202 shall be in substantially the following form:

[caption of case]

FINANCIAL STATEMENT

(Child Support Guidelines)

I, _____, state that:
My name

I am the _____
State Relationship (for example, mother, father, aunt, grandfather, guardian, etc.)

of the minor child(ren), including children who have not attained the age of 19 years, are not married or self-supporting, and are enrolled in secondary school:

Name	Date of Birth	Name	Date of Birth
Name	Date of Birth	Name	Date of Birth
Name	Date of Birth	Name	Date of Birth

The following is a list of my income and expenses (see below*):

See definitions on other side before filling out.

Total monthly income (before taxes) $

Child support I am paying for my other child(ren) each month

Alimony I am paying each month to _____
(Name of Person(s))

Alimony I am receiving each month from _____
(Name of Person(s))

For the child or children listed above:

The monthly health insurance premium

Work-related monthly child care expenses

Extraordinary monthly medical expenses

School and transportation expenses

* To figure the monthly amount of expenses, weekly expenses should be multiplied by 4.3 and yearly expenses should be divided by 12. If you do not pay the same amount each month for any of the categories listed, figure what your average monthly expense is.

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

_____ _____

Date Signature

Total Monthly Income: Include income from all sources including self-employment, rent, royalties, business income, salaries, wages, commissions, bonuses, dividends, pensions, interest, trusts, annuities, social security benefits, workers compensation, unemployment benefits, disability benefits, alimony or maintenance received, tips, income from side jobs, severance pay, capital gains, gifts, prizes, lottery winnings, etc. Do not report benefits from means-tested public assistance programs, such as food stamps or AFDC.

Extraordinary Medical Expenses: Uninsured expenses ~~over $100 for a single illness or condition~~ in excess of $250 in a calendar year for medical treatment, including orthodontia, dental treatment, vision care, asthma treatment, physical therapy, treatment for any chronic health problems, and professional counseling or psychiatric therapy for diagnosed mental disorders.

Child Care Expenses: Actual child care expenses incurred on behalf of a child due to employment or job search of either parent with amount to be determined by actual experience or the level required to provide quality care from a licensed source.

School and Transportation Expenses: Any expenses for attending a special or private elementary or secondary school to meet the particular needs of the child and expenses for transportation of the child between the homes of the parents.

. . .

Source: This Rule is new.

REPORTER'S NOTE

The proposed amendment to Rule 9-203 (b) revises the definition of "Extraordinary Medical Expenses" to conform to Chapter 436, 2019 Laws of Maryland (HB 742).

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

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

AMEND Rule 9-204 by replacing language contained in subsection (c)(6)(H), which references "developing constructive parenting arrangements" with language regarding the use of the Maryland Parenting Plan Tool and development of a parenting plan, as follows:

Rule 9-204. EDUCATIONAL SEMINAR

(a) Applicability

This Rule applies in an action in which child support, custody, or visitation is involved and the court determines to send the parties to an educational seminar designed to minimize disruptive effects of separation and divorce on the lives of children.

Cross reference: Code, Family Law Article, § 7-103.2.

(b) Order to Attend Seminar

(1) Subject to subsection (b)(2) of this Rule and as allowed or required by the county's case management plan required by Rule 16-302 (b), the court may order the parties to attend an educational seminar within the time set forth in the plan. The

content of the seminar shall be as prescribed in section (c) of this Rule. If a party who has been ordered to attend a seminar fails to do so, the court may not use its contempt powers to compel attendance or to punish the party for failure to attend, but may consider the failure as a factor in determining custody and visitation.

(2) A party who (A) is incarcerated, (B) lives outside the State in a jurisdiction where a comparable seminar or course is not available, or (C) establishes good cause for exemption may not be ordered to attend the seminar.

Committee note: Code, Family Law Article, § 7-103.2 (c)(2)(v) prohibits exemption based on evidence of domestic violence, child abuse, or neglect.

(c) Content

The seminar shall consist of one or two sessions, totaling six hours. Topics shall include:

(1) the emotional impact of divorce on children and parents;

(2) developmental stages of children and the effects of divorce on children at different stages;

(3) changes in the parent-child relationship;

(4) discipline;

(5) transitions between households;

(6) skill-building in

(A) parental communication with children and with each other,

(B) explaining divorce to children,

(C) problem-solving and decision-making techniques,

(D) conflict resolution,

(E) coping strategies,

(F) helping children adjust to family changes,

(G) avoiding inappropriate interactions with the children, and

(H) ~~developing constructive parenting arrangements~~ use of the Maryland Parenting Plan Tool and development of a parenting plan; and

(7) resources available in cases of domestic violence, child abuse, and neglect.

(d) Scheduling

The provider of the seminar shall establish scheduling procedures so that parties in actions where domestic violence, child abuse, or neglect is alleged do not attend the seminar at the same time and so that any party who does not wish to attend a seminar at the same time as the opposing party does not have to do so.

(e) Costs

The fee for the seminar shall be set in accordance with Code, Courts Article, § 7-202. Payment may be compelled by order of court and assessed among the parties as the court may direct. For good cause, the court may waive payment of the fee.

Source: This Rule is new.

REPORTER'S NOTE

An amendment to Rule 9-204 (c)(6)(H) is proposed in conjunction with the Court Process Workgroup's development of the Maryland Parenting Plan Instructions and Maryland Parenting Plan Tool. The amendment provides that use of the Parenting Plan Tool and development of a parenting plan will be included as a topic discussed at court-ordered educational seminars.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

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

AMEND Rule 9-205 by adding language in section (i) to provide that a mediator may assist parties in the completion of a Joint Statement of the Parties Concerning Decision-Making Authority and Parenting time, as follows:

Rule 9-205. MEDIATION OF CHILD CUSTODY AND VISITATION DISPUTES

. . .

(i) If No Agreement

If no agreement is reached or the mediator determines that mediation is inappropriate, the mediator shall so advise the court but shall not state the reasons. The mediator may assist the parties in the completion of a Joint Statement of the Parties Concerning Decision-Making Authority and Parenting Time, provided for by Rule 9-204.2. If the court does not order mediation or the case is returned to the court after mediation without an agreement as to all issues in the case, the court promptly shall schedule the case for hearing on any pendente lite or other appropriate relief not covered by a mediation agreement.

. . .

REPORTER'S NOTE

The amendment to Rule 9-205 is proposed in conformity with the Rules Committee's recommendation to add Rule 9-204.2, which requires the filing of a Joint Statement of the Parties Concerning Decision-Making Authority and Parenting Time if the parties are not able to agree upon a comprehensive parenting plan.

The amendment to section (i) permits the mediator to assist the parties in the completion of a Joint Statement provided for by Rule 9-204.2 if the parties are unable to reach an agreement regarding child custody and visitation disputes.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

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

ADD new Rule 9-204.1, as follows:

Rule 9-204.1. PARENTING PLANS

(a) Definitions

The following definitions apply, except as expressly otherwise provided or as necessary implication requires:

(1) Decision-Making Authority (Legal Custody)

Decision-Making Authority, also called legal custody, refers to how major long-term decisions about a child's medical care, mental health, education, religious training, and extracurricular activities are made.

(2) Parenting Plan

Parenting Plan means a written agreement about how parties will work together to take care of a child.

(3) Parenting Time (Physical Custody)

Parenting Time, also called physical custody, refers to where a child lives and the amount of time he or she spends with each party.

(b) Introduction of Parenting Plan

At the parties' first appearance in court on a decision-making authority or parenting time matter, the court shall provide to each party a paper copy of the Maryland Parenting Plan Instructions and Maryland Parenting Plan Tool and direct them to an electronic version of these documents. The court shall advise the parties that they may work separately, together, or with a mediator to develop a parenting plan they believe is in the best interest of their child.

(c) Best Interest of the Child

In determining what decision-making authority and parenting time arrangement is in the best interest of the child, the parties may consider the following factors:

(1) Stability and the foreseeable health and welfare of the child;

(2) Frequent, regular, and continuing contact with parties who can act in the child's best interest;

(3) Whether and how parties who do not live together will share the rights and responsibilities of raising the child;

(4) The child's relationship with each party, any siblings, other relatives, and individuals who are or may become important in the child's life;

(5) The child's physical and emotional security and protection from conflict and violence;

(6) The child's developmental needs, including physical safety, emotional security, positive self-image, interpersonal skills, and intellectual and cognitive growth;

(7) The day-to-day needs of the child, including education, socialization, culture and religion, food, shelter, clothing, and mental and physical health;

(8) How to:

(A) place the child's needs above the parties' needs;

(B) protect the child from the negative effects of any conflict between the parties; and

(C) maintain the child's relationship with the parties, siblings, other relatives, or other individuals who have or likely may have a significant relationship with the child;

(9) Age of the child;

(10) Any military deployment of a party and its effect, if any, on the parent-child relationship;

(11) Any prior court orders or agreements;

(12) Each party's role and tasks related to the child and how, if at all, those roles and tasks have changed;

(13) The location of each party's home as it relates to their ability to coordinate parenting time, school, and activities;

(14) The parties' relationship with each other, including:

(A) how they communicate with each other;

(B) whether they can co-parent without disrupting the child's social and school life; and

(C) how the parties will resolve any disputes in the future without the need for court intervention;

(15) The child's preference, if age-appropriate; and

(16) Any other factor deemed appropriate by the parties.

(d) No Agreement Reached

If the parties do not reach a comprehensive parenting plan, they shall complete a joint statement concerning decision-making authority and parenting time pursuant to Md. Rule 9-204.2.

Source: This Rule is new.

REPORTER'S NOTE

The Court Process Workgroup, established by the Domestic Law Committee of the Judicial Council, has recommended a three-part framework to facilitate statewide use of parenting plans in custody cases. The framework includes (1) proposals for two new Rules and amendments to existing Rules in Title 9 Chapter 200, (2) comprehensive Maryland Parenting Plan Instructions and a Maryland Parenting Plan Tool to assist parties in developing their own parenting plan, and (3) a Joint Statement of the Parties Concerning Decision-Making Authority and Parenting Time form to assist courts in identifying areas of dispute when parties are unable to agree on a parenting plan.

As Part I of the Workgroup's recommendations, the Rules Committee proposes the addition of two Rules to Title 9 Chapter 200. The first is Rule 9-204.1, which governs parenting plans. The goal in recommending Rule 9-204.1 is to facilitate an agreement between parties on how to handle child-related custody

issues. Some of the issues sought to be addressed by parenting plans include when the child spends time with each party (physical custody or parenting time), how important decisions regarding the child will be made (legal custody or decision-making authority), and how potential conflicts will be resolved. If the parties develop a parenting plan, it may be incorporated into a court order upon a determination by the court that the plan serves the best interest of the child.

Section (a) of Rule 9-204.1 contains definitions of key terms that appear in the Rules proposals and on the Parenting Plan Instructions and Parenting Plan Tool developed as Part II of the Workgroup's framework.

Section (b) sets forth when the court shall provide the parties with the Parenting Plan Instructions and Parenting Plan Tool, and directs the court to advise the parties that they may work together, separately, or with a mediator to develop their parenting plan.

Section (c) contains a list of factors the parties may consider in determining what decision-making authority and parenting time arrangement is in the best interest of the child. The list is intended to provide modern, child-focused factors that empower the parties to decide what is in the best interest of their child, while encouraging the parties to consider and anticipate their child's unique needs.

Section (d) of Rule 9-204.1 directs parties who are unable to reach a comprehensive parenting plan to file a joint statement concerning decision-making authority and parenting time pursuant to proposed new Rule 9-204.2.

The addition of Rule 9-204.2 is the second proposal under Part I of the Workgroup's framework. The Rule is modeled after current Rule 9-207, which governs joint statements of marital and non-marital property. In proposing Rule 9-204.2, the Workgroup sought to establish a way for parties to better inform the court of what custody arrangement they believe is in the best interest of their child, while assisting the court in gauging each of the parties' respective positions and identifying areas of dispute.

Section (a) of Rule 9-204.2 requires parties to file a Joint Statement of the Parties Concerning Decision-Making Authority and Parenting Time if the parties are unable to reach a comprehensive parenting plan.

Section (b) governs the form of the Joint Statement, which was developed as Part III of the Workgroup's framework. Section (b) provides that the Joint Statement shall be substantially in the form approved by the State Court Administrator, posted on the Judiciary website, and available in the offices of the clerks of the circuit courts.

Section (c) governs the procedure by which the parties are to complete and serve their proposed Joint Statements on the other party, and sets forth the time for filing the Joint Statement with the court.

Section (d) requires the court to consider the entire Joint Statement prior to rendering its decision and provides that the court may consider the factors set forth in Rule 9-204.1 (c).

Section (e) provides that if there is willful noncompliance with the Rule, the court, on motion or on its own initiative, and after an opportunity for a hearing, may enter an appropriate order in regard to the noncompliance.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

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

ADD new Rule 9-204.2, as follows:

Rule 9-204.2. JOINT STATEMENT OF THE PARTIES CONCERNING DECISION-MAKING AUTHORITY AND PARENTING TIME

(a) When Required

If the parties are not able to reach a comprehensive parenting plan, the parties shall file a Joint Statement of the Parties Concerning Decision-Making Authority and Parenting Time.

Cross reference: For the authority of a mediator to assist the parties with the completion of a Joint Statement, see Rule 9-205.

(b) Form of Joint Statement

The statement shall be substantially in the form approved by the State Court Administrator, posted on the Judiciary website, and available in the offices of the clerks of the circuit courts.

(c) Time for Filing; Procedure

The Joint Statement shall be filed at least ten days before any scheduled settlement conference or if none, 20 days before the scheduled trial date or by any other date fixed by

the court. At least 30 days before the Joint Statement is due to be filed, each party shall prepare and serve on the other party a proposed Joint Statement in the form set forth in section (b) of this Rule. At least 15 days before the Joint Statement is due, the plaintiff shall sign and serve on the defendant for approval and signature a proposed Joint Statement that fairly reflects the positions of the parties. The defendant shall timely file the Joint Statement, which shall be signed by the defendant or shall be accompanied by a written statement of the specific reasons why the defendant did not sign.

(d) Review of Joint Statement

Prior to rendering its decision, the court shall consider the entire Joint Statement. As to the provisions upon which the parties agree as well as those upon which the court must decide, the court may consider the factors listed in Md. Rule 9-204.1 (c).

(e) Sanctions

If a party willfully fails to comply with this Rule, the court, on motion or on its own initiative, after the opportunity for a hearing, may enter any appropriate order in regard to the noncompliance.

Committee note: Failure to comply with this Rule cannot be the basis upon which to deny a party's request for decision-making authority or parenting time.

REPORTER'S NOTE

See the Reporter's Note to Rule 9-204.1.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANSHIPS AND OTHER FIDUCIARIES

CHAPTER 100 – GENERAL PROVISIONS

ADD new Rule 10-106.1, as follows:

Rule 10-106.1. PRE-HEARING STATEMENT

(a) Generally

On its own initiative, the court may issue an Order directing the parties, interested persons who have responded to the petition or show cause order, or the attorneys for such parties or interested persons, to file a brief pre-hearing statement substantially in the form approved by the State Court Administrator on or before a date specified in the Order. The court shall include with the order a blank pre-hearing statement form.

(b) Contents

The pre-hearing statement form shall be limited to eliciting brief statements addressing the following matters:

(1) whether the minor or alleged disabled person will attend the hearing in person, by remote electronic participation, or not at all, and whether any special accommodations are needed to facilitate participation;

Cross reference: See the Rules in Title 2, Chapter 800, Remote Electronic Participation in Judicial Proceedings.

(2) if the minor or alleged disabled person will not be attending the hearing, the basis for the nonattendance;

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

(3) whether the alleged disabled person waives the right to a jury trial;

(4) whether there is a stipulation or limitation of any issue;

(5) the position of the party or interested person as to:

(A) the need for guardianship,

(B) less restrictive alternatives to guardianship or limitations on the powers to be granted to the guardian,

(C) designation of the proposed guardian and any issue related to the proposed designation,

(D) the identity of any interested person not previously identified in a pleading or paper filed in the action, the relationship of that person to the minor or alleged disabled person, and any issue relating to the designation of, or service upon, the interested person,

(E) the description, location, and value of any property, including any property not previously identified in a pleading or paper filed in the action, and

(F) expert testimony;

(6) whether there are special scheduling concerns not addressed by Rule 10-201 (f);

(7) whether any power of attorney, advance health care directive, or other similar document exists and, if so, identification of the document;

(8) whether mediation would be helpful, and if so, identification of each issue to be included in the mediation; and

(9) whether an independent investigator should be appointed, and if so, for what purpose.

Committee note: When completing a pre-hearing statement, an attorney for the minor or alleged disabled person should take care not to disclose information that is privileged or adverse to the client's position.

Source: This Rule is new.

REPORTER'S NOTE

Proposed new Rule 10-106.1 authorizes a court to issue an order directing that a pre-hearing statement be filed on or before a date specified in the order. The statement must be substantially in the form approved by the State Court Administrator, and a blank copy of the form is to be included with the order.

A pre-hearing statement may not be necessary in every guardianship matter. This Rule is intended to permit a trial judge to direct the parties, interested persons that have responded to the petition or show cause order, and attorneys for such parties and interested persons to file a pre-hearing statement when doing so will be useful to the court.

The contents of the form are limited to the matters listed in section (b) of the Rule. The list is based on recommendations of the Guardianship and Vulnerable Adults Workgroup of the Maryland Judicial Council Domestic Law Committee.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANSHIPS AND OTHER FIDUCIARIES

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 10-106.1 to renumber it, as follows:

Rule ~~10-106.1~~ 10-106.2. APPOINTMENT OF INVESTIGATOR

(a) In Connection With Petition to Establish Guardianship

The court may appoint an independent investigator in connection with a petition to establish a guardianship of the person, the property, or both of an alleged disabled person or a minor to (1) investigate specific matters relevant to whether a guardianship should be established and, if so, the suitability of one or more proposed guardians and (2) report written findings to the court.

(b) After Guardianship Established

The court may appoint an independent investigator after a guardianship has been established to investigate specific issues or concerns regarding the manner in which the guardianship is being administered and to report written findings to the court.

(c) Selection of Investigator

If the court concludes that it is appropriate to appoint an independent investigator, it shall appoint an individual particularly qualified to perform the tasks to be assigned. If

there is an issue as to abuse, neglect, or exploitation of the disabled person, the court may refer the matter to an appropriate public agency to conduct the investigation.

(d) Fee

The court shall fix the fee of an appointed independent investigator, which shall be paid from the estate unless the court directs otherwise.

Source: This Rule is new. It is derived from former Rule 10-106 (c)(2016).

REPORTER'S NOTE

With the addition of proposed new Rule 10-106.1, current Rule 10-106.1 is renumbered as Rule 10-106.2.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANSHIPS AND OTHER FIDUCIARIES

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 10-106 by adding a new section (e) clarifying the role that an attorney for the minor or alleged disabled person serves in a guardianship proceeding, by adding a Committee note and a Cross reference following section (e), and by making stylistic changes, as follows:

Rule 10-106. ATTORNEY FOR MINOR OR DISABLED PERSON

(a) Authority and Duty to Appoint

(1) Minor Persons

Upon the filing of a petition for guardianship of the person, the property, or both, of a minor who is not represented by an attorney, the court may appoint an attorney for the minor.

Committee note: Appointment of an attorney for a minor is discretionary because, in many cases involving minors, the guardian is a parent or other close family member and the circumstances do not indicate a need for an attorney for the minor. The court should scrutinize the petition, however, for circumstances that may warrant the appointment of an attorney for the minor.

(2) Alleged Disabled Persons

Upon the filing of a petition for guardianship of the person, the property, or both, of an alleged disabled person who is not represented by an attorney of the alleged disabled

person's own choice, the court shall promptly appoint an attorney for the alleged disabled person.

Cross reference: See Code, Estates and Trusts Article, §§ 13-211 (b) and 13-705 (d). See also Rule 19-301.14 of the Maryland Attorneys' Rules of Professional Conduct with respect to the attorney's role and obligations.

Committee note: This Rule applies to the appointment and payment of an attorney for a minor or alleged disabled person in proceedings to establish a guardianship for the minor or alleged disabled person, or their property, or both. Attorneys may be appointed in other capacities in guardianship proceedings--as an investigator pursuant to Rule ~~10-106.1~~ 10-106.2 or as a guardian pursuant to Rule 10-108.

(b) Eligibility for Appointment

(1) To be eligible for appointment, an attorney shall:

(A) be a member in good standing of the Maryland Bar;

(B) provide evidence satisfactory to the court of financial responsibility; and

Committee note: Methods of complying with subsection (b)(1)(B) include maintaining appropriate insurance, providing an attestation of financial circumstances, or filing a bond.

(C) unless waived by the court for good cause, have been trained in aspects of guardianship law and practice in conformance with the *Maryland Guidelines for ~~Court-Appointed~~ Attorneys Representing Minors and Alleged Disabled Persons In Guardianship Proceedings* attached as an Appendix to the Rules in this Title.

(2) Exercise of Discretion

Except in an action in which the selection of a court-appointed attorney is governed by Code, Estates and Trusts Article, § 13-705 (d)(2), the court should fairly distribute appointments among eligible attorneys, taking into account the attorney's relevant experience and availability and the complexity of the case.

(c) Fees

(1) Generally

The court shall order payment of reasonable and necessary fees of an appointed attorney. Fees may be paid from the estate of the alleged disabled person or as the court otherwise directs. To the extent the estate is insufficient, the fee of an attorney for an alleged disabled person shall be paid by the State.

Cross reference: See Code, Estates and Trusts Article, § 13-705 (d)(1), requiring the State to pay a reasonable attorneys' fee where the alleged disabled person is indigent. There is no similar statutory requirement with respect to attorneys appointed for a minor.

(2) Determination of Fee

Unless the attorney has agreed to serve on a pro bono basis or is serving under a contract with the Department of Human Services, the court, in determining the reasonableness of the attorney's fee, shall apply the factors set forth in Rule 2-703 (f)(3) and in the *Guidelines Regarding Compensable and Non-*

Compensable Attorneys' Fees and Related Expenses, contained in an Appendix to the Rules in Title 2, Chapter 700.

(3) Disabled Person--Security for Payment of Fee

(A) Except as provided in subsection (c)(3)(B) of this Rule, in a proceeding for guardianship of the person, the property, or both, of an alleged disabled person, upon the appointment of an attorney for an alleged disabled person, the court may require the deposit of an appropriate sum into the court registry or the appointed attorney's escrow account within 30 days after the order of appointment, subject to further order of the court.

(B) The court shall not exercise its authority under subsection (c)(3)(A) of this Rule if payment for the services of the appointed attorney is the responsibility of (i) a government agency paying benefits to the alleged disabled person, (ii) a local Department of Social Services, or (iii) an agency eligible to serve as the guardian of the alleged disabled person under Code, Estates and Trusts Article, § 13-707.

Cross reference: See Code, Estates and Trusts Article, § 13-705 (d)(1).

(d) Termination or Continuation of Appointment

(1) Generally

If no appeal is taken from a judgment dismissing the petition or appointing a guardian other than a public guardian,

the attorney's appointment shall terminate automatically upon expiration of the time for filing an appeal unless the court orders otherwise.

(2) Other Reason for Termination

A court-appointed attorney who perceives a present or impending conflict of interest or other inability to continue serving as attorney for the minor or disabled person shall immediately notify the court in writing and request that the court take appropriate action with respect to the appointment.

(3) Representation if Public Guardian Appointed

If a public guardian has been appointed for a disabled person, the court shall either continue the attorney's appointment or appoint another attorney to represent the disabled person before the Adult Public Guardianship Review Board.

Cross reference: Code, Family Law Article, § 14-404 (c)(2).

(4) Appointment After Establishment of Guardianship

Nothing in this section precludes a court from appointing, reappointing, or continuing the appointment of an attorney for a minor or disabled person after a guardianship has been established if the court finds that such appointment or continuation is in the best interest of the minor or disabled person. An order of appointment after a guardianship has been

established shall state the scope of the representation and may include specific duties the attorney is directed to perform.

(e) Reports and Statements

The court may not require an attorney for a minor or an alleged disabled person to file an investigative report, but may require the attorney to file a pre-hearing statement pursuant to Rule 10-106.1.

Committee note: An attorney for a minor or alleged disabled person, whether employed privately or appointed by the court, is an advocate for his or her client, not an independent investigator, and needs to be mindful of the attorney-client privilege and an attorney's responsibilities under Rule 19-301.14. It is a conflict of interest for the attorney to be both an advocate and an investigator appointed pursuant to Rule 10-106.2. See section 1.2 of the Maryland Guidelines for Attorneys Representing Minors and Alleged Disabled Persons in Guardianship Proceedings.

Cross reference: See Code, Courts Article, § 9-108.

Source: This Rule is derived in part from former Rules R76 and V71 and is in part new.

REPORTER'S NOTE

A proposed amendment to Rule 10-106 adds section (e) to clarify that an attorney for the minor or alleged disabled person in a guardianship proceeding serves as an advocate for the client, and not as an investigator reporting to the court. A Committee note and cross reference after section (e) highlight the applicability of attorney-client privilege, as well as the attorney's responsibilities under Rule 19-301.14 and the Maryland Guidelines for Attorneys Representing Minors and Alleged Disabled Persons in Guardianship proceedings.

Additionally, stylistic changes are made in the cross reference and Committee note following section (a).

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANSHIPS AND OTHER FIDUCIARIES

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 10-110 by adding a requirement that a separate petition be filed for each alleged disabled person or each minor as to whom a guardianship is sought, with an exception for similarly situated full siblings who are minors, by adding a Committee note, and by making stylistic changes, as follows:

Rule 10-110. COMBINATION OF GUARDIANSHIP PETITIONS

(a) Person and Property

A petition for the appointment of a guardian of the person of a minor or alleged disabled person also may ~~also~~ include a request for the appointment of a guardian of the person's property, and vice versa.

(b) Multiple Persons

(1) Alleged Disabled Persons

If guardianship of more than one alleged disabled person is sought, a separate petition shall be filed for each alleged disabled person.

(2) Minors

If guardianship of more than one minor is sought, a separate petition shall be filed for each minor, except that a

petition may include a request for guardianship of two or more similarly situated full siblings.

Committee note: If guardianship of minor siblings is granted, the court should enter a separate order for each minor.

Source: This Rule is derived in part from former Rule R71 a, and is in part new.

REPORTER'S NOTE

The Department of Juvenile and Family Services of the Administrative Office of the Courts had been advised by the Court Operations Department that guardianship petitions naming more than one minor or more than one alleged disabled person are being filed, and that this practice causes reporting and tracking problems, especially in MDEC counties when the court reports guardianship case information to the FBI for use in the National Instant Criminal Background Check System (NICS). Based upon this advisement, the Rules Committee, at its April 2019 meeting, approved amendments to Rules 10-110, 10-111, and 10-112.

The NICS is a national system that checks available records on persons who may be disqualified from receiving firearms. See https://www.fbi.gov/services/cjis/nics/about-nics. The NICS provides information to Federal Firearms Licensees on whether the transfer of a firearm would violate 18 U.S.C. § 922(g) or (n). Pursuant to 18 U.S.C. §922(g)(4), it is unlawful for any person "who has been adjudicated as a mental defective or who has been committed to a mental institution" to possess any firearm or ammunition.

In MDEC counties, only the first name listed in the guardianship case caption appears in the case information report provided to the FBI. To address this problem, a proposed amendment to Rule 10-110 requires the filing of a separate petition for each alleged disabled person as to whom a guardianship is sought. A conforming amendment to the Instructions at the top of the form petition in Rule 10-112 also is proposed.

As approved by the Committee in April, the amendments to Rule 10-110 also included the requirement of a separate petition for each minor as to whom a guardianship is sought. The Court

Operations Department advises that circuit courts would like to retain the flexibility of permitting requests for guardianships of minor siblings to be made in a single petition. Litigants would not be required to pay multiple filing fees, and guardianship of all of the siblings could be heard on a single day. Reconsideration of the previously approved amendments to Rules 10-110 and 10-111 therefore is requested so that separate petitions for each minor would not be required if guardianship of two or more similarly situated full siblings is sought. The Committee believes, however, that if guardianship of the minor siblings is granted, the court should enter a separate order for each minor. A Committee note to that effect is added at the end of the Rule.

RYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 10-111 by replacing the Note at the top of the form petition with Instructions to clarify which form petition is to be used if a guardianship of a minor is sought and that, with a certain exception, a separate petition must be filed for each minor as to whom a guardianship is sought; by making stylistic changes to sections 5, 6, and 8; and by adding the word "ADDITIONAL" to the heading of the Instructions at the bottom of the form, 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.~~

INSTRUCTIONS

(1) Use this form of petition when a guardianship of a minor is sought, even if the minor also is disabled.

(2) If the subject of the petition is not a minor, use the form petition set forth in Rule 10-112.

(3) If guardianship of more than one minor is sought, a separate petition must be filed for each minor, except that a petition may include a request for guardianship of two or more similarly situated full siblings. If guardianship of more than one sibling is sought, complete a separate Paragraph 1 for each sibling. In Paragraphs 2-13, if a response does not apply to all siblings, provide the requested information as to each sibling.

(4) If the petition is to be filed in the Circuit Court for Baltimore City, use "Baltimore City" as the name of the county.

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

The petitioner, _____, _____ whose address is
(name) (age)

_____, 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 county in which this petition is filed, state the place in this county where the minor is currently located _____

_____.

NOTE: For purposes of this Form, "county" includes Baltimore City.

3. The relationship of petitioner to the minor is _____

_____.

4. The minor

[ ] is a beneficiary of the Veterans Administration and the guardian may expect to receive benefits from that Administration.

[ ] is not a beneficiary of the Veterans Administration.

5. *Complete Section 5~~.~~ if the petitioner is asking the court to appoint the petitioner as the guardian.*

(Check only 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 _____

_____.

The conviction occurred in _____,
(year)

in the _____, but
(Name of court)

the following good cause exists for me to be appointed as guardian: _____

_____.

6. Complete Section 6~~.~~ if the petitioner is asking the court to appoint an individual other than the petitioner as the guardian.

6 a. Prospective Guardian of the Person *(Complete section 6 a~~.~~ if seeking guardianship of the person.)*

The name of the prospective guardian of the person 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 of a crime
(Name of prospective guardian)

listed in Code, Estates and Trusts Article, §11-114.

[ ] _____ was convicted of such a crime,
(Name of prospective guardian)

namely _____.

The conviction occurred in _____ in the _____
(year)

_____, but the
(Name of court)

following good cause exists for the individual to be appointed as guardian: _____

_____.

6 b. Prospective Guardian of the Property *(Complete section 6 b. if the prospective guardian of the property is different from the prospective guardian of the person or if guardianship of the person is not sought.)*

The name of the prospective guardian of the property 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 of a crime
(Name of prospective guardian)

listed in Code, Estates and Trusts Article, §11-114.

[ ] _____ was convicted of such a crime,
(Name of prospective guardian)

namely _____.

The conviction occurred in _____ in the _____
(year)

_____, but the
(Name of court)

following good cause exists for the individual to be appointed

as guardian: _____

_____.

7. State the name and address of any additional person on whom service shall be made on behalf of the minor, including a minor who is at least ten years of age: _____

_____

_____.

8. The following is a list of the names, addresses, telephone numbers, and e-mail addresses, if known, of all interested persons (see Code, Estates and Trusts Article, §13-101 (k)).

List of Interested Persons

	Name	Address	Telephone Number	E-mail Address (if known)
Parents:	_____	_____	_____	_____
	_____	_____	_____	_____
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~~ Who Has 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: _____ _____ _____ _____

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: _____ _____ _____ _____

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

Names	Addresses	Approximate Dates
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

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

_____

_____

_____.

11. 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, etc.
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

12. The petitioner's interest in the property of the minor listed in 11. is _____

_____.

13. (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:

_____

_____

_____.

14. 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) _____
(Name of prospective guardian)
should not be appointed as the guardian.

_____ _____
Attorney's Signature Petitioner's Name

_____
Attorney's Name

_____
Address

_____
Telephone 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

ADDITIONAL 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.

Source: This Rule is new.

REPORTER'S NOTE

A proposed amendment to Rule 10-111 replaces the Note at the top of the form with Instructions that clarify that a guardianship petition pertaining to a minor, including a minor who is disabled, must be filed using the form set forth in Rule 10-111, and not the form set forth in Rule 10-112.

Also, the following stylistic changes are made to sections 5, 6, and 8, and the heading of the Instructions at the bottom of the form. In sections 5 and 6, periods following section numbers are deleted in four places. In section 8, the language "Having" is replaced with "Who Has." The word "ADDITIONAL" is

added to the heading of the Instructions at the bottom of the form because the former Note at the top has been replaced with Instructions.

At its April 2019 meeting, the Rules Committee had approved the addition of the sentence to the Instructions at the top of the form:

> "If guardianship of more than one minor is sought, a separate petition must be filed for each minor."

This instruction is revised to conform to the proposed revised amendments to Rule 10-110. All other proposed amendments to Rule 10-111 remain as previously approved.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 10-112 by replacing the Note at the top of the form petition with Instructions to clarify which form petition shall be used if a guardianship of an alleged disabled person is sought and that a separate petition must be filed for each alleged disabled person as to whom a guardianship is sought, by making stylistic changes to section 5, 6, and 8, and by adding the word "ADDITIONAL" to the heading of the Instructions at the bottom of the form, 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 _____ (Name of Alleged) Disabled Individual)

In the Circuit Court for _____ (County)

_____ (docket reference)

PETITION FOR GUARDIANSHIP OF ALLEGED DISABLED PERSON

~~Note: This form is to be used only when where the subject of the petition is an individual, regardless of the individual's age, who has a disability other than minority.~~

INSTRUCTIONS

(1) Use this form of petition when a guardianship of an alleged disabled person, as defined in Code, Estates & Trusts Article, §13-101(f) and Rule 10-103 (b) is sought.

(2) If the subject of the petition is a minor including a disabled minor, use the form petition set forth in Rule 10-111.

(3) If guardianship of more than one alleged disabled person is sought, a separate petition must be filed for each alleged disabled person.

(4) If the petition is to be filed in the Circuit Court for Baltimore City, use "Baltimore City" as the name of the county.

[ ] 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 county in which this petition is filed, state the place in this county where the alleged disabled person is currently located

_____

_____.

NOTE: For purposes of this Form, "county" includes Baltimore City.

3. The relationship of petitioner to the alleged disabled person is _____.

4. The alleged disabled person

[ ] is a beneficiary of the Veterans Administration and the guardian may expect to receive benefits from that Administration.

[ ] is not a beneficiary of the Veterans Administration.

5. *Complete Section 5~~.~~ if the petitioner is asking the court to appoint the petitioner as the guardian.*

(Check only 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 _____

_____.

The conviction occurred in _____ (year) in the _____

_____ (name of court), but the following good cause exists for me to be appointed as guardian: _____

_____.

6. *Complete Section 6~~.~~ if the petitioner is asking the court to appoint an individual other than the petitioner as the guardian.*

6 a. Prospective Guardian of the Person *(Complete section 6 a~~.~~ if seeking guardianship of the person.)*

The name of the prospective guardian of the person 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 _____ _____. The conviction occurred in _____ in the _____, but the
(year) (Name of court)

following good cause exists for the individual to be appointed as guardian: _____.

6 b. Prospective Guardian of the Property *(Complete section 6 b~~.~~ if the prospective guardian of the property is different from the prospective guardian of the person or if guardianship of the person is not sought.)*

The name of the prospective guardian of the property 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 _____ _____. The conviction occurred in _____ in the _____, but the
(year) (Name of court)
following good cause exists for the individual to be appointed as guardian: _____ _____.

7. If the alleged disabled person resides with petitioner, then state the name and address of any additional person on whom initial service shall be made: _____ _____.

8. The following is a list of the names, addresses, telephone numbers, and e-mail addresses, if known of all interested persons (see Code, Estates and Trusts Article, §13-101 (k)):

	Name	Address	Telephone Number	E-mail Address (if known)
Person or Health Care Agent Designated in Writing by Alleged Disabled Person:	_____	_____	_____	_____
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:	_____	_____	_____	_____
Alleged Disabled Person's Attorney:	_____	_____	_____	_____
Any Other Person ~~Having~~ Who Has 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. Director of the Local Area Agency on Aging (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.

9. The names and addresses of the persons with whom the alleged disabled person resides or has resided over the past five years and the approximate dates of the alleged disabled person's residence with each person are as follows:

Name	Address	Approximate Dates
_____	_____	_____
_____	_____	_____

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

_____.

11. (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)):

_____.

12. (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, 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):

_____.

13. 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 (specific type), Life Tenant, Trustee, Custodian, Agent, etc.
_____	_____	_____	_____
_____	_____	_____	_____

14. The petitioner's interest in the property of the

alleged disabled person listed in 13. is _____

_____.

15. 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

16. All other proceedings regarding the alleged disabled person (including criminal) are as follows:

_____.

17. 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

_____
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

ADDITIONAL 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 licensed certified social worker-clinical, 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.

Source: This Rule is new.

REPORTER'S NOTE

A proposed amendment to Rule 10-112 replaces the Note at the top of the form with Instructions that clarify that this petition pertains only to alleged disabled persons as defined in Code, Estates & Trusts Article, § 13-101(f) and Rule 10-103(b). The definitions of "disabled person" contained in the statute and Rule exclude individuals who are minors. If the subject of a guardianship petition is a minor, including a disabled minor, the form of petition set forth in Rule 10-111 is to be used, rather than the form set forth in Rule 10-112. Also contained in the Instructions is a statement of the requirement that a separate petition be filed for each individual as to whom a guardianship is sought. This statement conforms the Instructions to the proposed amendments to Rule 10-110.

Also, the following stylistic changes are made to sections 5, 6, and 8, and the heading of the instructions at the bottom of the form. In sections 5 and 6, periods following section numbers are deleted in four places. In section 8, the language "Having" is replaced with "Who Has." The word "ADDITIONAL" is added to the heading of the Instructions at the bottom of the form because the former Note at the top has been replaced with Instructions.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANSHIPS AND OTHER FIDUCIARIES

CHAPTER 200 – GUARDIAN OF PERSON

AMEND Rule 10-206 by deleting the annual report forms from the Rule and by requiring that the reports be substantially in the form approved by the State Court Administrator and posted on the Judiciary website, as follows:

Rule 10-206. ANNUAL REPORT—GUARDIANSHIP OF A MINOR OR DISABLED PERSON

...

(e) Form of Annual Report of Guardian ~~of Disabled Person~~

The guardian's report shall be substantially in the form of the Annual Report of the Guardian of a Disabled Person or Annual Report of the Guardian of a Minor, as appropriate, approved by the State Court Administrator and posted on the Judiciary website. ~~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' home~~

~~___ nursing home~~ ~~___ hospital of 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 _____(date). If the person has moved within the past year, the 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 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 of 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 _____(date). If the person has moved within the past year, the 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

The Guardianship and Vulnerable Adult Work Group of the Maryland Judicial Council Domestic Law Committee recommends removing the Annual Report of Guardian of Disabled Person (Rule 10-206 (e)), Annual Report of Guardian of Minor (Rule 10-206 (f)) Inventory and Information Report (Rule 10-707 (a)), and the Fiduciary's Account (Rule 10-708 (a)) from the bodies of their respective Rules and instead requiring that these forms be "in the form approved by the State Court Administrator, posted on the Judiciary's website, and available in the offices of the clerks of the circuit courts and registers of wills."

As drafted, the forms are complex for pro se guardians, and court staff have asked for various revisions that are burdensome to make through Rule changes. Managing the forms through Judicial Council's Form Subcommittee would allow for more flexibility in the contents and structure of the forms. The State Court Administrator fully supports this recommendation, and the Rules Committee concurs in the recommendation.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANSHIPS AND OTHER FIDUCIARIES

CHAPTER 200 – GUARDIAN OF PERSON

AMEND Rule 10-209 by deleting the word "certified" from subsection (b)(1), as follows:

Rule 10-209. TERMINATION OF A GUARDIANSHIP OF THE PERSON

...

(b) Termination Not Requiring Prior Notice

(1) Petition; Grounds

Upon a petition filed in conformity with this section, the court shall terminate a guardianship of the person without prior notice upon a finding that either (A) a minor not otherwise disabled has attained the age of majority or (B) the minor or disabled person has died, and that (C) the guardian has exercised no control over any property of the disabled person. The petition may be filed by a minor not otherwise disabled or by the guardian of a minor or disabled person. It shall contain or be accompanied by the guardian's verified statement that the guardian has exercised no control over any property of the minor or disabled person, and shall also be accompanied by either a copy of the minor person's birth certificate or other

satisfactory proof of age or a ~~certified~~ copy of the minor or disabled person's death certificate.

(2) Time for Filing

A minor who is not disabled may file a petition at any time after attaining the age of majority. A guardian shall file a petition within 45 days after discovery that grounds for termination exist.

(3) Venue

The petition shall be filed in the court that appointed the guardian or that has assumed jurisdiction over the fiduciary estate.

(4) Copy of Order

The court shall send a copy of the order terminating the guardianship to the guardian, the person whose minority has ended, and any other person whom the court designates.

...

Source: This Rule is in part derived from former Rule V78 and is in part new.

REPORTER'S NOTE

The Guardianship and Vulnerable Adults Workgroup of the Maryland Judicial Council Domestic Law Committee recommends removing the requirement that guardians of the person file a certified copy of the minor or disabled person's death certificate with a petition to terminate guardianship of the person from Md. Rule 10-209 (d). A copy is sufficient, and the cost to acquire a certified death certificate is burdensome for

lay guardians and public agencies. Additionally, the expansion of electronic filing makes this requirement unnecessary.

The Probate/Fiduciary Subcommittee concurs in the Workgroup's recommendation.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 400 – STANDBY GUARDIAN

AMEND Rule 10-403 by adding evidence of the adverse immigration action to the documentation required under subsection (d)(3)(C) and by making a conforming amendment to the Cross reference following subsection (d)(4), as follows:

Rule 10-403. PETITION BY STANDBY GUARDIAN

...

(d) Documentation

Subject to subsections (d)(3) and (4) of this Rule, the petitioner shall file with the petition:

(1) The written parental designation of the standby guardian signed or consented to by each person having parental rights over the child, if available, and, if not, the documentation required by Code, Estates and Trusts Article, § 13-904 (f)(4);

(2) If a person having parental rights over the child did not sign or consent to the designation, a verified statement containing the following information, to the extent known: (A) the identity of the person, (B) if not known, what efforts were made to identify and locate the person, (C) if the person declined to sign or consent to the designation, the name and

whereabouts of the person and the reasons the person declined, and (D) if the designation was due to an adverse immigration action and the person having parental rights who did not sign or consent to the designation resides outside the United States, a statement to that effect.

Cross reference: See Code, Estates and Trusts Article, § 13-904 (f).

(3) A copy, as appropriate, of:

(A) A physician's determination of incapacity or debilitation of the parent pursuant to Code, Estates and Trusts Article, § 13-906;

(B) If a determination of debilitation is filed, the parental consent to the beginning of the standby guardianship; or

(C) If the designation was due to an adverse immigration action against the parent, the parental consent to the beginning of the guardianship, evidence of the adverse immigration action, and a copy of the birth certificate or other evidence of parentage for each child for whom the standby guardian is designated.

(4) If more than three months have elapsed since the standby guardianship became effective, (A) a statement from the child's primary healthcare provider that the child receives appropriate healthcare, (B) if the child is enrolled in school, a copy of

the child's most recent report card or other progress report, and (C) a reference to all court records pertaining to the child during that period.

Cross reference: See Rule ~~10-106.1~~ 10-106.2 regarding the appointment of an investigator if the court has a concern about the health, education, or general well-being of the child.

...

REPORTER'S NOTE

Two amendments to Rule 10-403 are proposed.

The phrase, "evidence of the adverse immigration action," is added to subsection (d)(3)(C). This conforms the subsection to a statutory requirement set forth in Code, Estates and Trusts Article, § 13-904 (f)(2)(ii)(2).

The Cross reference following subsection (d)(4) contains a conforming amendment because of the proposed re-numbering of existing Rule 10-106.1 to Rule 10-106.2.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 400 – STANDBY GUARDIAN

AMEND Rule 10-404 by making a conforming amendment to the Committee note, as follows:

Rule 10-404. HEARING

Before ruling on a petition filed under Rule 10-402 or 10-403, the court shall hold a hearing and shall give notice of the time and place of the hearing to all interested persons. The proposed standby guardian, the minor named in the petition, and, unless excused for good cause shown, the petitioner shall be present at the hearing.

Committee note: A court may exercise its other powers, such as appointing an attorney for the minor under Rule 10-106 or appointing an independent investigator pursuant to Rule ~~10-106.1~~ 10-106.2, where the court is unable to obtain reliable and credible information necessary for a decision on a petition, or in any other circumstance where the court deems it necessary.

REPORTER'S NOTE

A conforming amendment to the Committee note following Rule 10-404 is proposed because of the re-numbering of existing Rule 10-106.1 to Rule 10-106.2.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANSHIPS AND OTHER FIDUCIARIES

CHAPTER 700 – FIDUCIARY ESTATES INCLUDING

GUARDIANSHIP OF THE PROPERTY

AMEND Rule 10-707 by deleting the form set out in section (a) and by requiring that the fiduciary file an inventory and information report substantially in the form approved by the State Court Administrator and posted on the Judiciary website, 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 approved by the State Court Administrator and posted on the Judiciary website.~~:~~

~~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 document are true 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 Rule 10-206.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANSHIPS AND OTHER FIDUCIARIES

CHAPTER 700 – FIDUCIARY ESTATES INCLUDING

GUARDIANSHIP OF THE PROPERTY

AMEND Rule 10-708 by deleting the form set out in section (a), by requiring that the Fiduciary's Account be substantially in the form approved by the State Court Administrator and posted on the Judiciary website, and by adding to both the Report of Trust Clerk and the Order in section (b) language specifying the time period that the account covers, 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 approved by the State Court Administrator and posted on the Judiciary website.~~:~~

~~[CAPTION]~~

~~FIDUCIARY'S ACCOUNT~~

~~I, _____, make this [ ] periodic [ ] final Fiduciary's Account for the period from _____ to _____.~~

~~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 document are true 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 covering the period of _____ through _____ 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 covering the period of _____ through _____ is accepted.

(or)

ORDERED, that a hearing shall be held in this matter on _____(date).

JUDGE

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's Note to Rule 10-206.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

AMEND Rule 16-907 by exempting from section (f) certain docket entries and orders; by including in section (f) all other papers and submissions filed in guardianship actions and proceedings under Title 10, Chapters 200, 300, 400, or 700 of the Maryland Rules; and by adding a Committee note, as follows:

Rule 16-907. CASE RECORDS – REQUIRED DENIAL OF INSPECTION – CERTAIN CATEGORIES

Except as otherwise provided by law, court order, or the Rules in this Chapter, the custodian shall deny inspection of:

. . .

(f) Except for docket entries and orders entered under Rule 10-108, ~~Papers~~ papers and submissions filed ~~by a fiduciary or a guardian of the property of a minor or disabled person pursuant to~~ in guardianship actions or proceedings under Title 10, Chapter 200, 300, 400, or 700 of the Maryland Rules ~~that include financial information regarding the minor or disabled person~~.

Committee note: Most filings in guardianship actions are likely to be permeated with financial, medical, or psychological information regarding the minor or disabled person that ordinarily would be sealed or shielded under other Rules. Rather than require custodians to pore through those documents to redact that kind of information, this Rule shields the

documents themselves subject to Rule 16-912, which permits the court, on a motion and for good cause, to permit inspection of case records that otherwise are not subject to inspection. There may be circumstances in which that should be allowed. The guardian, of course, will have access to the case records and may need to share some of them with third persons in order to perform his or her duties, and this Rule is not intended to impede the guardian from doing so. Public access to the docket entries and to orders entered under Rule 10-108 will allow others to be informed of the guardianship and to seek additional access pursuant to Rule 16-912.

. . .

Source: This Rule is derived from former Rule 16-1006 (2016).

REPORTER'S NOTE

Amendments to Rule 16-907 are proposed in conjunction with amendments to Rules in Title 10 that were approved by the Rules Committee at its April 2019 meeting. A great amount of personal, sensitive information is included in the court file in a guardianship proceeding. The amendments to Rule 16-907 permit access to information the public may have a need to know – information contained in docket entries and orders entered in guardianship actions – while shielding from public inspection all other materials filed in these proceedings.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES

APPENDIX

AMEND Appendix: Maryland Guidelines for Court-Appointed Attorneys in Guardianship Proceedings by changing the name of the Appendix to "Maryland Guidelines for Attorneys Representing Minors and Alleged Disabled Persons in Guardianship Proceedings," by adding definitions of "minor" and "attorney," by expanding the applicability of the Guidelines to include attorneys who are not court-appointed, by adding new section 1.2 which clarifies the role an attorney serves in guardianship proceedings, and by making stylistic changes, as follows:

APPENDIX: MARYLAND GUIDELINES FOR ~~COURT- APPOINTED~~ ATTORNEYS REPRESENTING MINORS AND ALLEGED DISABLED PERSONS IN GUARDIANSHIP PROCEEDINGS

DEFINITIONS; INTRODUCTION AND SCOPE

In these guidelines, the word "minor" means the minor who is the subject of a guardianship proceeding, and the word "attorney" means the attorney representing the minor or alleged disabled person in a guardianship proceeding.

These Guidelines are intended to promote good practice and consistency in the appointment and performance of attorneys ~~appointed to represent~~ representing minors and alleged disabled persons in guardianship proceedings in orphans' and circuit courts. However, the failure to follow a Guideline does not itself give rise to a cause of action against an attorney, nor does it create any presumption that a legal duty has been breached. These Guidelines apply to guardianship of the person

and property cases where the court may be called upon to decide whether a minor or alleged disabled person needs a guardian and whether a proposed guardian is appropriate. Nothing contained in these Guidelines is intended to alter the duty an attorney owes to a client pursuant to the Maryland Attorneys' Rules of Professional Conduct.

~~1.~~ 1.1. RESPONSIBILITIES

It is the responsibility of ~~court-appointed~~ attorneys representing minors and alleged disabled persons in guardianship proceedings to protect the due process rights of their clients ~~minors and alleged disabled persons~~. This role is distinct from the role of an investigator appointed under Rule ~~10-106.1~~ 10-106.2.

As clients in guardianship proceedings may have diminished capacity due to minority, mental impairment, or some other reason, the ~~court-appointed~~ attorney should be mindful of the obligation, as far as reasonably possible, to maintain a normal client-attorney relationship as prescribed by the Maryland Attorneys' Rules of Professional Conduct. The ~~court-appointed~~ attorney's role is to advocate for the client's position even if that position conflicts with the attorney's judgment as to what the best interest of the client, except where the attorney reasonably believes that a client with diminished capacity is at risk of substantial physical, financial, or other harm. In that instance, Rule 19-301.14 permits the attorney ~~may~~ to take reasonably necessary protective action.

In guardianship proceedings, it is the role of the attorney ~~court-appointed attorneys~~ to:

(a) explain the proceedings to the client;
(b) advise the client of his or her rights;
(c) keep the client's confidences;
(d) advocate for the client's position; and
(e) protect the client's interests.

Given the significant loss of rights and liberties imposed on individuals under guardianship, the ~~court-appointed~~ attorney is to ensure that:

(a) proper procedures are followed by the court;

(b) guardianship is imposed only if the petitioner proves by clear and convincing evidence that guardianship is necessary as required under Code, Estates and Trusts Article, § 13-705 (b);
(c) guardianship remains no more restrictive than is warranted;
(d) there is no collusion between an investigator appointed pursuant to Md. Rule ~~10-106.1~~ 10-106.2 and the petitioner; and
(e) the client's right to appeal is exercised, if appropriate.

~~The~~ A court-appointed attorney's appointment terminates as prescribed under Md. Rule 10-106 (d).

1.2. INFORMATION PROVIDED BY ATTORNEYS

There are instances where it is appropriate for an attorney to provide information about the minor or alleged disabled person to the court. For example, if a court directs the attorney to file a written statement pursuant to Rule 10-106.1, the attorney may provide information to help the court make case management decisions, so long as those facts do not violate Rule 19-301.6 or are not otherwise adverse to the client's stated or expressed position.

It is a conflict of interest for the attorney to be both an advocate and an investigator appointed pursuant to Rule 10-106.2; an investigator gathers information and reports findings, observations, or impressions to the court.

As in other adversarial proceedings involving clients with diminished capacity, the attorney must make decisions about how to zealously represent the client's unique interests.

2. TRAINING

Training for ~~court-appointed~~ attorneys in guardianship proceedings should include the following topics:

(a) OVERVIEW OF GUARDIANSHIP

What a guardianship is and when it is necessary; alternatives to guardianship; the types of guardianship; the general role, responsibilities, limitations, and basic competencies required of guardians; parties to a guardianship; how attorneys are appointed in guardianship proceedings; and guardianship law and procedures.

(b) UNDERSTANDING DISABILITIES AND DIMINISHED CAPACITY

The manifestation of mental health issues; distinguishing between temporary and permanent conditions; assessing capacity; interacting with people with disabilities or diminished capacity; and types and signs of abuse (physical, sexual, and emotional), neglect (including self-neglect), and exploitation to which vulnerable persons are susceptible and how to respond to and prevent abuse, neglect, and exploitation.

(c) THE ROLE OF ~~COURT-APPOINTED~~ THE ATTORNEY

~~How attorneys are appointed in guardianship proceedings;~~ Overview of—the role of the attorney; meeting with the minor or alleged disabled person and interested persons; assessing physicians', psychologists', and social workers' certificates and reviewing records; filing answers and motions; and waivers, assessing the appropriateness of the proposed guardian, identification of assets, and less restrictive alternatives.

(d) ETHICS

Applicable Maryland Attorneys' Rules of Professional Conduct, including Rules 19-301.14 (Client with Diminished Capacity), 19-301.4 (Communication), 19-301.6 (Confidentiality of Information), 19-301.2 (Scope of Representation and Allocation of Authority Between Client and Attorney), 19-301.3 (Diligence), and 19-301.7 (Conflict of Interest--General Rule).

(e) FEES

Guardianship-specific fee issues including billing practices, determining indigence, and working with state agencies.

Attorneys should complete the training before beginning representation of the client ~~appointment~~ in a guardianship proceeding. ~~If a court finds a reason to appoint an attorney who has not completed the training, the attorney should complete it before the first hearing in the case.~~ Courts may waive the training requirement for attorneys with relevant guardianship experience or training.

3. QUALIFICATIONS FOR COURT APPOINTMENT

When evaluating relevant experience of an attorney eligible for appointment under Rule 10-106 (b), courts may consider the attorney's experience in litigation, social work, mental health, health care, elder care, disability issues, and other related fields. While courts may not require attorneys to represent a minor or disabled person on a *pro bono* basis, they may take into account a particular attorney's willingness to accept or past history of accepting *pro bono* appointments.

If a court finds a reason to appoint an attorney who has not completed the training described in section 2 of these Guidelines, the attorney, whenever possible, should complete it before the first hearing in the case.

Courts should encourage attorneys seeking appointments in guardianship proceedings to maintain their knowledge of current guardianship law and practice and take advantage of available continuing education opportunities.

REPORTER'S NOTE

Proposed amendments to Title 10, Appendix: Maryland Guidelines for Court-Appointed Attorneys in Guardianship Proceedings change the name of the Appendix to "Maryland Guidelines for Attorneys Representing Minors and Alleged Disabled Persons in Guardianship Proceedings" and clarify the role that these attorneys serve in guardianship proceedings. In some instances, attorneys for the minor or alleged disabled person have been directed by the court to file a report, which can create a conflict between the attorney's role as an advocate for the minor or alleged disabled person and the court's need for reliable information.

As recommended by the Guardianship and Vulnerable Adults Workgroup of the Maryland Judicial Council Domestic Law Committee, section 1.2 is proposed to be added to this Appendix to spotlight this issue and provide clarity as to the attorney's appropriate role in a guardianship proceeding. Also as recommended by the workgroup, the revised title of the Appendix and other revisions clarify that the Guidelines are applicable to all attorneys representing minors and alleged disabled persons in guardianship proceedings, not just to attorneys who are court-appointed.

Stylistic changes are made to former section 1 to renumber it as section 1.1 and to correct references to former Rule 10-106.1, which is renumbered as Rule 10-106.2. Additionally, the first clause of subsection 2(c) is moved to subsection 2(a), and the penultimate sentence of section 2 is moved to section 3.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 200 – PROCEEDINGS IN CIRCUIT COURT

AMEND Rule 17-205 by deleting the word "any" from subsection (a)(6) and by requiring court-designated mediators to abide by mediation standards adopted by Administrative Order of the Court of Appeals and posted on the Judiciary website, as follows:

Rule 17-205. QUALIFICATIONS OF COURT-DESIGNATED MEDIATORS

(a) Basic qualifications.

A mediator designated by the court shall:

(1) unless waived by the parties, be at least 21 years old;

(2) have completed at least 40 hours of basic mediation training in a program meeting the requirements of Rule 17-104 or, for individuals trained prior to January 1, 2013, former Rule 17-106;

(3) be familiar with the rules, statutes, and practices governing mediation in the circuit courts;

(4) have mediated or co-mediated at least two civil cases;

(5) complete in each calendar year four hours of continuing mediation-related education in one or more of the topics set forth in Rule 17-104;

(6) abide by ~~any~~ mediation standards adopted by Administrative Order of the Court of Appeals and posted on the Judiciary website;

(7) submit to periodic monitoring of court-ordered mediations by a qualified mediator designated by the county administrative judge; and

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

(b) Business and technology cases.

A mediator designated by the court for a Business and Technology Program case shall, unless the parties agree otherwise:

(1) have the qualifications prescribed in section (a) of this Rule; and

(2) within the two-year period preceding an application for approval pursuant to Rule 17-207, have served as a mediator in at least five non-domestic civil mediations at least two of which involved types of conflicts assigned to the Business and Technology Case Management Program.

(c) Economic issues in divorce and annulment cases.

A mediator designated by the court for issues in divorce or annulment cases other than those subject to Rule 9-205 shall:

(1) have the qualifications prescribed in section (a) of this Rule;

(2) have completed at least 20 hours of skill-based training in mediation of economic issues in divorce and annulment cases; and

(3) have served as a mediator or co-mediator in at least two mediations involving marital economic issues.

(d) Health care malpractice claims.

A mediator designated by the court for a health care malpractice claim shall, unless the parties agree otherwise:

(1) have the qualifications prescribed in section (a) of this Rule;

(2) within the two-year period preceding an application for approval pursuant to Rule 17-207, have served as a mediator in at least five non-domestic civil mediations, at least two of which involved types of conflicts assigned to the Health Care Malpractice Claims ADR Program;

(3) be knowledgeable about health care malpractice claims through experience, training, or education; and

(4) agree to complete any continuing education training required by the court.

Cross reference: See Code, Courts Article § 3-2A-06c.

(e) Foreclosure cases.

(1) This section does not apply to an ADR practitioner selected by the Office of Administrative Hearings to conduct a "foreclosure mediation" pursuant to Code, Real Property Article, § 7-105.1 and Rule 14-209.1.

(2) A mediator designated by the court in a proceeding to foreclose a lien instrument shall, unless the parties agree otherwise:

(A) have the qualifications prescribed in section (a) of this Rule; and

(B) through experience, training, or education, be knowledgeable about lien instruments and federal and Maryland laws, rules, and regulations governing foreclosure proceedings.

(f) Experience requirement.

The experience requirements in this Rule may be met by mediating in the District Court or the Court of Special Appeals.

Source: This Rule is derived in part from former Rule 17-104 (a), (c), (d), (e), and (f) (2012) and is in part new.

REPORTER'S NOTE

A proposed amendment to Rule 17-205 clarifies that standards applicable to court-designated mediators are adopted by Administrative Order of the Court of Appeals and posted on the Judiciary website. When the Rule initially was promulgated, no mediation standards had been adopted by the Court. Because standards, as modified from time to time, now have been adopted, the word "any" is deleted from subsection (a)(6).

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 200 – PROCEEDINGS IN CIRCUIT COURT

AMEND Rule 17-206 by deleting the word "any" from subsection (a)(1), by requiring court-designated ADR practitioners other than mediators to abide by standards adopted by Administrative Order of the Court of Appeals and posted on the Judiciary website, and by making a stylistic change in subsection (a)(4), as follows:

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

(a) Generally

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

(1) abide by ~~any~~ applicable standards adopted by Administrative Order of the Court of Appeals and posted on the Judiciary website;

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

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

(4) either (A) be a member in good standing of the Maryland bar and have at least five years of experience as (i) a judge, (ii) a practitioner in the active practice of law, (iii) a full-time teacher of law at a law school approved by the American Bar Association, or (iv) a Federal or Maryland administrative law judge, or (B) have equivalent or specialized knowledge and experience in dealing with the issues in dispute; and

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

(b) Judges and Magistrates.

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

Cross references: Rule 18-103.9 and Rule 18-203.9.

Source: This Rule is derived from Rule 17-105(2012).

REPORTER'S NOTE

A proposed amendment to Rule 17-206 clarifies that standards applicable to court-designated ADR practitioners other than mediators are adopted by Administrative Order of the Court of Appeals and posted on the Judiciary website. When the Rule initially was promulgated, no standards applicable to ADR practitioners had been adopted by the Court. Because standards,

as modified from time to time, now have been adopted, the word "any" is deleted from subsection (a)(1).

The addition of the word "of" to subsection (a)(4) is stylistic, only.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 300 – PROCEEDINGS IN THE DISTRICT COURT

AMEND Rule 17-304 by deleting the word "any" from subsections (a)(9) and (b)(3)(A), by requiring court-designated mediators and settlement conference chairs to abide by applicable standards adopted by Administrative Order of the Court of Appeals and posted on the Judiciary website, and by making stylistic changes in the Committee note following subsection (c)(1), as follows:

Rule 17-304. QUALIFICATIONS AND SELECTION OF MEDIATORS AND SETTLEMENT CONFERENCE CHAIRS.

(a) Qualifications of Court-Designated Mediator.

To be designated by the court as a mediator, an individual shall:

(1) unless waived by the parties, be at least 21 years old;

(2) have completed at least 40 hours of basic mediation training in a program meeting the requirements of (A) Rule 17-104 or (B) for individuals trained prior to January 1, 2013, former Rule 17-106;

(3) be familiar with the Rules in Title 17 of the Maryland Rules;

(4) submit a completed application in the form required by the ADR Office;

(5) attend an orientation session provided by the ADR Office;

(6) unless waived by the ADR Office, observe, on separate dates, at least two District Court mediation sessions and participate in a debriefing with the mediator after each mediation;

(7) unless waived by the ADR Office, mediate on separate dates, at least two District Court cases while being reviewed by an experienced mediator or other individual designated by the ADR Office and participate in a debriefing with the observer after each mediation;

(8) agree to volunteer at least six days in each calendar year as a court-designated mediator in the District Court day-of-trial mediation program;

(9) abide by ~~any~~ mediation standards adopted by Administrative Order of the Court of Appeals and posted on the Judiciary website;

(10) submit to periodic monitoring by the ADR Office;

(11) in each calendar year complete four hours of continuing mediation-related education in one or more of the topics set forth in Rule 17-104; and

(12) comply with the procedures and requirements posted on the ADR Office's website relating to diligence and quality assurance.

(b) Qualifications of Court-Designated Settlement Conference Chair.

To be designated by the court as a settlement conference chair, an individual shall be:

(1) a judge of the District Court;

(2) a senior judge; or

(3) an individual who, unless the parties agree otherwise, shall:

(A) abide by ~~any~~ applicable standards adopted by Administrative Order of the Court of Appeals and posted on the Judiciary website;

(B) submit to periodic monitoring of court-ordered ADR by a qualified person designated by the ADR Office;

(C) be a member in good standing of the Maryland Bar and have at least three years of experience in the active practice of law;

(D) unless waived by the court, have completed a training program of at least six hours that has been approved by the ADR Office; and

(E) comply with the procedures and requirements posted on the ADR Office's website relating to diligence and quality assurance.

(c) Procedure for Approval.

(1) Filing Application. An individual seeking designation to mediate or conduct settlement conferences in the District Court shall submit to the ADR Office a completed application substantially in the form required by that Office. The application shall be accompanied by documentation demonstrating that the applicant has met the applicable qualifications required by this Rule.

Committee note: Application forms are available from the ADR Office and on the ~~Maryland~~ Judiciary~~'s~~ website~~, www.mdcourts.gov/district/forms/general/adr001.pdf~~.

(2) Action on Application. After such investigation as the ADR Office deems appropriate, the ADR Office shall notify the applicant of the approval or disapproval of the application and the reasons for a disapproval.

(3) Court-approved ADR Practitioner and Organization Lists. The ADR Office shall maintain a list:

(A) of mediators who meet the qualifications of section (a) of this Rule;

(B) of settlement conference chairs who meet the qualifications set forth in subsection (b)(3) of this Rule; and

(C) of ADR organizations approved by the ADR Office.

(4) Public Access to Lists. The ADR Office shall provide to the Administrative Clerk of each District a copy of each list for that District maintained pursuant to subsection (c)(3) of this Rule. The clerk shall make a copy of the list available to the public at each District Court location. A copy of the completed application of an individual on a list shall be made available by the ADR Office upon request.

(5) Removal From List. After notice and a reasonable opportunity to respond, the ADR Office may remove a person as a mediator or settlement conference chair for failure to maintain the applicable qualifications of this Rule or for other good cause.

Source: This Rule is new.

REPORTER'S NOTE

Proposed amendments to Rule 17-304 clarify that standards applicable to court-designated mediators and other ADR practitioners are adopted by Administrative Order of the Court of Appeals and posted on the Judiciary website. When Rules establishing minimum qualifications for mediators and other practitioners were initially promulgated, no mediation standards or standards applicable to other ADR practitioners had been adopted by the Court. Because standards, as modified from time to time, now have been adopted, the word "any" is deleted from subsections (a)(9) and (b)(3)(A).

Several stylistic changes to the Rule are made. The word "Maryland," the possessive "s" in "Judiciary," and the website URL are deleted from the Committee note following subsection (c)(1) so the language in the Committee note is consistent with the new language in subsections (a)(9) and (b)(3)(A). Additionally, the word "of" is added to subsection (b)(3)(C).

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 400 – PROCEEDINGS IN THE COURT OF SPECIAL APPEALS

AMEND Rule 17-405 by deleting the word "any" from subsection (b)(1) and by requiring court-designated mediators to abide by mediation standards adopted by Administrative Order of the Court of Appeals and posted on the Judiciary website, as follows:

Rule 17-405. QUALIFICATIONS OF COURT-DESIGNATED MEDIATORS.

(a) Initial approval.

To be approved as a mediator by the Chief Judge, an individual shall:

(1) be (A) an incumbent judge of the Court of Special Appeals; (B) a senior judge of the Court of Appeals, the Court of Special Appeals, or a circuit court; or (C) a staff attorney from the Court of Special Appeals designated by the Chief Judge;

(2) have (A) completed at least 40 hours of basic mediation training in a program meeting the requirements of Rule 17-104, or (B) conducted at least two Maryland appellate mediations prior to January 1, 2014 and completed advanced mediation training approved by the ADR Division;

(3) unless waived by the ADR Division, have observed at least two Court of Special Appeals mediation sessions and have participated in a debriefing with a staff mediator from the ADR Division after the mediations; and

(4) be familiar with the Rules in Titles 8 and 17 of the Maryland Rules.

(b) Continued approval.

To retain approval as a mediator by the Chief Judge, an individual shall:

(1) abide by mediation standards adopted by Administrative Order of the Court of Appeals~~,~~ ~~if any~~ and posted on the Judiciary website;

(2) comply with mediation procedures and requirements established by the Court of Special Appeals;

(3) submit to periodic monitoring by the ADR Division of mediations conducted by the individual; and

(4) unless waived by the Chief Judge, complete in each calendar year four hours of continuing mediation-related education in one or more topics set forth in Rule 17-104 or any other advanced mediation training approved by the ADR Division.

Source: This Rule is derived from former Rule 17-403 (a)(2015).

REPORTER'S NOTE

A proposed amendment to Rule 17-405 clarifies that standards applicable to court-designated mediators as amended

from time to time and adopted by Administrative Order of the Court of Appeals are posted on the Judiciary website.

The deletion of the words "if any" from subsection (b)(1) is stylistic only.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 600 – PROCEEDINGS IN ORPHANS' COURT

AMEND Rule 17-603 by deleting the word "any" from subsection (a)(5), by adding language to subsection (a)(5) and new subsection (b)(4) which require court-designated mediators and settlement conference presiders to abide by applicable standards adopted by Administrative Order of the Court of Appeals and posted on the Judiciary website, as follows:

Rule 17-603. QUALIFICATIONS OF COURT-DESIGNATED ADR PRACTITIONERS

(a) Court-Designated Mediators.

A mediator designated by the court pursuant to Rule 17-602 (e)(1)(B) shall:

(1) unless waived by the parties, be at least 21 years old;

(2) have completed at least 40 hours of basic mediation training in a program meeting the requirements of Rule 17-104 or, for individuals trained prior to January 1, 2013, former Rule 17-106;

(3) be familiar with the rules, statutes, and procedures governing wills, the administration of estates, the authority of

orphans' courts and registers of wills, and the mediation program operated by the orphans' court;

(4) complete in each calendar year four hours of continuing mediation-related education in one or more of the topics set forth in Rule 17-104;

(5) abide by ~~any~~ mediation standards adopted by Administrative Order of the Court of Appeals and posted on the Judiciary website; and

(6) submit to periodic monitoring of court-ordered mediations by a qualified mediator designated by the Chief Judge.

(b) Court-designated Settlement Conference Presiders.

An individual designated as a settlement conference presider shall:

(1) be a member in good standing of the Maryland Bar and have at least three years of experience in the active practice of law;

(2) be familiar with the rules, statutes, and procedures governing wills, the administration of estates, the authority of orphans' courts and registers of wills, and appropriate settlement conference procedures; ~~and~~

(3) have conducted at least three settlement conferences as a judge, senior judge, or magistrate, or pursuant to a designation by a Maryland court~~.~~; and

(5) abide by applicable standards adopted by Administrative Order of the Court of Appeals and posted on the Judiciary website.

Source: This Rule is new.

REPORTER'S NOTE

A proposed amendment to Rule 17-603 clarifies that standards applicable to court-designated mediators and settlement conference presiders as amended from time to time and adopted by Administrative Order of the Court of Appeals are posted on the Judiciary website. This was accomplished by adding language to subsection (a)(5) and adding new subsection (b)(5).

The deletion of the word "any" from subsection (a)(5) is stylistic only.

MARYLAND RULES OF PROCEDURE

TITLE 6 – SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 – ADMINISTRATION OF ESTATES

AMEND Rule 6-417 by adding a Committee note following subsection (b)(4) and by revising sections (d) and (f) to provide that the time for filing exceptions runs from the docketing of the order approving the account, as follows:

Rule 6-417. ACCOUNTS

(a) Time for Filing

The personal representative shall file with the register an initial account (1) within nine months after the date of the appointment of the personal representative or (2) if the decedent died before October 1, 1992, within the later of ten months after the decedent's death or nine months after the date of the first publication. The personal representative shall file subsequent accounts until the estate is closed at intervals of the first to occur of: six months after the prior account is approved or nine months after the prior account is filed.

(b) Contents of Account

A personal representative's account shall include the following items, to the extent applicable to the accounting period:

(1) In an initial account, the total value of the property shown on all inventories filed prior to the date of the account; and in the case of a subsequent account, the total value of any assets retained in the estate as shown in the last account, together with the total value of the assets shown in any inventory filed since the last account.

(2) An itemized listing of all estate receipts during the accounting period, setting forth the amount, and a brief description of each receipt, including:

(A) each receipt of principal not included in an inventory of the estate;

(B) each purchase, sale, lease, exchange, or other transaction involving assets owned by the decedent at the time of death or acquired by the estate during administration, setting forth the gross amount of all gains or losses and otherwise stating the amount by which the transaction affects the gross value of the estate;

(C) each receipt of income including rents, dividends, and interest.

(3) The total gross value of the estate’s assets to be accounted for in the account.

(4) An itemized listing of all payments and disbursements related to the satisfaction of estate liabilities during the accounting period, setting forth the amount, and a brief

description of each payment or disbursement, including: funeral expenses; family allowance; filing fees to the register; court costs; accounting fees; expenses of sale; federal and state death taxes; personal representative's commissions; attorney's fees; and all other expenses of administration.

Committee note: Code, Estates and Trust Article, § 2-206 (a) requires the register to waive fees under certain circumstances. A form to request the waiver is available on the website of the Maryland Office of the Register of Wills.

(5) The total amount of payments and disbursements reported in the account, and the amount of the net estate available for distribution or retention.

(6) Distributions and proposed distributions to estate beneficiaries from the net estate available for distribution, including adjustments for distributions in kind, and the amount of the inheritance tax due with respect to each distribution.

(7) The value of any assets to be retained in the estate for subsequent accounting, with a brief explanation of the need for the retention.

(8) The total amount of the estate accounted for in the account, consisting of all payments, disbursements, distributions, and the value of any assets retained for subsequent accounting, and equaling the amount stated pursuant to subsection (3) of this section.

(9) The personal representative's verification 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.

(c) Affidavit in Lieu of Account

If an estate has had no assets during an accounting period, the personal representative may file an affidavit of no assets in lieu of an account.

Committee note: In some cases an estate may be opened for litigation purposes only and there is no recovery to or for the benefit of the estate.

(d) Notice

At the time the account or affidavit is filed the personal representative shall serve notice pursuant to Rule 6-125 on each interested person who has not waived notice. The notice shall state (1) that an account or affidavit has been filed, (2) that the recipient may file exceptions with the court within 20 days ~~from~~ after the court's order approving the account is docketed, (3) that further information can be obtained by reviewing the estate file in the office of the Register of Wills or by contacting the personal representative or the attorney, (4) that upon request the personal representative shall furnish a copy of

the account or affidavit to any person who is given notice, and (5) that distribution under the account as approved by the court will be made within 30 days after the order of court approving the account becomes final.

(e) Audit and Order of Approval

The register shall promptly audit the account and may require the personal representative to furnish proof of any disbursement or distribution shown on the account. Following audit by the register and approval of the account by the court, the court immediately shall execute an order of approval subject to any exceptions.

(f) Exception

An exception shall be filed within 20 days after ~~entry of~~ the order approving the account is docketed and shall include the grounds therefor in reasonable detail. A copy of the exception shall be served on the personal representative.

(g) Disposition

If no timely exceptions are filed, the order of the court approving the account becomes final. Upon the receipt of exceptions, the court shall set the matter for hearing and notify the personal representative and such other persons as the court deems appropriate of the date, time, place, and purpose of the hearing.

Cross reference: Code, Estates and Trusts Article, §§ 7-301, 7-303, 7-305, 7-501, and 10-101 (a).

REPORTER'S NOTE

Chapter 233, 2018 Laws of Maryland (HB 556) provided that the Register of Wills may waive certain estate administration fees in decedents' estates where real property subject to administration: (1) is to be transferred to an heir of the decedent who resides on the property; or (2) is encumbered by a lien and subject to sale, and the estate is unable to pay the fees by reason of poverty. Chapter 224, 2019 Laws of Maryland (SB 261) changed this provision to remove discretion and require the Register of Wills to waive the same fees under the same circumstances.

The Rules Committee recommends amending Rule 6-417 by adding a Committee note following subsection (b)(4) that explains that the register must waive fees in certain cases. The Committee note also indicates that a form to request a waiver can be found on the Register of Wills' website.

The Committee has observed an apparent ambiguity in the time-counting provisions of sections (d) and (f), and that the provisions are not internally consistent. The notice required by subsection (d)(2) advises the recipient of an account or affidavit that exceptions may be filed "...within 20 days from the court's order approving the account." Section (f) requires that an exception be "filed within 20 days after entry of the order approving the account."

The Committee recommends that the time-counting provisions in this Rule commence upon "docketing," and not upon filing or approval by the court. Accordingly, amendments are proposed to subsection (d)(2) and section (f) to clarify that time for filing exceptions runs from docketing of the court's order approving the account.

MARYLAND RULES OF PROCEDURE

TITLE 6 – SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 6-171 (b) by deleting language pertaining to paper docketing and by adding language pertaining to electronic docketing, as follows:

Rule 6-171. ENTRY OF ORDER OR JUDGMENT

(a) Direction by the Court

After determination of an issue, whether by the court or by the circuit court after transmission of issues, the court shall direct the entry of an appropriate order or judgment.

Cross reference: Rule 6-434.

(b) Entry by Register

The register shall enter an order or judgment by making ~~a record of it in writing on the file jacket, or on a docket within the file, or in a docket book, according to the practice of each court~~ an entry of it on the docket of the electronic case management system used by the register along with such description of the order or judgment as the register deems appropriate, and shall record the actual date of the entry. That date shall be the date of the order or judgment.

REPORTER'S NOTE

Proposed amendments to Rule 6-417 (d) and (f) provide that the time for filing exceptions to an order approving an account runs from the date the order is docketed by the register of wills and not from the date the order is signed by the court.

In conjunction with the changes to Rule 6-417, conforming amendments to Rule 6-171 (b) are proposed for consistency and to bring the language in the Rule into harmony with the actual practice statewide. Since the late 1990's, the registers of wills throughout the State have used the same electronic docketing software. Therefore, the language in Rule 6-171 referring to paper docketing and the practice in each court is no longer necessary and is deleted. The language is replaced with language concerning electronic docketing similar to the language of Rule 2-601 (b)(2).

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 100 – COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 2-124 by updating the Cross reference following section (l), as follows:

RULE 2-124. PROCESS – PERSONS TO BE SERVED

. . .

(l) Local Entity

Service is made on a county, municipal corporation, bicounty or multicounty agency, public authority, special taxing district, or other political subdivision or unit of a political subdivision of the State by serving the resident agent designated by the local entity. If the local entity has no resident agent or if a good faith effort to serve the resident agent has failed, service may be made by serving the chief executive or presiding officer or, if none, by serving any member of the governing body.

Cross reference: See Code, ~~Article 24, § 1-110~~ Local Government Article, § 1-1301 concerning a local entity's designation of a resident agent by filing with the State Department of Assessments and Taxation.

. . .

Source: This Rule is derived as follows:
Section (a) is new and replaces former Rules 105 c and 106 f.
Section (b) is derived from former Rule 104 b 1 (i) and (ii).

Section (c) is derived from former Rule 119.
Section (d) is derived from former Rule 106 b.
Section (e) is new.
Section (f) is new.
Section (g) is new.
Section (h) is new.
Section (i) is new.
Section (j) is new.
Section (k) is new.
Section (l) is new.
Section (m) is derived from former Rule 108 a.
Section (n) derived from former Rule 108 b.
Section (o) is new, but is derived in part from former section (c) and former Rule 106 e 1 and 2.

REPORTER'S NOTE

Proposed amendments to Rules 2-124 and 3-124 update the Cross reference following section (l) from Code, Article 24, § 1-110 to Code, Local Government Article, § 1-1301.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 – TRIAL

AMEND Rule 2-512 by updating the Cross reference following section (c), as follows:

Rule 2-512. JURY SELECTION

. . .

(c) Jury List

(1) Contents

Before the examination of qualified jurors, each party shall be provided with a list that includes each juror's name, address, age, sex, education, occupation, spouse's occupation, and any other information required by Rule. Unless the trial judge orders otherwise, the address shall be limited to the city or town and zip code and shall not include the street address or box number.

(2) Dissemination

(A) Allowed

A party may provide the jury list to any person employed by the party to assist in jury selection. With permission of the trial judge, the list may be disseminated to

other individuals such as the courtroom clerk or court reporter for use in carrying out official duties.

(B) Prohibited

Unless the trial judge orders otherwise, a party and any other person to whom the jury list is provided in accordance with subsection (c)(2)(A) of this Rule may not disseminate the list or the information contained on the list to any other person.

(3) Not Part of the Case Record; Exception

Unless the court orders otherwise, copies of jury lists shall be returned to the jury commissioner. Unless marked for identification and offered in evidence pursuant to Rule 2-516, a jury list is not part of the case record.

Cross reference: See Rule ~~16-910~~ 16-912 concerning motions to seal or limit inspection of a case record.

. . .

Source: This Rule is derived as follows:
Section (a) is in part derived from former Rules 754 a and Rule 543 c and in part new.
Section (b) is derived from former Rule 751 b and former Rule 543 b 3.
Section (c) is new.
Section (d) is derived from former Rules 752, 754 b, and 543 d.
Section (e) is derived from former Rules 753 and 543 a 3 and 4.
Section (f) is new.
Section (g) is derived from former Rule 751 d.

REPORTER'S NOTE

A proposed amendment to Rule 2-512 updates the Cross reference following section (c) from "Rule 16-910" to "Rule 16-912."

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 100 – COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 3-124 by updating the Cross reference following section (l), as follows:

RULE 3-124. PROCESS – PERSONS TO BE SERVED

. . .

(l) Local Entity

Service is made on a county, municipal corporation, bicounty or multicounty agency, public authority, special taxing district, or other political subdivision or unit of a political subdivision of the State by serving the resident agent designated by the local entity. If the local entity has no resident agent or if a good faith effort to serve the resident agent has failed, service may be made by serving the chief executive or presiding officer or, if there is no chief executive or presiding officer, by serving any member of the governing body.

Cross reference: See Code, ~~Article 24, § 1-110~~ Local Government Article, § 1-1301 concerning a local entity's designation of a resident agent by filing with the State Department of Assessments and Taxation.

. . .

Source: This Rule is derived as follows:

Section (a) is new and replaces former M.D.R. 106 f.
Section (b) is derived from former M.D.R. 104 b 1 (i) and (ii).
Section (c) is derived from former M.D.R. 119.
Section (d) is derived from former M.D.R. 106 b.
Section (e) is new.
Section (f) is new.
Section (g) is new.
Section (h) is new.
Section (i) is new.
Section (j) is new.
Section (k) is new.
Section (l) is new.
Section (m) is derived from former Rule 108 a.
Section (n) is derived from former Rule 108 b.
Section (o) is new, but is derived in part from former section (c) and former M.D.R. 106 e 1 and 2.

REPORTER'S NOTE

See the Reporter's Note to Rule 2-124.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 300 – TRIAL AND SENTENCING

AMEND Rule 4-345, by adding a Cross reference following section (c), as follows:

Rule 4-345. SENTENCING—REVISORY POWER OF THE COURT

(a) Illegal Sentence

The court may correct an illegal sentence at any time.

(b) Fraud, Mistake, or Irregularity

The court has revisory power over a sentence in case of fraud, mistake, or irregularity.

(c) Correction of Mistake in Announcement

The court may correct an evident mistake in the announcement of a sentence if the correction is made on the record before the defendant leaves the courtroom following the sentencing proceeding.

Cross reference: See *State v. Brown*, 464 Md. 237 (2019) concerning an evident mistake in the announcement of a sentence.

. . .

Source: This Rule is derived in part from former Rule 774 and M.D.R. 774, and is in part new.

REPORTER'S NOTE

The addition of the Cross reference following Rule 4-345 (c) is proposed in light of *State v. Brown*, 464 Md. 237 (2019),

concluding that for a mistake in the announcement of a sentence to be "evident," the mistake must be clear or obvious.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 600 – MISCELLANEOUS PROVISIONS

AMEND Rule 18-603 to remove surplus language from section (b), as follows:

Rule 18-603 Financial Disclosure Statement by Judges

(a) Definitions

In this Rule, "judge" means(A) an incumbent judge of the Court of Appeals, the Court of Special Appeals, a circuit court, the District Court, or an orphans' court and (B) an individual who, in the preceding calendar year, served as an incumbent judge of one of those courts or was a senior judge.

(b) Requirement

Each judge and senior judge shall file with the State Court Administrator a financial disclosure statement in the form prescribed by the Court of Appeals. ~~When filed, a financial disclosure statement is a public record.~~

(c) When Due; Period Covered

(1) Generally

Except as provided in subsection (c)(2) of this Rule, the statement shall be filed on or before April 30 of each year and shall cover the preceding calendar year or that portion of

the preceding calendar year during which the individual was a judge or a senior judge, except that a newly appointed or elected judge or a judge who leaves office shall file a statement within the time set forth in the instructions to the financial disclosure statement form.

(2) Exception

If a judge or other individual who files a certificate of candidacy for nomination for an election to an elected judgeship has filed a statement pursuant to Code, General Provisions Article, § 5-610, the individual need not file a financial disclosure statement under this Rule for the same period of time. The State Court Administrator is designated as the individual to receive statements from the State Administrative Board of Election Laws pursuant to Code, General Provisions Article, § 5-610.

(3) Presumption of Filing

A judge's or senior judge's financial disclosure statement is presumed to have been filed unless the State Court Administrator, no later than five days after the statement was due, notifies the judge or senior judge that the statement for the preceding calendar year or portion thereof was not received.

(d) Extension of Time for Filing

(1) Application

Except when required to file a statement pursuant to Code, General Provisions Article, § 5-610, a judge or senior judge may apply to the State Court Administrator for an extension of time for filing the statement. The application shall be submitted prior to the deadline for filing the statement and shall set forth in detail the reasons an extension is requested and the date when a completed statement will be filed.

(2) Decision

For good cause, the State Court Administrator may grant a reasonable extension of time for filing the statement. Whether the request is granted or denied, the State Court Administrator shall furnish the judge or senior judge and the Judicial Ethics Committee with a written statement of the reasons for the decision and the facts upon which the decision was based.

(3) Review by Judicial Ethics Committee

A judge or senior judge may seek review of the State Court Administrator's decision by the Judicial Ethics Committee by filing with the Committee, within ten days after the date of the decision a statement of reasons for the judge's or senior judge's dissatisfaction with the decision. The Committee may take the action it deems appropriate with or without a hearing or the consideration of additional documents.

(e) Failure to File Statement; Incomplete Statement

(1) Notice; Referral to Judicial Ethics Committee

The State Court Administrator shall (A) give written notice to each judge or senior judge who fails to file a timely statement or who files an incomplete statement and (B) in the notice, set a reasonable time, not to exceed ten days, for the judge or senior judge to file or supplement the statement. If the judge or senior judge fails to correct the deficiency within the time allowed, the State Court Administrator shall report the deficiency to the Judicial Ethics Committee.

(2) Duties of Committee

(A) After an inquiry, the Committee shall determine whether (i) the judge or senior judge was required to file the statement or the omitted information was required to be disclosed, and (ii) if so, whether the failure to file or the omission of the required information was inadvertent or in a good faith belief that the judge or senior judge was not required to file the statement or to disclose the omitted information.

(B) If the Committee determines that the judge or senior judge was not required to file the statement or disclose the omitted information, it shall notify the State Court Administrator and the judge or senior judge and terminate the inquiry.

(C) If the Committee determines that the statement was required to be filed or that the omitted information was required to be disclosed but that the failure to do so was inadvertent or in a good faith belief that the filing or disclosure was not required, the Committee shall send notice of that determination to the State Court Administrator and the judge or senior judge and, in the notice, set a reasonable time, not to exceed 15 days, within which the judge or senior judge shall correct the deficiency.

(D) If the Committee (i) finds that the statement was required to be filed or that the omitted information was required to be disclosed and that failure to file or disclose the omitted information was not inadvertent or in a good faith belief, or (ii) after notice was given pursuant to subsection (e)(2)(C) of this Rule, the judge or senior judge failed to correct the deficiency within the time allowed, the Committee shall report the matter to the Commission on Judicial Disabilities and notify the State Court Administrator and the judge or senior judge that it has done so.

(f) Public Record

When filed, a financial disclosure statement is a public record.

Source: This Rule is derived from former Rule 16-815 (2016).

REPORTER'S NOTE

A proposed amendment to Rule 18-603 removes surplus language from section (b). The last sentence of section (b) reads, "[w]hen filed, a financial disclosure statement is a public record." This is identical to the only language contained in section (f). Removal of the surplus language from section (b) makes the structure of Rule 18-603 consistent with the structure of Rule 18-604.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 300 – MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-301.8 by deleting the phrase, "the advice of," from subsection (h)(2), as follows:

Rule 19-301.8. CONFLICT OF INTEREST; CURRENT CLIENTS; SPECIFIC RULES (1.8)

. . .

(h) An attorney shall not:

(1) make an agreement prospectively limiting the attorney's liability to a client for malpractice unless the client is independently represented in making the agreement; or

(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek ~~the advice of~~ independent legal advice in connection therewith.

. . .

REPORTER'S NOTE

A proposed amendment to Rule 19-301.8 corrects a stylistic error in subsection (h)(2) by deleting the phrase, "the advise of."

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CASES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-245 by adding language to sections (b) and (c) requiring the State's Attorney to serve notice of an alleged prior conviction on the defendant in substantially a form approved by the State Court Administrator and posted on the Judiciary website, as follows:

Rule 4-245. SUBSEQUENT OFFENDERS

. . .

(b) Required Notice of Additional Penalties

When the law permits but does not mandate additional penalties because of a specified previous conviction, the court shall not sentence the defendant as a subsequent offender unless the State's Attorney serves notice of the alleged prior conviction on the defendant or counsel before the acceptance of a plea of guilty or nolo contendere or at least 15 days before trial in circuit court or five days before trial in District Court, whichever is earlier. <u>The notice required under this subsection shall be substantially in the form approved by the State Court Administrator and posted on the Judiciary website.</u>

(c) Required Notice of Mandatory Penalties

When the law prescribes a mandatory sentence because of a specified previous conviction, the State's Attorney shall serve a notice of the alleged prior conviction on the defendant or counsel at least 15 days before sentencing in circuit court or five days before sentencing in District Court. If the State's Attorney fails to give timely notice, the court shall postpone sentencing at least 15 days unless the defendant waives the notice requirement. The notice required under this subsection shall be substantially in the form approved by the State Court Administrator and posted on the Judiciary website.

. . .

Source: This Rule is derived from former Rule 734 and M.D.R. 734.

REPORTER'S NOTE

Proposed amendments to Rule 4-245 (b) and (c) require State's Attorneys to serve notice of an alleged prior conviction on defendants in substantially the form approved by the State Court Administrator and posted on the Judiciary website. This requirement is intended to facilitate compliance with this Rule and to assist the courts in accurately tracking subsequent offender data pursuant to Code, Criminal Law, § 14-101(d)(2)(i).

APPENDIX 1

Article - Criminal Procedure

§8–301.1.

(a) On a motion of the State, at any time after the entry of a probation before judgment or judgment of conviction in a criminal case, the court with jurisdiction over the case may vacate the probation before judgment or conviction on the ground that:

(1) (i) there is newly discovered evidence that:

1. could not have been discovered by due diligence in time to move for a new trial under Maryland Rule 4–331(c); and

2. creates a substantial or significant probability that the result would have been different; or

(ii) the State's Attorney received new information after the entry of a probation before judgment or judgment of conviction that calls into question the integrity of the probation before judgment or conviction; and

(2) the interest of justice and fairness justifies vacating the probation before judgment or conviction.

(b) A motion filed under this section shall:

(1) be in writing;

(2) state in detail the grounds on which the motion is based;

(3) where applicable, describe the newly discovered evidence; and

(4) contain or be accompanied by a request for a hearing.

(c) (1) The State shall notify the defendant in writing of the filing of a motion under this section.

(2) The defendant may file a response to the motion within 30 days after receipt of the notice required under this subsection or within the period of time that the court orders.

(d) (1) Before a hearing on a motion filed under this section, the victim or victim's representative shall be notified, as provided under § 11–104 or § 11–503 of this article.

(2) A victim or victim's representative has the right to attend a hearing on a motion filed under this section, as provided under § 11–102 of this article.

(e) (1) Except as provided in paragraph (2) of this subsection, the court shall hold a hearing on a motion filed under this section if the motion satisfies the requirements of subsection (b) of this section.

(2) The court may dismiss a motion without a hearing if the court finds that the motion fails to assert grounds on which relief may be granted.

(f) (1) In ruling on a motion filed under this section, the court, as the court considers appropriate, may:

(i) vacate the conviction or probation before judgment and discharge the defendant; or

(ii) deny the motion.

(2) The court shall state the reasons for a ruling under this section on the record.

(g) The State in a proceeding under this section has the burden of proof.

(h) An appeal may be taken by either party from an order entered under this section.

APPENDIX 2

Proposed Revised Maryland Standards of Conduct for Mediators

The (Revised) Maryland Standards of Conduct for Mediators

Approved by the Judicial Council ADR Committee on May 10, 2018,
for submission to the Judicial Council

PREFACE

These revised Maryland Standards of Conduct for Mediators (the Standards) replace the Standards of Conduct for Mediators, Arbitrators and other ADR Practitioners approved by the Maryland Court of Appeals on October 31, 2001 and the Maryland Program for Mediator Excellence (MPME) Maryland Standards of Conduct for Mediators approved by the Mediator Excellence Council on April 20, 2006.

The revisions were initially drafted by the Maryland Judicial Council ADR Committee Work Group on Standards of Conduct for Mediators, which included representatives of the ADR Committee, Maryland mediator practitioner organizations, and the Maryland Judiciary statewide ADR offices. During the drafting process, approximately 200 Maryland mediators and mediation program administrators attended public forums across the state and online, and many made oral or written comments. The Work Group considered these comments in developing a new draft of revised Standards, which it submitted to the Judicial Council ADR Committee. The revised draft Standards were then considered, revised, and approved by the Judicial Council ADR Committee, for submission to the Judicial Council.

These Standards are intended to guide the conduct of mediators, to help set appropriate expectations for mediation participants, and to promote public confidence in mediation.[1] To accomplish these goals, the Standards should be publicized and made readily

[1] DRAFTERS NOTE: These Standards are not intended to create a basis to set aside an agreement reached in mediation or for a cause of action against a mediator. A violation of standards is not intended to excuse the mediator's obligation to follow these or any other applicable standards or to diminish confidentiality under any applicable law.

available to mediators and mediation users by mediation trainers, organizations that require or provide mediation, and mediators.

These Standards provide general ethical principles that should be followed by all mediators to whom they apply, regardless of the mediation framework or style being practiced. The Standards do not explicitly address all ethical issues that may arise in mediation. Mediators and organizations that provide mediation should regularly and carefully study the Standards and consider how these general principles may apply to situations that may arise in their practices.

These Standards shall be read in their entirety and interpreted and applied as a whole.[2] No one Standard is more important than another.

APPLICATION AND DEFINITIONS

A. Application. These Standards apply to a mediator and to any person assisting the mediator in convening, administering, or conducting a mediation when:

1. A Maryland court has ordered, directed, or referred all or part of a case to the mediator, or to an ADR organization or an ADR unit of the court that designated the mediator, and the order, direction, or referral is contained in a court record; or

2. The mediator has agreed to follow the Maryland Standards of Conduct for Mediators;[3] or

[2] DRAFTERS NOTE: In some instances, a Standard will illuminate the mediator's obligations under another Standard. In other instances, there may be a tension between the mediator's obligations under these Standards.
[3] DRAFTERS NOTE: For example, to invoke the Maryland Mediation Confidentiality Act the mediator must state in

3. The mediator belongs to or is mediating for a program or organization that requires its members or mediators to follow the Maryland Standards of Conduct for Mediators.

B. Definitions. For purposes of these Standards:

1. "Certification" means that a public or private entity with criteria for certifying mediators has determined that the mediator meets those criteria. Different entities certify mediators based on different criteria, which may include observation and assessment of the mediator's skills ("performance based certification"), a review of the mediator's training and experience ("paper based certification"), or both. Obtaining a certificate of completion of a mediation training does not constitute certification as a mediator.

2. "Competent" and "competence" mean that the mediator has knowledge, skills, and abilities to mediate.

3. "Conflict of interest" means a past or present personal, professional, or financial relationship or circumstance that affects or that might reasonably be seen to affect the mediator's impartiality or the appearance of the mediator's impartiality.

4. "Impartial" and "impartiality" mean acting without favoritism, bias, or prejudice.

5. "Maryland Rules" means the rules adopted by the Maryland Court of Appeals.

writing that the mediator has read and will abide by the Maryland Standards of Conduct for Mediators during the mediation. See Maryland Code, Courts and Judicial Proceedings, section 3-1802(b).

6. "Mediation" means a collaborative process in which one or more mediators support communication and voluntary decision making by people or entities with a current or potential conflict.[4] The fundamental principles of mediation are party self-determination, mediator impartiality, and confidentiality.

7. "Mediation communication" means any spoken, written, or nonverbal communication made as part of a mediation, including for the purpose of considering, initiating, convening, continuing, reconvening, or evaluating a mediation or a mediator.

8. "Mediator" means a person who offers or agrees to conduct or conducts a mediation. Mediator includes a sole mediator, all co-mediators, and any person who helps a mediator conduct a mediation.

9. "Observer" means a person who attends a mediation for purposes of training, mentoring, research, evaluation, or quality assurance.

10. "Participant" means any person other than a mediator or an observer who attends or engages in any part of a mediation. Participant includes a party.

11. "Party" means a person, including the decision-making representative of an entity, who attends or engages in any part of a mediation and whose agreement is legally or practically necessary to resolve the conflict.

12. "Self-determination" means the opportunity to make voluntary, uncoerced, and informed decisions.

[4] DRAFTERS NOTE: Mediation is used to resolve or prevent a broad range of conflicts in a wide variety of settings.

13. "Shall" means the mediator is required to act as described.

14. "Should" means the mediator may only depart from the described action after careful consideration and for a compelling reason.

15. "The Maryland Mediation Confidentiality Act" and "the Act" mean Maryland Code, Courts and Judicial Proceedings, section 3-1801 et. seq.

STANDARD I. SELF-DETERMINATION

A. A mediator shall support and respect the self-determination of all parties, so that each party may make voluntary, uncoerced, and informed decisions about their participation in the mediation process and the mediation outcome.[5]

1. A mediator should consider and explore any request that a party may make about the mediation process, and attempt to address the interests underlying the request, in a manner consistent with the mediator's practices, qualifications, and other duties under these Standards.[6]

2. A mediator should inform the parties that they may consult other persons to help them make informed choices.[7] If a party requests the opportunity to obtain

[5] DRAFTERS NOTE: The parties may always exercise self-determination regarding the manner and extent of their own participation in the mediation process, whether to enter an agreement, and the terms of any agreement. Unless otherwise required by a court or other agency, the parties may also exercise self-determination regarding whether to mediate, the selection of a mediator, the participants in the mediation, and whether to withdraw from, postpone, or terminate mediation.

[6] DRAFTERS NOTE: A mediator is responsible for giving the parties a general explanation of the mediation process that the mediator will provide and for the quality and integrity of that process. (See Standard VI.) The parties may often exercise self-determination regarding the mediation process by making an informed selection of a mediator and by telling the mediator their process preferences. However, the parties do not control the mediation process.

[7] DRAFTERS NOTE: The mediator must be careful to advise the parties that they may consult others at a time and in a manner that is consistent with the mediator's obligations to act impartially and respect party self-determination.

additional information to help the party make an informed decision, the mediator should allow the party a reasonable opportunity to do this.[8]

B. A mediator shall not undermine any party's self-determination to promote or achieve a settlement. A mediator shall resist any outside pressure to achieve settlement, including any pressure from courts or other referral sources, programs or organizations that the mediator is affiliated with, employers, or funders.

C. If a mediator has reason to believe that a party is having difficulty understanding, participating, or exercising self-determination in a mediation, the mediator shall consider and, if appropriate, explore with the participants, possible ways to increase the party's ability to participate in mediation. If the difficulty cannot be satisfactorily addressed, the mediator should terminate the mediation.

D. If a mediator has reason to believe that abuse, coercion, duress, or undue influence may be preventing a party from fully participating or exercising self-determination, the mediator shall consider and, if appropriate, explore with the participants, whether there is a way to conduct the mediation in a manner that would allow the party to participate freely, safely, and without fear of retaliation. If the mediator concludes that any party cannot participate safely and without fear of retaliation, the mediator shall terminate the mediation.

[8] DRAFTERS NOTE: A mediator cannot personally ensure that each party has made informed decisions.

STANDARD II. IMPARTIALITY

A. A mediator shall conduct all aspects of a mediation in an impartial manner, which means acting without favoritism, bias, or prejudice.

1. A mediator shall decline a new mediation or withdraw from an ongoing mediation if the mediator cannot act in an impartial manner for any reason.

2. A mediator shall not favor or disfavor any participant for any reason, such as the participant's race, age, sex, gender identity, sexual orientation, disability, appearance, personal characteristics, background, values, beliefs, or actions or behavior during or outside the mediation process.

3. A mediator shall make an effort to be aware of the mediator's biases and should learn about unconscious and implicit biases.

B. A mediator shall refrain from statements and conduct, during and outside of mediation, that might reasonably raise a question about the mediator's impartiality.[9]

C. A mediator shall not offer, give, solicit, or accept any item or service of value, before, during or after a mediation, if doing so might reasonably raise a question about the mediator's impartiality.

STANDARD III. CONFLICTS OF INTEREST

A. A mediator shall not mediate a dispute in which the mediator has any direct or indirect conflict of interest that is or reasonably should be known to the mediator unless the

[9] DRAFTERS NOTE: A mediator should be aware that public statements, writings, and social media activities may give the appearance that the mediator is not impartial.

mediator has disclosed the relevant circumstances to all parties, the parties have thereafter agreed that the mediator may conduct or proceed with the mediation, and the conflict would not undermine the integrity of the mediation process.

1. A conflict of interest is any personal, professional, or financial relationship or circumstance that might reasonably raise a question about the mediator's impartiality. A conflict of interest may arise from a relationship or circumstance that existed before the mediation, one that exists at the time of the mediation, or one that might occur after the mediation.

2. A direct conflict of interest may arise from:

   a. a personal, professional, or financial relationship between the mediator and a participant in the mediation; or

   b. the mediator's interest in a potential outcome of the mediation or the conflict.

3. An indirect conflict of interest may arise from a personal, professional, or financial relationship between the mediator and another person who, or an entity that, has:

   a. a personal, professional, or financial relationship with a participant in the mediation; or

   b. an interest in a potential outcome of the mediation or the conflict.

B. A mediator shall make a reasonable effort to identify any conflicts of interest as soon as possible after being asked to conduct a mediation.

C. If a mediator knows or learns of any relationship or circumstance that creates or might create a conflict of interest, the mediator shall promptly do one of the following:

1. If disclosure can be made without violating confidentially, disclose the relationship or circumstance to the parties. If the mediator and all parties then agree and doing so would not undermine the integrity of the mediation process, the mediator may proceed with the mediation.

2. Decline to accept the mediation, if it has not begun.

3. Withdraw from the mediation, if it has begun.

D. If a conflict of interest would undermine the integrity of the mediation process, the mediator shall decline to accept a new mediation or withdraw from an ongoing mediation, regardless of any other desire, agreement, or consent of the parties.

E. While a mediation is pending or ongoing, the mediator shall not perform professional services in any other capacity for any party without the informed consent of all parties in the mediation.

F. While a mediation is pending or ongoing, the mediator shall not establish any new relationship or involvement that might reasonably raise a question about the mediator's impartiality.

G. After a mediation has concluded, the mediator shall avoid any potential new relationship or involvement with a participant or the subject of the dispute that might reasonably raise a question about the mediator's impartiality during the mediation,

unless the parties to the mediation have consented to the new relationship or involvement.[10]

STANDARD IV. COMPETENCE

A. A mediator shall offer, agree, or undertake to mediate a matter only if the mediator has the knowledge, skills, and abilities to mediate the matter.[11]

1. A mediator shall have the ability to describe accurately the mediation skills, techniques, and processes that the mediator uses.

2. A mediator shall have the ability to perform competently the services that the mediator offers.

B. A mediator shall provide accurate and appropriately complete information about the mediator's training and experience, upon request, to potential mediation participants, to any program from which the mediator accepts referrals, and to others.

1. A mediator shall claim to meet the mediator qualifications of a public or private entity only if that entity has criteria for qualifying mediators and has determined that the mediator meets those criteria.

[10] DRAFTERS NOTE: In deciding whether a new relationship or involvement is permissible, or whether the parties' consent is required, the mediator shall consider the subject matter of the mediation, the time elapsed since the mediation, the nature of the possible new relationship or involvement, and any other relevant factors.

[11] DRAFTERS NOTE: Mediation training and experience are very important to mediate competently; however academic degrees and professional backgrounds are not necessary to mediate competently. Specialized mediation training may be required to mediate some types of conflicts. A mediator who is not competent to mediate a matter independently may be competent to do so as a co-mediator or with appropriate mentoring or other assistance.

2. Any communication stating that a mediator is or has been certified shall identify the organization or program that certified the mediator.

C. A mediator shall attend educational programs and participate in other activities to develop, maintain, and enhance the mediator's competence.[12]

D. If a mediator cannot conduct a mediation competently, the mediator shall promptly:

1. Discuss the situation with the parties and take appropriate steps to address it;

2. Obtain appropriate assistance; or

3. Withdraw from the mediation, either with or without disclosing the reason.

E. A mediator shall not conduct a mediation if the mediator's ability to mediate competently is impaired by medication, illness, drugs, alcohol, or other causes or conditions.

STANDARD V. CONFIDENTIALITY

A. A mediator shall follow all applicable mediation confidentiality statutes and rules of court, and any confidentiality agreement between the parties and the mediator that is consistent with the applicable statutes and rules.[13]

[12] DRAFTERS NOTE: The number of hours of continuing education activities is not specified in these Standards because different programs and rosters have different requirements. A mediator should satisfy the continuing education requirements of each program for which the mediator mediates.

[13] DRAFTERS NOTE: The existence and scope of mediation confidentiality in Maryland depends on the context and circumstances of the mediation. If Title 17 of the Maryland Rules applies, mediation confidentiality is established and governed by Rule 17-105. If Title 17 of the Maryland Rules does not apply, mediation confidentiality may or may not be established and governed by the Maryland Mediation Confidentiality Act.

B. A mediator shall explain mediation confidentiality, including any applicable statutes, rules, standards, and relevant exceptions, to all mediation participants as soon as practicable and at the beginning of the first mediation session.

C. A mediator shall discuss with the participants whether and to what extent the participants will maintain the confidentiality of mediation communications.

D. A mediator shall maintain the confidentiality of all mediation communications, conduct, and outcomes unless a disclosure is required or permitted by an applicable statute or provision of the Maryland Rules.[14]

E. A mediator who speaks privately with a participant during a mediation shall not reveal any information that was privately communicated without the consent of that participant, unless the disclosure is otherwise required or permitted by an applicable statute or provision of the Maryland Rules.

F. A mediator should not reveal the name of, or other identifying information about, any participant without that participant's prior consent, unless required or permitted by an applicable statute or provision of the Maryland Rules.

G. If it is necessary to identify a participant in a past, pending, or ongoing mediation to determine whether a conflict of interest exists or to disclose an actual or potential conflict of interest in another mediation:

1. the mediator should obtain the permission of the participant in the past, pending, or ongoing mediation before revealing the participant's name; and

[14] DRAFTERS NOTE: Confidentiality is important to promote communication in mediation and to preserve mediator impartiality, the appearances and perceptions of mediator impartiality, and the integrity of the mediation process.

2. if the mediator cannot obtain permission of the participant in the past, pending, or ongoing mediation, the mediator should decline or withdraw from the other mediation.

H. A mediator who participates in teaching, research, or evaluation of mediation shall protect the anonymity of the participants and shall respect their reasonable expectations about privacy and confidentiality.

STANDARD VI. QUALITY AND INTEGRITY OF THE MEDIATION PROCESS

A. A mediator shall conduct a mediation in a manner that promotes the quality and integrity of the mediation process.

1. A mediator shall not conduct a dispute resolution process other than mediation and call it mediation.

2. A mediator shall not knowingly misrepresent any material fact or circumstance in the course of a mediation.

3. A mediator shall support honesty and candor by all participants.

4. A mediator shall not schedule or conduct a mediation in a timeframe that would not allow a quality process.

B. A mediator shall follow all applicable statutes and Maryland Rules, these Standards, and the requirements of any program for which the mediator is mediating.

1. If there is a tension or a conflict between the mediator's obligations, the mediator shall consider carefully the circumstances, determine whether there is a way to reconcile the mediator's obligations, and take appropriate action. If the

mediator cannot appropriately reconcile conflicting obligations, it may be necessary for the mediator to decline, postpone, withdraw from, or terminate the mediation.

2. If the mediator knows of an applicable statute or rule that conflicts with and takes precedence over a provision of these Standards, the mediator shall follow the statute or rule, inform the participants of any conflict that may be relevant to the mediation, comply with the spirit and intent of the preempted Standard to the extent possible, and honor all remaining Standards.

3. If a program requirement conflicts with a provision of these Standards, the mediator shall follow these Standards.

C. A mediator shall agree to mediate a matter only if the mediator is able to:

1. Commit the time, attention, and resources necessary to conduct an effective mediation; and

2. Satisfy any reasonable expectations or requirements of the parties, and of any referring program, concerning the timing of the mediation.

D. A mediator should help the parties identify the people who are appropriate participants in the mediation and facilitate the participation of those people. The parties and mediator may agree that other people may be included in or excluded from some or all sessions.

E. Before or at the beginning of the first mediation session, the mediator shall give all participants a general description of the process that the mediator will provide. The mediator shall substantially provide the process that the mediator described, unless the

mediator and the parties agree to a different process in a manner that is consistent with these Standards.

F. A mediator shall not change from mediation to any other dispute resolution process without first discussing the implications with the parties and obtaining their informed consent. A mediator shall not change processes if doing so is prohibited by the requirements of the mediation program that referred the case, if any.

G. During a mediation session, the mediator shall not perform any services other than as a mediator.

H. Upon the request of a party, a mediator may provide information that the mediator is qualified by training or experience to provide, if the mediator can do so consistently with these Standards and any applicable statutes, Maryland Rules, program requirements, and other standards of conduct.

I. If a mediator has reason to believe that anything occurring in a mediation is unlawful, inconsistent with these Standards, or may undermine the quality or integrity of the mediation process, the mediator shall consider carefully the circumstances and take appropriate steps. Depending on the circumstances, these steps may include exploring the issue in private session; continuing, postponing, withdrawing from, or terminating the mediation; and reporting a situation to an appropriate person or authority, if this is consistent with the mediator's confidentiality obligations.

J. If a mediator decides to postpone, withdraw from, or terminate a mediation, the mediator shall consider the safety of the participants and the integrity of the mediation process in determining how to proceed. The mediator may inform some or all mediation

participants of the reason for postponing, withdrawing from, or terminating the mediation if this is consistent with the mediator's confidentiality and impartiality obligations.

STANDARD VII. ADVERTISING AND SOLICITATION

A. Any advertisement, solicitation of business, use of testimonials, and other communication about a mediator's services shall be consistent with these Standards.

B. A mediator shall be truthful and appropriately complete in any communications about the mediator's qualifications, experience, skills, techniques, processes, practices, services, availability, and fees.

C. A mediator shall not make any promises or representations about potential mediation outcomes.

D. A mediator shall not advertise or solicit business in any way that might reasonably create an impression that the mediator favors or disfavors any party or parties.

STANDARD VIII. FEES AND OTHER CHARGES

A. If a mediator or an organization that the mediator is associated with will charge fees or other charges, those fees and charges shall be reasonable in light of all relevant factors. These factors may include the type and complexity of the matter, the mediator's qualifications and availability, the time required to prepare for and conduct the mediation, and customary rates for similar mediation services.

B. A reasonable time before the first mediation session, the mediator shall inform each party, or the party's representative, of the fees and charges that the mediator and any organization the mediator is associated with may charge in connection with the mediation.

C. If a mediator or an organization that the mediator is associated with will charge any fees or other charges for a mediation, the fee arrangement should be in writing.

D. A mediator or an organization that the mediator is associated with shall not charge fees or other charges in a manner that might reasonably raise a question about the mediator's impartiality.

1. A mediation fee agreement shall not be contingent on the outcome of the mediation or the amount or other terms of any settlement.

2. A mediator or an organization that a mediator is associated with may accept unequal fee payments from or on behalf of the parties if the fee arrangement is disclosed to all parties and does not reasonably raise a question about the mediator's impartiality.

STANDARD IX. ADVANCEMENT OF MEDIATION PRACTICE

A. A mediator should advance the practice of mediation and may do this in many ways, including:

1. Helping to create a more diverse community of mediators;

2. Striving to make mediation accessible, including by providing mediation services at a reduced rate or without charge, when appropriate;

3. Participating in mediation research and evaluation, including by requesting participant feedback, when appropriate;
4. Promoting public understanding and appreciation of mediation; and
5. Helping other mediators as appropriate, including through co-mediation, observation, mentoring, and networking.

B. A mediator who believes that another mediator has acted inconsistently with these Standards should consider discussing this with that mediator, in a manner consistent with mediation confidentiality.

C. A mediator should engage in conversations about the practice of mediation in a respectful manner and work with others to improve the profession and better serve people in conflict.

D. A mediator should consider using mediation to address the mediator's conflicts.

Proposed Revised Maryland Standards of Conduct for Arbitrators, Fact Finders, Neutral Evaluators, and Settlement Conference Practitioners

Maryland Standards of Conduct For
Arbitrators, Fact Finders, Neutral Evaluators, and Settlement
Conference Practitioners

Preface

These Standards of Conduct for Arbitrators, Fact Finders, Neutral Evaluators, and Settlement Conference Practitioners ("ADR practitioners") are intended to perform three major functions: to serve as a guide for the conduct of these ADR practitioners; to inform the participants involved in ADR processes that they conduct; and to promote public confidence in these ADR processes as a means for resolving disputes or addressing issues. The Standards draw on existing codes of conduct and take into account issues and problems that have surfaced in ADR practice.

These Standards do not include mediation. There is a separate set of Standards of Conduct for Mediators adopted by the Court of Appeals on date.

Key

The following key codes will identify which ADR Practitioners should follow each of the standards defined below:

> **A** = Arbitrators, **FF** = Fact Finders, **NE** = Neutral Evaluators (this category includes Non-Binding Arbitrators), **SC** = Settlement Conference Practitioners

All ADR practitioners covered by these Standards of Conduct may be referred to by the term **"neutrals,"** and comments that mention "neutrals," absent a key code, refer to all such ADR practitioners. In these cases, neutrals are expected to uphold the applicable standards of each process in which they engage. Although a neutral should not perform more than one ADR process at a time, a neutral may be engaged to perform more than one ADR process sequentially (such as med/arb).

Standards of Conduct

I. Self-Determination: A neutral shall recognize that arbitration, fact finding, neutral evaluation and settlement conferencing are based on the principle of self-determination by the parties.

A, FF, NE, SC

Self-determination plays a role in consensus-based ADR processes. ADR practices reflect this principle by giving the parties the ultimate decision-making power (FF, NE, SC) or by allowing them to define the scope of a process in which a decision is rendered (A).

Comments:

A If an arbitration is conducted under the Federal Arbitration Act, the Maryland Uniform Arbitration Act, or common law rules governing arbitration, an arbitrator makes a decision which is binding on the parties. If conducted solely pursuant to Title 17 of the Maryland Rules, and there is no agreement to the contrary, the arbitration is non-binding and the parties may accept or reject the award.

FF A fact finder determines certain facts at the request of the parties. The fact finder is responsible for explaining the method(s) of determination used and, unless the parties agree in writing to be bound by the fact finder's determination, they may accept or reject the determination.

NE A neutral evaluator, after considering presentations by the parties, renders an opinion as to the issue(s) presented, which may often be the value of a lawsuit. The neutral evaluator is responsible for explaining the method(s) of determination used and the participants may accept or reject the determination.

SC A settlement conference practitioner may recommend the terms of a settlement and may encourage the participants to settle a lawsuit. The participants may accept or reject the recommendations.

II. <u>Impartiality</u>: A neutral shall conduct the ADR process in an impartial manner.

A, FF, NE, SC

The concept of impartiality is central to all ADR processes. Neutrals shall handle only those matters in which they can remain impartial. If at any time neutrals are unable to conduct the process in an impartial manner, they are obligated to withdraw.

Comments apply to all neutrals:

- A neutral shall avoid conduct that gives the appearance of partiality toward any party. The quality of the process is enhanced when the parties have confidence in the impartiality of the neutral.

- When neutrals are appointed by a court or institution, the appointing agency shall make reasonable efforts to ensure that neutrals serve impartially.

- A neutral should guard against partiality or prejudice based on the parties' personal characteristics, background or behavior during the ADR process, except where these factors are relevant to recommendations or conclusions that ADR practitioners are asked to provide.

III. <u>Conflicts of Interest</u>: Neutrals shall disclose all actual and potential conflicts of interest reasonably known to them. After disclosure, neutrals shall decline to participate unless all parties choose to retain them. The need to protect against conflicts of interest also governs conduct that occurs during and after the ADR proceeding.

A, FF, NE, SC

A conflict of interest is a dealing or relationship that creates or might create an impression of possible bias. The basic approach to questions of conflict of interest is consistent with the concept of self-determination. Neutrals have a responsibility to disclose all actual and potential conflicts that are reasonably known to them and could reasonably be seen as raising questions about impartiality. If all parties agree to participate in the ADR process after being informed of conflicts, the neutral may proceed. If, however, the conflict of interest casts serious doubt on the integrity of the process, the neutral shall decline to proceed. Neutrals must avoid conflicts of interest both during and after the ADR process, such as representing one party against the other party in an adversarial proceeding.

Comments:

- **SC** Potential conflicts of interest may arise between administrators of ADR programs and neutrals, and there may be strong pressures on the neutrals to settle a particular case or cases. A neutral's commitment must be to the participants and the process. Pressure from outside of the process should never influence the neutral to coerce parties to settle.

- While neutrals may recommend the services of other professionals, neutrals shall avoid conflicts of interest when making such recommendations.

IV. <u>Competence</u>: Neutrals shall provide services only when they have the necessary qualifications to satisfy the reasonable expectations of the parties.

A, FF, NE, SC

Subject to the requirements of any statute or Maryland rule, any person may be selected as a neutral, provided that the parties are satisfied with their qualifications. Training and experience, however, are often necessary. Persons who offer themselves as neutrals give parties and the public an expectation that they have the competency to conduct their ADR processes effectively. In court-connected or any form of mandated ADR, it is essential that neutrals assigned to the parties have the requisite training and experience.

Comments apply to all neutrals:

- Neutrals should have information available for the parties regarding their relevant training, education and experience.

- When neutrals are appointed by a court or institution, the appointing agency shall make reasonable efforts to ensure that each neutral is qualified for the particular ADR process.

V. <u>Confidentiality</u>: A neutral shall maintain confidentiality with certain limited exceptions.

A, FF, NE, SC

A neutral shall maintain confidentiality, with certain limited exceptions. Depending upon the ADR process being used, the degree of confidentiality a neutral must maintain may be subject to rules, agreements, statutory obligations, and court orders.

Comments apply to all neutrals:

- Since the parties' expectations regarding confidentiality of the process and the written results of the process are important, the neutral should discuss these expectations with the parties at the beginning of the process.

- The parties may be permitted to make their own rules with respect to confidentiality or a practitioner or institution may dictate a particular set of expectations.

- Where the parties have agreed that all or a portion of the information disclosed during an ADR process is confidential, the parties' agreement should be respected by the neutral.

- If the neutral holds private sessions with a party, the nature of these sessions with regard to confidentiality should be discussed prior to undertaking such sessions.

- In order to protect the integrity of the ADR process, a neutral should not communicate information about the parties, their behavior, the merits of their case or settlement offers to the court or other referral source.
- Confidentiality should not be construed to prohibit the effective monitoring, research, or evaluation of ADR programs by responsible persons. Under appropriate circumstances, researchers may be permitted to obtain access to statistical data and, with the permission of the parties, to individual case files, observations, and interviews with participants.

- A neutral cannot ensure the confidentiality of statements parties make to each other or to third persons.

VI. <u>Quality of the Process</u>: A neutral shall conduct the process fairly, diligently, and in a manner consistent with the principle of self-determination by the parties.

A, FF, NE, SC

A neutral shall work to ensure a quality process and to encourage mutual respect among the participants. A quality process requires a commitment by the neutral to diligence and procedural fairness. There should be adequate opportunity for each party to participate in the discussions. The parties decide when and under what conditions they will reach an agreement, be bound by an arbitration award or terminate a neutral.

Comments:

SC Settlement conference practitioners should not be guided by a desire for a high settlement rate.

- Neutrals may agree to conduct an ADR process only when they are prepared to commit the attention essential to an effective process.
- Neutrals accepting matters for an ADR process should satisfy the reasonable expectations of the parties concerning the timing of the process. A neutral should not allow a process to be unduly delayed by parties or their representatives.
- The presence or absence of persons depends on the agreement of the parties and the neutral. The parties and neutral may agree that others may be excluded from particular sessions or from the entire process.
- A neutral shall withdraw from an ADR process when incapable of serving or when unable to remain impartial.
- A neutral may withdraw from an ADR process or postpone a session if the process is being used to further illegal or unconscionable conduct, or if a party is unable to participate due to drug, alcohol, or other physical or mental incapacity.

VII. <u>Advertising and Solicitation</u>: A neutral shall be truthful in advertising and solicitation.

A, FF, NE, SC

Advertising or any other communication with the public concerning services offered or regarding the education, training, and expertise of the neutral shall be truthful. neutrals shall refrain from promises and guarantees of results.

Comments apply to all neutrals:

- It is imperative that communications with the public educate and instill confidence in ADR processes.

- In an advertisement or other communication to the public, a neutral may make reference to meeting state, national, or private organizations' qualifications, only if the entity referred to has a procedure for qualifying neutrals and the neutral has been duly granted the requisite status.

VIII. <u>Fees</u>: A neutral shall fully disclose and explain the basis of compensation, fees, and charges to the parties.

A, FF, NE, SC

The parties should be provided sufficient information about fees at the outset of an ADR process to determine if they wish to retain the services of a neutral. If a neutral charges fees, the fees shall be reasonable, considering among other things, the service provided, the type and complexity of the matter, the expertise of the neutral, the time required, and the rates customary in the community. In a circuit court referred case, fees may not exceed the maximum allowed by court order. For clarity, a neutral should set down the fee arrangements in a written agreement.

Comments apply to all neutrals:

- A neutral who withdraws from an ADR process should return any unearned fees to the parties.

- A neutral should not enter into a fee agreement which is contingent upon the result of the process or amount of the settlement.

- Co-neutrals who share a fee should hold to standards of reasonableness in determining the allocation of fees.

- While neutrals may refer cases to other ADR practitioners and to other types of service providers, a neutral should not accept a fee for referral of a matter to another neutral or to any other person. This prohibition does not

apply to ADR service providers who subcontract with other ADR practitioners or who employ other ADR practitioners.

IX. <u>Obligations to the Process</u>: Neutrals have a duty to improve their skills and advance the ADR field.

A, FF, NE, SC

Comment applies to all neutrals:

- Neutrals are regarded as knowledgeable in the ADR field, and they have an obligation to use their knowledge to help educate the public about ADR, to make ADR accessible to those who would like to use it, to correct abuses, and to improve their professional skills and abilities.

For More Information: Copies of this document, the ADR Commission's Practical Action Plan, requisite Court Rules, and other information regarding ADR in Maryland can be obtained by calling the Maryland Mediation and Conflict Resolution Office (MACRO) at 410-260-3540 or by visiting MACRO's website at https://mdcourts.gov/macro.
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