

STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

NOTICE OF PROPOSED RULES CHANGES

The Rules Committee submitted Parts I and II of its One Hundred Seventy-Eighth Report to the Court of Appeals on April 29, 2013 and June 26, 2013, respectively, recommending rescission of Title 16 of the Maryland Rules of Procedure and replacement of it by new Title 16 (Court Administration), Title 18 (Judges and Judicial Appointees), and Title 19 (Attorneys). The Committee now has submitted to the Court Part III of the Report, transmitting thereby proposed new Title 19 and proposed amendments to Rules 1-101, 1-312, 1-322, 1-322.1, 1-325, 1-326, 1-333, 1-351, 2-111, 2-112, 2-131, 2-504, 2-504.1, 2-508, 2-512, 2-516, 2-601, 2-652, 3-131, 3-508, 3-601, 4-214, 4-216, 4-217, 4-263, 4-312, 4-322, 4-327, 5-410, 5-605, 6-108, 7-113, 8-402, 8-411, 8-415, 9-203, 9-204, 9-205, 9-205.2, 9-208, 10-106, 11-106, 15-207, 15-1103, 17-207, 17-205, 17-206, 17-506, 20-101, 20-109, 20-203, 20-405, 20-502, 20-503, and 20-504; recommending rescission of Appendix: Maryland Lawyers' Rules of Professional conduct and the Rules Governing Admission to the Bar of Maryland; and recommending the transfer of and amendments to the Rules of the State Board of Law Examiners, Forms RGAB-14/M and RGAB-14/O in Appendix: Forms, Appendix: Ideals of Professionalism, Appendix: Guidelines of Advocacy for Attorneys Representing Children in CINA and Related TRP and Adoption Proceedings, and

Appendix: Maryland Guidelines for Practice for Court-Appointed Lawyers Representing Children in Cases Involving Child Custody or Child Access.

The Committee's Part III of its One Hundred Seventy-Eighth Report and the proposed Rules changes are set forth below.

Interested persons are asked to consider Part III of the Committee's Report and proposed rules changes and to forward on or before April 11, 2016 any written comments they may wish to make to:

Sandra F. Haines, Esq.
Reporter, Rules Committee
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Annapolis, Maryland 21401

BESSIE M. DECKER

Clerk

Court of Appeals of Maryland

March 11, 2016

The Honorable Mary Ellen Barbera,
Chief Judge

The Honorable Lynne A. Battaglia
The Honorable Clayton Greene, Jr.
The Honorable Sally D. Adkins
The Honorable Robert N. McDonald
The Honorable Shirley M. Watts
The Honorable Michele D. Hotten

Judges

The Court of Appeals of Maryland
Robert C. Murphy Courts of Appeal Building
Annapolis, Maryland 21401

Your Honors:

The Rules Committee submits this Part III of its One Hundred Seventy-Eighth Report and recommends that the Court adopt the new Rules and amendments to existing Rules transmitted with this Part. Part III, which constitutes the last segment of the general reorganization and updating of Title 16 of the Maryland Rules and various appendices to that Title, collects, updates, reorganizes, and makes style revisions to the Rules governing attorneys, all in a new Title 19 of the Maryland Rules.

In accordance with what the Committee did in presenting the Supplements to Parts I and II, it is presenting Part III in two ways. Because all of the Rules are actually new ones, wholly rewritten, they are presented in the form they would read if the Court adopts them (the "clean" version). In order for the Court and the public to see the actual changes made from the current Rules, however, they are presented as well, in a separate binder, with those changes marked by the underlining of new language and strikeouts of current language.

Title 19 is divided into seven chapters:

Chapter 100: State Board of Law Examiners and Character
Committees

Chapter 200: Admission to the Bar

Chapter 300: Maryland Attorneys' Rules of Professional Conduct
Chapter 400: Attorney Trust Accounts
Chapter 500: Pro Bono Legal Services
Chapter 600: Client Protection Fund
Chapter 700: Discipline, Inactive Status, Resignation

Chapter 100: State Board of Law Examiners and Character Committees

The Rules in Chapters 100 and 200 are derived from what currently are labeled as Rules Governing Admission to the Bar of Maryland (RGAB), which are found in an Appendix to the Maryland Rules. The reorganization and the changes proposed have been considered by the State Board of Law Examiners (SBLE). Rule 19-101 defines terms used in Chapters 100 and 200. It is derived from RGAB 1.

Rule 19-102, derived from RGAB 18 and 20, provides for SBLE and its assistants. Most of the powers of the Board are provided for in Chapter 200, but Rule 19-102 authorizes SBLE to adopt Board rules and set fees. The Board rules deal mostly with Bar Examinations and are currently placed with the RGAB in the Appendix to the Maryland Rules. They are proposed to be relocated to the end of Chapter 200, to which they are most relevant.

Three substantive changes are recommended in Rule 19-102. The first, in section (c), implements a recommendation of the Professionalism Center Task Force that SBLE exercise supervision over the character and fitness requirements for Bar admission and the operations of the character committees. The second, in section (d), deletes the requirement that changes in Board Rules be published at least once in a newspaper of general circulation in the State. For ordinary changes, the one required publication must be at least 45 days before the bar examination at which it is to be effective; if the change increases the subject matter knowledge required for the examination, it must be published at least one year prior to the examination.

Finally, the Committee was advised that the Board publishes such notices once in the *Baltimore Sun* and the *Daily Record*. The likelihood that anyone who may be affected by the change will, in fact, see the one notice published in either paper, 45 days or one year before the examination, is remote at best. With the approval of SBLE, the Committee recommends that, instead of the one-time newspaper publication, changes in Board Rules be posted on the Judiciary website, where they can remain publicly accessible for the entire 45-day or one-year period and where law

students and bar applicants are much more likely to look for and find them.

Current RGAB 17 (Rule 19-103) permits the **Court** to provide compensation to members of the character committees. That does not happen; no compensation is paid to character committee members. Instead, for each application sent to a character committee for investigation, the **Board**, from its budget, sends to the Chair of the committee \$45 to defray some of the cost of the investigation. The Chair distributes the money to reimburse the members for expenses they incurred in conducting investigations. Rule 19-103 reflects that practice.

RGAB 22 (Rule 19-104) permits the Board or a character committee, on its own initiative or on request of an applicant, to cause a subpoena to be issued by the clerk of a circuit court but, to safeguard confidentiality, provides that "the proceedings" shall not be docketed. The Rules Committee, with the approval of SBLE, believes that the proceedings should be docketed, so there is a record, but that they be shielded from public access and under seal. Rule 19-104 reflects that change.

Rule 19-105 deals with the confidentiality of proceedings before SBLE, character committees, and the Accommodations Review Committee (ARC).¹ Rule 19-105 is derived from RGAB 19 with three changes requested by SBLE. RGAB 19 (b) generally permits an applicant to be informed of and inspect papers received or considered by a panel of the ARC, a character committee, or SBLE, except when, without a hearing, the applicant is recommended for admission. Subsection (b)(2) of Rule 19-105 adds to that exception papers received or considered by the National Conference of Bar Examiners. The second change addresses the situation of an applicant - most likely an individual who was a former applicant - who is being considered for judicial office. The current Rule permits the disclosure of otherwise confidential information, upon request, to the Governor of Maryland and committees of the Maryland Senate and the U.S. Senate in that situation. Rule 19-105 (c)(5) permits such disclosure as well, upon request, to the Governor of another State and the President of the United States. The third change, in subsection (c)(4), permits material concerning an applicant (or former applicant) to be disclosed to disciplinary authorities for use in a pending disciplinary proceeding against the applicant or for reinstatement after a suspension or disbarment.

¹ARC is currently provided for in RGAB 6.1, which will become Rule 19-205.

Chapter 200: Admission to the Bar

Most of the Rules in Chapter 200 are derived from the RGAB, with style changes, clarifications, and some updating. The Chapter deals with four topics: (1) general provisions focusing on the standard admission procedure, which involves taking the Maryland bar examination, (2) admission of out-of-State attorneys, (3) special authorization to practice that is limited and does not constitute an admission, and (4) two miscellaneous provisions. There are two new Rules and some substantive changes to existing ones.

The standard admission process is described in Rules 19-201 through 19-211. Rule 19-202, which is derived from RGAB 2, adds two substantive provisions, both recommended by SBLE. The current Rule establishes two deadlines for filing an application to take a bar examination - January 16 and May 20 for the July examination and September 15 and December 20 for the February examination. The application must be filed by the later of the two respective deadlines. If filed after the earlier deadline, however, a late fee is charged. SBLE advises that over 90 percent of the applicants file after the earlier deadline and have to pay the late fee. The Board has requested, and the Committee agrees, that the later deadline should remain the actual deadline, but there should be no late fee; instead, under its authority to set fees, SBLE will offer a discount for filing by the earlier date.

The current Rule, copied in Rule 19-202 (d), permits an applicant, at any time after completion of his or her pre-legal studies, to file an application to determine whether there are any impediments to the applicant's qualification for admission. Section (e) adds a provision that, if such an application has been pending for more than three years, the applicant must file an updated application.

A Committee note is added to Rule 19-203, to make clear that an applicant's immigration status, of itself, does not preclude admission to the Maryland Bar, provided that the applicant, like every other applicant, has demonstrated good moral character. At least since 2008, and likely before then, the application for Bar admission asks where and when the applicant was born, whether the applicant is a citizen of the United States, and, if not, what the applicant's "immigration status" is. If the applicant indicates an undocumented or illegal status, an investigation is, or should be, conducted to determine whether or how that might affect the applicant's character and fitness to practice law - whether, for example, the applicant has ever improperly concealed or lied about that status. We are advised that, on at least one occasion, an applicant revealed that he was brought to the country illegally by his parents but was in the Federal Deferred

Action for Childhood Arrivals program. That program allows undocumented immigrants to receive renewable two-year work permits and exemption from deportation, provided that they (1) entered the country before their 16th birthday and before June 2007 and (2) satisfy other criteria for the program. The character committee investigator made an investigation and discovered no reason to deny admission. The applicant was recommended for admission to the Bar, without any mention of immigration status, and was admitted in due course.

The Court has not faced this issue directly, but the Rules Committee recommends that, by Committee note, the Rules make clear that an undocumented status does not, of itself, constitute proof of poor moral character or lack of fitness to practice law.

A provision is added to Rule 19-204 (b) permitting the Board to reject a request for a test accommodation under the Americans with Disabilities Act that is substantially incomplete or so untimely that granting of the request is impracticable.

Rule 19-206 (b) reflects an amendment proposed by the Professionalism Center Task Force revising the language stating the purpose of the bar examination. The Rules Committee has left in the Rule the first sentence of that section, making clear the Court's policy that no quota of successful candidates be set, but that each examinee be judged based on the examination answers.

Admission of out-of-State attorneys is dealt with in Rules 19-212 through 19-214, which are derived from RGAB 13 and 14. With one exception, there are no substantive changes. In Rule 19-212 (a), which provides for the admission of out-of-State attorneys and is derived from RGAB 13, the Committee recommends adding, as an alternative to the requirement that the attorney have passed a written bar examination in a State, that the attorney has been admitted to a State Bar by "diploma privilege" after graduating from an ABA-accredited law school. That is to accommodate attorneys admitted to the Wisconsin Bar and was recommended by SBLE. In Wisconsin, an individual may be admitted to that State's Bar without having taken a bar examination if the individual graduated from an ABA-accredited law school in Wisconsin. Rule 19-214 is the *pro hac vice* Rule.

The third topic - special authorization to practice - is dealt with in Rules 19-215 through 19-218. These Rules allow attorneys who are not otherwise permitted to practice in Maryland to do so under certain conditions and subject to certain limitations. They make clear that the special authorization does not constitute an admission to the Maryland Bar. Those Rules include changes that were approved by the Court in its consideration of the Committee's 187th Report (Category 4).

Two changes are made to Rule 19-217, which is derived from RGAB 16, dealing with the practice of law by law students. The first is to permit such practice through externships. An externship is a field placement, for credit, in a governmental unit or a not-for-profit organization. Under the proposal, the practice must be under the supervision of a faculty member of the law school and must be in compliance with the applicable American Bar Association standard for study outside the classroom, and the program must be approved by the Maryland State Bar Association Section of Legal Education and Admission to the Bar.

There appears to be some question whether externships qualify under the current Rule. RGAB 16 requires clinical programs to be approved by the MSBA Section Council. The Rules Committee was advised that the Section Council, the members of which change from time to time, has taken inconsistent positions from one year to another on whether an externship qualifies as a clinical program. The clinical directors find these externships useful and would like them to qualify. Because externships do differ in some respects from traditional clinical programs, the Committee proposes adding them to the Rule directly, rather than expanding the definition of clinical program to include them.

The second amendment is to permit the practice to include appearances before administrative agencies.

Rule 19-218 requires that attorneys admitted to practice in Maryland and specially authorized out-of-State attorneys pay the assessments to the Client Protection Fund and the Attorney Grievance Commission Disciplinary Fund. It is derived in part from a cross-reference following current RGAB 12 and, as to specially authorized out-of-State attorneys, from RGAB 15 (h). That requirement is already provided for in the Rules governing contributions to the Client Protection Fund and the Attorney Grievance Commission (Rules 16-811.5 and 16-714; proposed Rules 19-605 and 19-705).

As noted, the current SBLE Board Rules, with style, clarifying, and conforming amendments, are moved to follow immediately after the Rules in Chapter 200.

Chapter 300: Maryland Attorneys' Rules of Professional Conduct

Chapter 300 consists of the relocation of (1) the Maryland Lawyers' Rules of Professional Conduct, which, currently, are adopted by reference in Rule 16-812 and appear textually as an Appendix to the Maryland Rules, and (2) three appendices to those Rules of Professional Conduct - the Ideals of Professionalism, the Maryland Guidelines of Advocacy for Attorneys Representing Children in CINA and Related TPR and Adoption Proceedings, and

the Maryland Guidelines for Practice for Court-Appointed Lawyers Representing Children in Cases Involving Child Custody or Child Access.

Consistent with the Rules Committee's recommendation regarding the Code of Judicial Conduct, the Committee recommends making each of the Maryland Attorneys' Rules of Professional Conduct (MARPC) a separate Maryland Rule, as each deals with a separate matter and has the force of law, but to retain a clear reference to the numbering system of the American Bar Association Model Code, from which the MARPC was derived.

Most of the changes to the current Rules of Professional Conduct are ones of style or clarification. The most ubiquitous change is substituting "attorney" for "lawyer." Throughout the current Rules dealing with attorneys, three different terms are used to denote the same status - attorney, lawyer, and counsel. In this Part III and in the other Rules as well, the Rules Committee recommends using one term - attorney - except when "counsel" has a broader meaning.

With style changes, Rule 19-307.4 retains current Rule 7.4 as it is. In its 187th Report, the Committee recommended expansion of the Rule to permit attorneys to advertise certification by an accredited entity as a specialist in a particular field of practice, along with new Rules to be included in Title 16 providing a structure and procedure for such accreditation and recognition of specialities. The Court deferred consideration on that proposal. Should the Court approve those recommendations, or alternatives to them, the Committee will submit one or more new Rules to conform them to whatever the Court approves.

Chapter 400: Attorney Trust Accounts

Chapter 400 consists of the relocation, without substantive change, of current Rules 16-601 through 16-612.

Chapter 500: Pro Bono Legal Services

Chapter 500 consists of the relocation, without substantive change, of current Rules 16-901 through 16-903. The only changes in Rules 19-501 through 19-503 are conforming cross-references and changing "lawyer" to "attorney."

Chapter 600: Client Protection Fund

Chapter 600 incorporates the changes approved by the Court in its consideration of the Committee's 180th and 187th Report. The Committee calls to the Court's attention that Rule 19-603 carries forth without change the provision of seven year terms for the trustees. The Rule says nothing about reappointment or any term limits.

Chapter 700: Discipline, Inactive Status, Resignation; Permanent Retirement

Chapter 700 consists of the reorganization, restyling, and updating of current Rules 16-701 through 16-781, dealing with the Attorney Grievance Commission (AGC), Bar Counsel, and proceedings relating to the discipline, inactive status, resignation, and reinstatement of attorneys. The Rules are grouped into six parts: General Provisions (Rules 19-701 through 19-709); Administrative Proceedings (Rules 19-711 through 19-721); Proceedings on Petition for Disciplinary or Remedial Action (Rules 19-722 through 19-730); Special Proceedings (Rules 19-731 through 19-740); Disposition by Court of Appeals (Rules 19-741 through 19-744); and Reinstatement (Rules 19-751 and 19-752).

Chapter 700 was developed collaboratively with the Chair of the Attorney Grievance Commission and Bar Counsel. One goal is to give greater attention to the situation where an attorney's violation of a Rule of Professional Conduct is attributable more to an incapacity rather than deliberate misconduct and Bar Counsel's response looks toward placement of the attorney on inactive status rather than reprimand, suspension, or disbarment. An effort also is made to clarify the process of reinstatement following a suspension, disbarment, resignation, or placement on inactive status.

There are no substantive changes in Rules 19-701, 19-702, 19-703, 19-704, 19-705, 19-706, 19-708, 19-709, 19-711, 19-712, 19-713, 19-714, 19-720, 19-721, 19-722, 19-723, 19-724, 19-728, 19-729, 19-733, 19-735, 19-737, 19-739, or 19-741, although some of those Rules are clarified and reorganized.

Rule 19-707 (b) adds to the list of those precluded from disclosing confidential information a complainant and a complainant's attorney in a civil action. Subsection (f) (5) of that Rule allows AGC and Bar Counsel, on written request by the Client Protection Fund, to permit an authorized officer of the Fund to inspect and copy specific records relating to an attorney that are relevant to a claim pending before the Fund. This was a compromise that gives the Fund access to specific records it

needs to make an informed decision regarding a claim without allowing a wholesale rummaging through AGC or Bar Counsel files. In Rule 19-715 (a) (2) and (c) (1), provisions are added to deal with the incapacitated attorney.

Rule 19-716, dealing with conditional diversion agreements (CDA), contains several substantive changes. Under subsection (c) (3) (A) (ix), if the agreement calls for a reprimand, the text of the reprimand must be agreed upon and attached to the CDA, but it is a separate document and the actual reprimand is not actually issued until the conditions of the CDA are fulfilled. There are two reasons for that: (1) the contents of the CDA are confidential, but the text of the reprimand is not, and (2) if the attorney does not satisfactorily fulfill the conditions, the CDA may be revoked, and Bar Counsel may withdraw the reprimand and proceed directly to a petition for disciplinary or remedial action. Under subsection (h) (4), an attorney who defaults on a CDA is not entitled to another peer review proceeding. Subsection (j) (1) (B) (iv) requires Bar Counsel, upon approval of a CDA by AGC, to inform the attorney of the consequences of non-compliance.

Rule 19-717, dealing with reprimands, excludes from the scope of the Rule reprimands issued in connection with a CDA, which are dealt with in Rule 19-716.

Rule 19-718 requires a Statement of Charges to be more specific regarding the alleged violations. The language is taken from case law, in particular *Bar Ass'n of Balt. v. Cockrell*, 270 Md. 686, 692-93 (1974).

A provision is added to Rule 19-722 requiring the judge designated to hear the action to enter a scheduling order not later than 15 days after the date on which the attorney's answer to the AGC petition is due. Another new provision allows the judge to amend the scheduling order for good cause, subject to the 120-day time limit on completing the hearing.

Rule 19-725 (Pleadings; Motions; Amendments) contains two clarifying amendments -- one, that the only pleadings allowed in the proceeding are the petition and an answer, and two, that a motion to dismiss is not allowed. The limited scope of the proceeding before the circuit court judge is explained in a new Committee note.

Rule 19-727 (Judicial Hearing) requires that the judge's findings be in a written statement and not dictated *ex temporaneously* into the record. That is to help ensure that the statement is complete, that it addresses all of the pending issues, and that it is internally consistent.

Current Rule 16-759 (b), dealing with review of the judge's findings by the Court of Appeals, provides that, if no exceptions are filed, the Court may treat the findings of fact as established "for the purpose of determining appropriate sanctions, if any." The Committee recommends deleting that limiting language in Rule 19-729, so that the Court may treat the findings as established for any purpose.

Rule 19-732 (Injunction; Expedited Action) permits Bar Counsel to seek injunctive relief not only on information that an attorney is engaging in professional misconduct that is creating special harm but also on information that an attorney has an incapacity that is creating such harm.

Rule 19-736 (Consent to Discipline or Inactive Status) adds a requirement to any consent to inactive status that the attorney be competent to consent. The Rules Committee regards that as implicit.

At the request of Bar Counsel, Rule 19-738 (Discipline on Conviction of Crime) addresses the problem of an attorney who has been found guilty of a crime but the judge delays imposition of sentence for a period of more than 30 days, thereby delaying entry of an actual judgment of conviction. The Committee was advised that this has occurred. Section (e) provides for an interim suspension process upon the finding of guilt, subject to termination or a petition for disciplinary or remedial action upon the imposition of sentence or other action by the criminal court. Hopefully, the need for this will be rare.

Rule 19-742 (Order of Disbarment or Suspension) reorganizes current Rule 16-760 to (1) clarify the duties of an attorney who has been suspended or disbarred, (2) place provisions pertaining to inactive status and resignation in other Rules dealing with those subjects, and (3) update the Rule and make it consistent with current practice. The Rule prohibits a suspended or disbarred attorney from using any social networking media or website to suggest that he or she is entitled to practice law, but permits the attorney to use his or her office, stationery, and checks in order to comply with the "winding up" requirements of Rule 19-742 (c).

Subsection (c) (2) (A) of Rule 19-742 addresses a problem noted in *Attorney Grievance v. Maignan*, 402 Md. 39 (2007) by requiring the suspended or disbarred attorney, **without charging any additional fee**, to take any action immediately necessary to protect the interests of current clients that, as a practical matter, cannot otherwise be protected. As an accompanying Committee Note explains, that may require the attorney to engage in very limited conduct that would be regarded as the practice of

law, for a very limited period of time, such as requesting a postponement of closely impending hearings or trials or filing a paper in a pending case which, if not filed prior to the client's practical ability to obtain another attorney, might result in significant harm to the client.

Rule 19-744 is a self-contained Rule on inactive status. Subsection (a)(2) is new. It deals with the situation in which the disabled attorney is unable to perform the winding-up duties required under Rule 19-742 (c) and satisfactory arrangements have not been made for the performance of those duties.

Rules 19-751 and 19-752 are new Rules that are derived from, but substantially reorganize, current Rule 16-781, dealing with the reinstatement of attorneys who have been disbarred, suspended, or placed on inactive status or who have resigned. One major innovation is to deal separately with attorneys who have been suspended for a fixed period not exceeding six months (Rule 19-751) and attorneys who received other forms of suspension, had been disbarred or placed on inactive status, or had resigned (Rule 19-752). Both Rules make clear that, with respect to suspensions for a fixed period, reinstatement is not automatic upon the expiration of the suspension period but requires a petition and an Order of the Court. That is so the Court can be assured that any conditions attached to the reinstatement have been satisfied and that there is nothing else that might make reinstatement inadvisable.

Rule 19-751 permits a suspended attorney to file with the Court and serve on Bar Counsel a petition for reinstatement within ten days prior to the end of the period of suspension. Bar Counsel is required to review the petition and, within five days after service, file with the Court any objection he or she may have to the reinstatement. If no timely objection is filed, the Clerk forwards the petition, a certification that no objection was filed, and a proposed Order of Reinstatement to the Chief Judge or a judge designated by the Chief Judge, who may sign and file the Order on behalf of the Court. If Bar Counsel files a timely objection, the matter is referred to the Court for its consideration. The intent is to provide an expeditious process of reinstatement when there is no basis for concern.

Section (h) permits Bar Counsel to file a motion to vacate an Order of Reinstatement if (1) the petitioner failed to comply with the Order or any condition of reinstatement, or (2) the petition contained a knowingly false statement or omitted a material fact and the true facts were not disclosed to Bar Counsel prior to entry of the Order. In that event, the Court may designate a circuit court judge to conduct a hearing, with the same procedures that govern a hearing on a petition for disciplinary or remedial action.

Rule 19-752 follows the same general procedure but sets different times for the filing of the petition, requires more extensive information to be provided in the petition and separate information to be provided to Bar Counsel, and requires Bar Counsel to respond formally to the petition. If Bar Counsel consents to the reinstatement, the Court may proceed in the manner specified in Rule 19-751 where no objection is filed by Bar Counsel. Otherwise, the Court may grant or deny the petition without a hearing or refer the matter for a hearing. Section (h) establishes criteria for the Court to consider in determining whether to reinstate the attorney.

Finally, a new Rule 19-761 specifies certain duties of the Clerk of the Court of Appeals upon the suspension, disbarment, placement on inactive status, permanent retirement, or decertification of an attorney. There are 16 Rules that provide a basis for the suspension or termination of an attorney's authority to practice law or for the restoration of that authority. They tend to fall into two categories - those that result from proceedings before the Attorney Grievance Commission and those that do not.

In cases of a disbarment, suspension, placement on inactive status, or permanent retirement, which come through the Attorney Grievance Commission, the Clerk strikes the name of the attorney from the register of attorneys, subject, except in the case of a permanent retirement, to reentering the name should the attorney ever be reinstated. The Clerk does not strike the name of an attorney whose authority to practice is suspended because of a decertification order due to failure to file an IOLTA Report under Rule 19-409 or a pro bono service Report under Rule 19-503 or for failure to comply with the attorney's obligations to the Client Protection Fund under Rule 19-606. The reason for that is that those suspensions (1) are more numerous, and (2) in most cases, are of short duration. That distinction is maintained in Rule 19-761.

The other duty of the Clerk is to send notice of the suspension or termination of the attorney's authority to practice law to various people, mostly the clerks of the trial courts. Until recently, the list of persons notified varied. With the approval of Ms. Bessie Decker, the current Clerk, the Committee recommends one list of persons to be notified, without regard to the nature of the suspension. The clerks of the trial courts, and of the Federal courts in which a Maryland attorney may practice - the U.S. Supreme Court, the U.S. Court of Appeals for the Fourth Circuit, and the U.S. District Court for the District of Maryland - should be informed of when a Maryland attorney's authority to practice has been suspended or terminated for any reason. The notices may be sent electronically, so there should be no undue burden on the Clerk of the Court of Appeals.

Mostly because of the renumbering of these Rules, conforming amendments need to be made a host of other Rules. A list of those Rules to which conforming amendments are recommended is attached as an Appendix to this Report.

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

Respectfully submitted,

Alan M. Wilner
Chair

AMW:cdc
cc: Bessie M. Decker, Clerk

APPENDIX: Conforming Amendments

Following is a list of Rules to which conforming amendments are proposed:

- Rule 1-101 (Applicability)
- Rule 1-312 (Requirements of Signing Attorney)
- Rule 1-322 (Filing of Pleadings, Papers, and Other Items)
- Rule 1-322.1 (Exclusion of Personal Identifier Information in Court Filings)
- Rule 1-325 (Waiver of Costs Due to Indigence - Generally)
- Rule 1-326 (Proceedings Regarding Victims and Victims' Representatives)
- Rule 1-333 (Court Interpreters)
- Rule 1-351 (Order Upon Ex Parte Application Prohibited - Exceptions)
- Rule 2-111 (Process - Requirements Preliminary to Summons)
- Rule 2-112 (Process - Issuance of Summons)
- Rule 2-131 (Appearance)
- Rule 2-504 (Scheduling Order)
- Rule 2-504.1 (Scheduling Conference)
- Rule 2-508 (Continuance or Postponement)
- Rule 2-512 (Jury Selection)
- Rule 2-516 (Exhibits and Recordings)
- Rule 2-601 (Entry of Judgment)
- Rule 2-652 (Enforcement of Attorney's Liens)
- Rule 3-131 (Appearance)
- Rule 3-508 (Continuance or Postponement)
- Rule 3-601 (Entry of Judgment)
- Rule 4-214 (Defense Counsel)
- Rule 4-216 (Pretrial Release - Authority of Judicial Officer; Procedure)
- Rule 4-217 (Bail Bonds)
- Rule 4-263 (Discovery in Circuit Court)
- Rule 4-312 (Jury Selection)
- Rule 4-322 (Exhibits, Computer-Generate Evidence, and Recordings)
- Rule 4-327 (Verdict - Jury)
- Rule 5-410 (Inadmissibility of Pleas, Plea Discussions, and Related Statements)
- Rule 5-605 (Competency of Judge as Witness)
- Rule 6-108 (Register of Wills - Acceptance of Papers)
- Rule 7-113 (Appeals Heard on the Record)
- Rule 8-402 (Appearance of Counsel)
- Rule 8-411 (Transcript)
- Rule 8-415 (Procedures Applicable When Lower Court Record is Made by Videotape Recording)

Rule 9-203 (Financial Statements)
Rule 9-204 (Educational Seminar)
Rule 9-205 (Mediation of Child Custody and Visitation Disputes)
Rule 9-205.2 (Parenting Coordination)
Rule 9-208 (Referral of Matters to Magistrates)
Rule 10-106 (Appointment of Attorney or Investigator)
Rule 11-106 (Right to Counsel)
Rule 15-207 (Constructive Contempt; Further Proceedings)
Rule 15-1103 (Initiation of Proceeding to Content Isolation or Quarantine)
Rule 17-205 (Qualifications of Court-Designated Mediators)
Rule 17-206 (Qualifications of Court-Designated ADR Practitioners Other than Mediators)
Rule 17-207 (Procedure for Appeal)
Rule 17-506 (Scope of Representation)
Rule 20-101 (Definitions)
Rule 20-109 (Access to Electronic Court Records)
Rule 20-203 (Review by Clerk; Striking of Submission; Delinquency Notice; Correction; Enforcement)
Rule 20-405 (Other Submissions)
Rule 20-502 (Removal to and Remand from the United States District Court)
Rule 20-503 (Archival of Records)
Rule 20-504 (Agreements with Vendors)

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

**CHAPTER 100 - STATE BOARD OF LAW EXAMINERS AND
CHARACTER COMMITTEES**

- Rule 19-101. DEFINITIONS
- Rule 19-102. STATE BOARD OF LAW EXAMINERS
- Rule 19-103. CHARACTER COMMITTEES
- Rule 19-104. SUBPOENA POWER
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MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 100 - STATE BOARD OF LAW EXAMINERS AND

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Rule 19-101. DEFINITIONS

In this Chapter and Chapter 200 of this Title, the following definitions apply, except as expressly otherwise provided or as necessary implication requires:

(a) ADA

"ADA" means the Americans with Disabilities Act as amended, 42 U.S.C. §12101, et seq.

(b) Applicant; Petitioner

"Applicant" means an individual who applies for admission to the Bar of Maryland (1) pursuant to Rule 19-202, or (2) as a "petitioner" under Rule 19-213.

(c) Board

"Board" means the Board of Law Examiners of the State of Maryland.

(d) Court

"Court" means the Court of Appeals of Maryland.

(e) Filed

"Filed" means received in the office of the Secretary of the Board during normal business hours.

(f) MBE

"MBE" means the Multi-state Bar Examination published by

the National Conference of Bar Examiners.

(g) MPT

"MPT" means the Multistate Performance Test published by the National Conference of Bar Examiners.

(h) Oath

"Oath" means a declaration or affirmation made under the penalties of perjury that a certain statement of fact is true.

(i) State

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

Source: This Rule is derived from former Rule 1 of the Rules Governing Admission to the Bar of Maryland (2016).

REPORTER'S NOTE

Rule 19-101 is derived from current Rule 1 of the Rules Governing Admission to the Bar of Maryland (RGAB), with style changes.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

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Rule 19-102. STATE BOARD OF LAW EXAMINERS

(a) Appointment

There is a State Board of Law Examiners. The Board shall consist of seven members appointed by the Court. Each member shall have been admitted to practice law in Maryland. The terms of members shall be as provided in Code, Business Occupations and Professions Article, §10-202 (c).

(b) Quorum

A majority of the authorized membership of the Board is a quorum.

(c) Authority

(1) Generally

The Board shall exercise the authority and perform the duties assigned to it by the Rules in this Chapter and Chapter 200 of this Title, including general supervision over the character and fitness requirements and procedures set forth in those Rules and the operations of the character committees.

(2) Adoption of Rules

The Board may adopt rules to carry out the requirements of this Chapter and Chapter 200 of this Title. The Rules of the Board shall follow Chapter 200 of Title 19.

(d) Amendment of Board Rules - Posting

Any amendment of the Board's rules shall be posted on the Judiciary website at least 45 days before the examination at which it is to become effective, except that an amendment that substantially increases the area of subject-matter knowledge required for any examination shall be posted at least one year before the examination.

(e) Professional Assistants

The Board may appoint the professional assistants necessary for the proper conduct of its business. Each professional assistant shall be an attorney admitted by the Court of Appeals and shall serve at the pleasure of the Board.

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

(f) Compensation of Board Members and Assistants

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

(g) Secretary to the Board

The Court may appoint a secretary to the Board, to hold office at the pleasure of the Court. The secretary shall have the administrative powers and duties prescribed by the Board and shall serve as the administrative director of the Office of the State Board of Law Examiners.

(h) Fees

The Board shall prescribe the fees, subject to approval by the Court, to be paid by applicants under Rules 19-202, 19-204,

and 19-208 and by petitioners under Rule 19-213.

Cross reference: See Code, Business Occupations and Professions Article, §10-208 (b) for maximum examination fee allowed by law.

Source: This Rule is derived as follows:

Section (a) is new.

Section (b) is new.

Sections (c) through (g) are derived from former Rule 20 of the Rules Governing Admission to the Bar of Maryland (2016).

Section (h) is derived from former Rule 18 of the Rules Governing Admission to the Bar of Maryland (2016).

REPORTER'S NOTE

Rule 19-102 is derived from current RGAB 20 and 18, with style changes. Sections (a) and (b) are new and include the provisions of Code, Business Occupations and Professions Article, §10-202 concerning the composition of the Board and quorum requirements.

Subsection (c)(1) is new. It implements a recommendation of the Maryland Professionalism Center Bar Admission Task Force that the character and fitness procedure be put under the purview of the Board.

Section (d) is updated to require posting on the Judiciary website, rather than publication in a newspaper.

Section (e) is clarified by the addition of the word "professional" in the tagline and text and by the addition of a Committee note.

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TITLE 19 - ATTORNEYS

CHAPTER 100 - STATE BOARD OF LAW EXAMINERS AND

CHARACTER COMMITTEES

Rule 19-103. CHARACTER COMMITTEES

The Court shall appoint a Character Committee for each of the seven Appellate Judicial Circuits of the State. Each Character Committee shall consist of not less than five members whose terms shall be five years each, except that in the Sixth Appellate Judicial Circuit the term of each member shall be two years. The terms shall be staggered. The Court shall designate the chair of each Committee and vice chair, if any. For each application referred to a Character Committee, the Board shall remit to the Committee a sum to defray some of the expense of the investigation.

Cross reference: See Rule 19-203 for the Character Review Procedure.

Source: This Rule is derived from former Rule 17 of the Rules Governing Admission to the Bar of Maryland (2016).

REPORTER'S NOTE

Rule 19-103 is derived from current RGAB 17, with the addition of a reference to a vice chair, if any, and a cross reference to the Rule concerning the character review procedure itself. The reference to "compensation" is replaced by a sentence that more accurately describes the sums paid by the Board to the Character Committees.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 100 - STATE BOARD OF LAW EXAMINERS AND

CHARACTER COMMITTEES

Rule 19-104. SUBPOENA POWER

(a) Subpoena

(1) Issuance

In any proceeding before the Board or a Character Committee pursuant to Rule 19-203 or Rule 19-213, the Board or Committee, on its own initiative or the motion of an applicant, may cause a subpoena to be issued by a clerk pursuant to Rule 2-510. The subpoena shall issue from the Circuit Court for Anne Arundel County if incident to Board proceedings or from the circuit court in the county in which the Character Committee proceeding is pending. The proceedings shall be docketed in the issuing court and shall be sealed and shielded from public inspection.

(2) Name of Applicant

The subpoena shall not divulge the name of the applicant, except to the extent this requirement is impracticable.

(3) Return

The sheriff's return shall be made as directed in the subpoena.

(4) Dockets and Files

The Character Committee or the Board, as applicable,

shall maintain docketed and files of all papers filed in the proceedings.

(5) Action to Quash or Enforce

Any action to quash or enforce a subpoena shall be filed under seal and docketed as a miscellaneous action in the court that issued the subpoena.

Cross reference: See Rule 16-906 (g) (3).

(b) Sanctions

If a person subpoenaed to appear and give testimony or to produce books, documents, or other tangible things fails to do so, the party who requested the subpoena, by motion that does not divulge the name of the applicant, except to the extent that this requirement is impracticable, may request the court to issue an attachment pursuant to Rule 2-510 (j), or to cite the person for contempt pursuant to Title 15, Chapter 200 of the Maryland Rules, or both. Any such motion shall be filed under seal.

(c) Court Costs

All court costs in proceedings under this Rule shall be assessable to and paid by the State.

Source: This Rule is derived from former Rule 22 of the Rules Governing Admission to the Bar of Maryland (2016).

REPORTER'S NOTE

Rule 19-104 is derived from current RGAB 22 with style changes and the addition of provisions concerning sealing, shielding, quashing, and enforcing subpoenas.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

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Rule 19-105. CONFIDENTIALITY

(a) Proceedings Before Accommodations Review Committee, Character Committee, or Board

Except as provided in sections (b), (c), and (d) of this Rule, the proceedings before the Accommodations Review Committee and its panels, a Character Committee, and the Board, including related papers, evidence, and information, are confidential and shall not be open to public inspection or subject to court process or compulsory disclosure.

(b) Right of Applicant

(1) Right to Attend Hearings and Inspect Papers

An applicant has the right to attend all hearings before a panel of the Accommodations Review Committee, a Character Committee, the Board, and the Court pertaining to his or her application and, except as provided in subsection (b)(2) of this Rule, to be informed of and inspect all papers, evidence, and information received or considered by the panel, Committee or the Board pertaining to the applicant.

(2) Exclusions

Subsection (b)(1) of this Rule does not apply to (A) papers or evidence received, considered, or prepared by the

National Conference of Bar Examiners, a Character Committee, or the Board if the Committee or Board, without a hearing, recommends the applicant's admission; (B) personal memoranda, notes, and work papers of members or staff of the National Conference of Bar Examiners, a Character Committee, or the Board; (C) correspondence between or among members or staff of the National Conference of Bar Examiners, a Character Committee, or the Board; or (D) an applicant's bar examination grades and answers, except as authorized in Rule 19-207 and Rule 19-213.

(c) When Disclosure Authorized

The Board may disclose:

(1) statistical information that does not reveal the identity of an individual applicant;

(2) the fact that an applicant has passed the bar examination and the date of the examination;

(3) if the applicant has consented in writing, any material pertaining to the applicant that the applicant would be entitled to inspect under section (b) of this Rule;

(4) for use in a pending disciplinary proceeding against the applicant as an attorney or judge, a pending proceeding for reinstatement of the applicant as an attorney after suspension or disbarment, or a pending proceeding for original admission of the applicant to the Bar, any material pertaining to an applicant requested by:

(A) a court of this State, another state, or the United States;

(B) Bar Counsel, the Attorney Grievance Commission, or the attorney disciplinary authority in another state;

(C) the authority in another jurisdiction responsible for investigating the character and fitness of an applicant for admission to the bar of that jurisdiction, or

(D) Investigative Counsel, the Commission on Judicial Disabilities, or the judicial disciplinary authority in another jurisdiction;

(5) any material pertaining to an applicant requested by a judicial nominating commission or the Governor of this or any other State, a committee of the Senate of Maryland, the President of the United States, or a committee of the United States Senate in connection with an application by or nomination of the applicant for judicial office;

(6) to a law school, the names of individuals who graduated from that law school who took a bar examination, whether they passed or failed the examination, and the number of bar examination attempts by each individual;

(7) to the Maryland State Bar Association and any other bona fide bar association in the State of Maryland, the name and address of an individual recommended for bar admission pursuant to Rule 19-209;

(8) to each entity selected to give the orientation program required by Rule 19-210 and verify participation in it, the name and address of an individual recommended for bar admission pursuant to Rule 19-209;

(9) to the National Conference of Bar Examiners, the following information regarding individuals who have filed applications for admission pursuant to Rule 19-202 or petitions to take the attorney's examination pursuant to Rule 19-213: the applicant's name and any aliases, applicant number, birthdate, Law School Admission Council number, law school, date that a juris doctor or equivalent degree was conferred, bar examination results and pass/fail status, and the number of bar examination attempts;

(10) to any member of a Character Committee, the report of any Character Committee or the Board following a hearing on an application; and

(11) to the Child Support Enforcement Administration, upon its request, the name, Social Security number, and address of an individual who has filed an application pursuant to Rule 19-202 or a petition to take the attorney's examination pursuant to Rule 19-213.

Unless information disclosed pursuant to subsections (c) (4) and (5) of this Rule is disclosed with the written consent of the applicant, an applicant shall receive a copy of the information and may rebut, in writing, any matter contained in it. Upon receipt of a written rebuttal, the Board shall forward a copy to the individual or entity to whom the information was disclosed.

(d) Proceedings and Access to Records in the Court of Appeals

(1) Subject to reasonable regulation by the Court of Appeals, Bar Admission ceremonies shall be open.

(2) Unless the Court otherwise orders in a particular case:

(A) hearings in the Court of Appeals shall be open, and

(B) if the Court conducts a hearing regarding a bar

applicant, any report by the Accommodations Review Committee, a Character Committee, or the Board filed with the Court, but no other part of the applicant's record, shall be subject to public inspection.

(3) The Court of Appeals may make any of the disclosures that the Board may make pursuant to section (c) of this Rule.

(4) Except as provided in subsections (d)(1), (2), and (3) of this Rule or as otherwise required by law, proceedings before the Court of Appeals and the related papers, evidence, and information are confidential and shall not be open to public inspection or subject to court process or compulsory disclosure.

Source: This Rule is derived from former Rule 19 of the Rules Governing Admission to the Bar of Maryland (2016).

REPORTER'S NOTE

This Rule is derived from former RGAB 19 with style changes. The State Board of Law Examiners recommends that more references to the National Conference of Bar Examiners be included in the Rule. References to the judicial nominating commission of other States, governors of other States, and the President of the United States are added. At the request of law schools, added to subsection (c)(6) is the permitted disclosure to a law school of the number of times an individual graduate of that law school took the bar examination.

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MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 200 - ADMISSION TO THE BAR

Rule 19-201. ELIGIBILITY TO TAKE BAR EXAMINATION

(a) Educational Requirements

Subject to section (b) of this Rule, in order to take the Maryland Bar examination an individual:

(1) shall have completed the pre-legal education necessary to meet the minimum requirements for admission to a law school approved by the American Bar Association; and

(2) shall have graduated or be unqualifiedly eligible for graduation with a juris doctor or equivalent degree from a law school (A) located in a state and (B) approved by the American Bar Association.

(b) Waiver

The Board may waive the requirements of subsection (a) (2) of this Rule for an applicant who (1) has passed the bar examination of another state, is a member in good standing of the Bar of that state, and the Board finds is qualified by reason of education or experience to take the bar examination; or (2) is admitted to practice in a jurisdiction that is not defined as a state by Rule 19-101 (i) and has obtained an additional degree from a law school in Maryland approved by the American Bar Association that meets the requirements prescribed by the Board Rules.

(c) Minors

If otherwise qualified, an applicant who is under 18 years of age is eligible to take the bar examination but shall not be admitted to the Bar until 18 years of age.

Source: This Rule is derived from former Rules 3 and 4 of the Rules Governing Admission to the Bar of Maryland (2016).

REPORTER'S NOTE

Subsection (a)(1) of Rule 19-201 is derived from current RGAB 3. The remainder of the Rule is derived from current RGAB 4, as amended effective January 1, 2013.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 200 - ADMISSION TO THE BAR

Rule 19-202. APPLICATION FOR ADMISSION AND PRELIMINARY
DETERMINATION OF ELIGIBILITY

(a) By Application

An individual who meets the requirements of Rule 19-201 or had the requirement of Rule 19-201 (a) (2) waived pursuant to Rule 19-201 (b) may apply for admission to the Bar of this State by filing with the Board an application for admission, accompanied by the prescribed fee.

(b) Form of Application

The application shall be on a form prescribed by the Board and shall be under oath. The form shall elicit the information the Board considers appropriate concerning the applicant's character, education, and eligibility to become an applicant. The application shall require the applicant to provide the applicant's Social Security number and shall include an authorization to release confidential information pertaining to the applicant's character and fitness for the practice of law to a Character Committee, the Board, and the Court.

(c) Time for Filing

(1) Without Intent to Take Particular Examination

At any time after the completion of pre-legal studies, an individual may file an application to determine whether there

are any existing impediments, including reasons pertaining to the individual's character and the sufficiency of pre-legal education, to the applicant's qualifications for admission.

(2) With Intent to Take Particular Examination

An applicant who intends to take the examination in July shall file the application no later than the preceding May 20. An applicant who intends to take the examination in February shall file the application no later than the preceding December 20.

(3) Acceptance of Late Application

Upon written request of the applicant and for good cause shown, the Board may accept an application filed after the applicable deadline prescribed in subsection (c)(2) of this Rule. If the applicant intends to take a particular bar examination, the applicant shall also show good cause under Rule 19-204 (c) for late filing of a petition. If the Board rejects the application for lack of good cause for the untimeliness, the applicant may file an exception with the Court within five business days after notice of the rejection is mailed.

(d) Preliminary Determination of Eligibility

On receipt of an application, the Board shall determine whether the applicant has met the pre-legal education requirements set forth in Rule 19-201 (a) and in Code, Business Occupations and Professions Article, §10-207. If the Board concludes that the requirements have been met, it shall forward the character questionnaire portion of the application to a

Character Committee. If the Board concludes that the requirements have not been met, it shall promptly notify the applicant in writing.

(e) Updated Application

If an application has been pending for more than three years since the date of the applicant's most recent application or updated application, the applicant shall file with the Board an updated application prior to filing a petition to take a scheduled examination. The updated application shall be under oath, filed on the form prescribed by the Board, and accompanied by the prescribed fee.

(f) Withdrawal of Application

At any time, an applicant may withdraw an application by filing with the Board written notice of withdrawal. No fees will be refunded.

(g) Subsequent Application

An applicant who reapplies for admission after an earlier application has been withdrawn or rejected pursuant to Rule 19-203 must retake and pass the bar examination even if the applicant passed the examination when the earlier application was pending. If the applicant failed the examination when the earlier application was pending, the failure shall be counted under Rule 19-208.

Source: This Rule is derived from former Rule 2 of the Rules Governing Admission to the Bar of Maryland (2016).

REPORTER'S NOTE

Rule 19-202 is derived from current RGAB 2 with some changes. The Committee note following current Rule 2 (a) is deleted as superfluous. The Committee note following current Rule 2 (c) is deleted, but the examples of "impediments" are added to the text of the Rule.

In subsection (c)(2), the concept of a deadline followed by a "late" deadline is replaced by one deadline per examination.

The reference to lack of good cause for untimeliness is added to subsection (c)(3) for clarity, and to distinguish this rejection from any other rejection of an application. The time for filing an exception is clarified to read, "within five business days after notice of the rejection is mailed."

Section (e) is new. It requires the applicant to file an updated application if the applicant's most recent application has been pending for more than three years.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 200 - ADMISSION TO THE BAR

Rule 19-203. CHARACTER REVIEW

(a) Investigation and Report of Character Committee

(1) On receipt of a character questionnaire forwarded by the Board pursuant to Rule 19-202 (d), the Character Committee shall (A) through one of its members, personally interview the applicant, (B) verify the facts stated in the questionnaire, contact the applicant's references, and make any further investigation it finds necessary or desirable, (C) evaluate the applicant's character and fitness for the practice of law, and (D) transmit to the Board a report of its investigation and a recommendation as to the approval or denial of the application for admission.

(2) If the Committee concludes that there may be grounds for recommending denial of the application, it shall notify the applicant and schedule a hearing. The hearing shall be recorded verbatim by shorthand, stenotype, mechanical or electronic audio recording methods, electronic word or text processing methods, or any combination of those methods. The applicant shall have the right to testify, to present witnesses, and to be represented by an attorney. A transcript of the hearing shall be transmitted by the Committee to the Board along with the Committee's report. The Committee's report shall set forth findings of fact on which

the recommendation is based and a statement supporting the conclusion. The Committee shall mail a copy of its report to the applicant, and a copy of the hearing transcript shall be furnished to the applicant upon payment of reasonable costs.

(b) Hearing by Board

If the Board concludes after review of the Character Committee's report and the transcript that there may be grounds for recommending denial of the application, it shall promptly afford the applicant the opportunity for a hearing on the record made before the Committee. In its discretion, the Board, may permit additional evidence to be submitted. The Board shall mail a copy of its report and recommendation to the applicant and the Committee. If the Board decides to recommend denial of the application in its report to the Court, the Board shall first give the applicant an opportunity to withdraw the application. If the applicant withdraws the application, the Board shall retain the records. If the applicant elects not to withdraw the application, the Board shall transmit to the Court a report of its proceedings and a recommendation as to the approval or denial of the application together with all papers relating to the matter.

(c) Review by Court

(1) After the Board submits its report and adverse recommendation the Court shall require the applicant to show cause why the application should not be denied.

(2) If the Board recommends approval of the application

contrary to an adverse recommendation by the Character Committee, within 30 days after the filing of the Board's report, the Committee may file with the Court exceptions to the Board's recommendation. The Committee shall mail copies of its exceptions to the applicant and the Board.

(3) Proceedings in the Court under section (c) of this Rule shall be on the record made before the Character Committee and the Board. If the Court denies the application, the Board shall retain the records.

(d) Burden of Proof

The applicant bears the burden of proving to the Character Committee, the Board, and the Court the applicant's good moral character and fitness for the practice of law. Failure or refusal to answer fully and candidly any question in the application or any relevant question asked by a member of the Character Committee, the Board, or the Court is sufficient cause for a finding that the applicant has not met this burden.

Committee note: Undocumented immigration status, in itself, does not preclude admission to the Bar, provided that the applicant otherwise has demonstrated good moral character and fitness.

(e) Continuing Review

All applicants remain subject to further Character Committee and Board review and report until admitted to the Bar.

Source: This Rule is derived from former Rule 5 of the Rules Governing Admission to the Bar of Maryland (2016).

REPORTER'S NOTE

Rule 19-203 is derived from current RGAB 5 with style

changes and a clarification of the existing requirement that a hearing conducted by a Character Committee be on the record supplemented by any additional evidence that the Board, in its discretion, may allow. Additionally, a Committee note following section (d) is added.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 200 - ADMISSION TO THE BAR

Rule 19-204. PETITION TO TAKE A SCHEDULED EXAMINATION

(a) Filing

An applicant may file a petition to take a scheduled bar examination if (1) the applicant is eligible under Rule 19-201 to take the bar examination, (2) the applicant has applied for admission pursuant to Rule 19-202, and (3) the application has not been withdrawn or rejected pursuant to Rule 19-203. The petition shall be under oath, filed on the form prescribed by the Board, and accompanied by the prescribed fee.

(b) Request for Test Accommodation

An applicant who seeks a test accommodation under the ADA for the bar examination shall file with the Board an "Accommodation Request" on a form prescribed by the Board, together with the supporting documentation that the Board requires. The form and documentation shall be filed no later than the deadline stated in section (c) of this Rule for filing a petition to take a scheduled bar examination. The Board may reject an accommodation request that is (1) substantially incomplete or (2) filed untimely if the untimeliness makes the granting of the accommodation impracticable.

Committee note: An applicant who may need a test accommodation is encouraged to file an Accommodation Request as early as possible.

Cross reference: See Rule 19-205 for the procedure to appeal a denial of a request for a test accommodation.

(c) Time for Filing

An applicant who intends to take the examination in July shall file the petition no later than the preceding May 20. An applicant who intends to take the examination in February shall file the petition no later than the preceding December 20. Upon written request of an applicant and for good cause shown, the Board may accept a petition filed after that deadline. If the Board rejects the petition for lack of good cause for the untimeliness, the applicant may file an exception with the Court within five business days after notice of the rejection is mailed.

(d) Affirmation and Verification of Eligibility

The petition to take an examination shall contain a signed, notarized statement affirming that the applicant is eligible to take the examination. No later than the first day of September following an examination in July or the fifteenth day of March following an examination in February, the applicant shall cause to be sent to the Office of the State Board of Law Examiners an official transcript that reflects the date of the award to the applicant of a qualifying degree under Rule 19-201.

(e) Voiding of Examination Results for Ineligibility

If an applicant who is determined by the Board not to be eligible under Rule 19-201 takes an examination, the applicant's petition shall be deemed invalid and the applicant's examination

results shall be voided. No fees shall be refunded.

(f) Certification by Law School

Promptly following each bar examination, the Board shall submit a list of applicants who identified themselves as graduates of a particular law school and who sat for the most recent bar examination to the law school for certification of graduation and good moral character. Not later than 45 days after each examination, the law school dean or other authorized official shall certify to the Board in writing (1) the date of graduation of each of its graduates on the list or shall state that the applicant is unqualifiedly eligible for graduation at the next commencement exercise, naming the date; and (2) that each of the applicants on the list, so far as is known to that official, has not been guilty of any criminal or dishonest conduct other than minor traffic offenses and is of good moral character, except as otherwise noted.

(g) Refunds

If an applicant withdraws the petition or fails to attend and take the examination, the examination fee shall not be refunded except for good cause shown. The examination fee may not be applied to a subsequent examination unless the applicant is permitted by the Board to defer taking the examination or the applicant establishes good cause for the withdrawal or failure to attend.

Source: This Rule is derived from former Rule 6 of the Rules Governing Admission to the Bar of Maryland (2016).

REPORTER'S NOTE

Amendments to current Rules 6 and 9 of the Rules Governing Admission to the Bar of Maryland were proposed at the request of the State Board of Law Examiners.

To allow the Board sufficient time to process a petition to take an examination, in light of increases in the number of applicants and the number of requests for accommodation under the Americans With Disabilities Act, the time for filing the petition was changed from 20 days before the scheduled examination to no later than the preceding May 20th for the July examination or the preceding December 20th for a February examination. A sentence permitting the Board to reject an incomplete or untimely request is added.

In section (c), the time for filing an exceptions is clarified to read, "within five business days after notice of the rejection is mailed."

The requirement set forth in current Rule 6 (f) that a certain certification by the applicant's law school be included in the petition was deleted. In its place were added new sections (d) and (e). New section (d) requires the applicant to affirm the applicant's eligibility to take the examination and provide an official law school transcript to the Board within a certain time after the examination. New section (e) voids the examination results of any applicant who is found to have been ineligible to take the examination.

In section (g), Refunds, a provision pertaining to good cause for withdrawal of the petition or failure to attend the examination is added.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 200 - ADMISSION TO THE BAR

Rule 19-205. APPEAL OF DENIAL OF ADA TEST ACCOMMODATION
REQUEST

(a) Accommodations Review Committee

(1) Creation and Composition

There is an Accommodations Review Committee that shall consist of nine members appointed by the Court of Appeals. Six members shall be attorneys admitted to practice in Maryland who are not members of the Board. Three members shall not be attorneys. Each non-attorney member shall be a licensed psychologist or physician who, during the member's term, does not serve the Board as a consultant or in any capacity other than as a member of the Committee. The Court shall designate one attorney as Chair of the Committee and one attorney as Vice Chair. In the absence or disability of the Chair or upon express delegation of authority by the Chair, the Vice Chair shall have the authority and perform the duties of the Chair.

(2) Term

Subject to subsection (a) (4) of this Rule, the term of each member is five years. A member may serve more than one term.

(3) Reimbursement; Compensation

A member is entitled to reimbursement for expenses

reasonably incurred in the performance of official duties in accordance with standard State travel regulations. In addition, the Court may provide compensation for the members.

(4) Removal

The Court of Appeals may remove a member of the Accommodations Review Committee at any time.

(b) Procedure for Appeal

(1) Notice of Appeal

An applicant whose request for a test accommodation pursuant to the ADA is denied in whole or in part by the Board may note an appeal to the Accommodations Review Committee by filing a Notice of Appeal with the Board.

Committee note: It is likely that an appeal may not be resolved before the date of the scheduled bar examination that the applicant has petitioned to take. No applicant "has the right to take a particular bar examination at a particular time, nor to be admitted to the bar at any particular time." *Application of Kimmer*, 392 Md. 251, 272 (2006). After an appeal has been resolved, the applicant may file a timely petition to take a later scheduled bar examination with the accommodation, if any, granted as a result of the appeal process.

(2) Transmittal of Record

Upon receiving a notice of appeal, the Board promptly shall (A) transmit to the Chair of the Accommodations Review Committee a copy of the applicant's request for a test accommodation, all documentation submitted in support of the request, the report of each expert retained by the Board to analyze the applicant's request, and the Board's letter denying the request and (B) mail to the applicant notice of the transmittal and a copy of each report of an expert retained by

the Board.

(3) Hearing

The Chair of the Accommodations Review Committee shall appoint a panel of the Committee, consisting of two attorneys and one non-attorney, to hold a hearing at which the applicant and the Board have the right to present witnesses and documentary evidence and be represented by an attorney. In the interest of justice, the panel may decline to require strict application of the Rules in Title 5, other than those relating to the competency of witnesses. Lawful privileges shall be respected. The hearing shall be recorded verbatim by shorthand, stenotype, mechanical, or electronic audio recording methods, electronic word or text processing methods, or any combination of those methods.

(4) Report

The panel shall (A) file with the Board a report containing its recommendation, the reasons for the recommendation, and findings of fact upon which the recommendation is based, (B) mail a copy of its report to the applicant, and (C) provide a copy of the report to the Chair of the Committee.

(c) Exceptions

Within 30 days after the report of the panel is filed with the Board, the applicant or the Board may file with the Chair of the Committee exceptions to the recommendation and shall mail a copy of the exceptions to the other party. Upon receiving the exceptions, the Chair shall cause to be prepared a transcript of

the proceedings and transmit to the Court of Appeals the record of the proceedings, which shall include the transcript and the exceptions. The Chair shall notify the applicant and the Board of the transmittal to the Court and provide to each party a copy of the transcript.

(d) Proceedings in the Court of Appeals

Proceedings in the Court of Appeals shall be on the record made before the panel. The Court shall require the party who filed exceptions to show cause why the exceptions should not be denied.

(e) If No Exceptions Filed

If no exceptions pursuant to section (c) of this Rule are timely filed, no transcript of the proceedings before the panel shall be prepared, the panel shall transmit its record to the Board, and the Board shall provide the test accommodation, if any, recommended by the panel.

Source: This Rule is derived from former Rule 6.1 of the Rules Governing Admission to the Bar of Maryland (2016).

REPORTER'S NOTE

Rule 19-205 is derived from current RGAB 6.1 with style changes.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 200 - ADMISSION TO THE BAR

Rule 19-206. BAR EXAMINATION

(a) Scheduling

The Board shall administer a written examination twice annually, once in February and once in July. The examination shall be held on two successive days. The total duration of the examination shall be not more than 12 hours nor less than nine hours, unless extended at the applicant's request pursuant to Rules 19-204 and 19-205. At least 30 days before an examination, the Board shall publish and have posted on the Judiciary website notice of the dates, times, and place or places of the examination.

(b) Purpose of Examination

The purpose of the bar examination is to enable applicants to demonstrate their capacity to achieve mastery of foundational legal doctrines, proficiency in fundamental legal skills, and competence in applying both to solve legal problems consistent with the highest ethical standards. It is the policy of the Court that no quota of successful applicants be set but that each applicant be judged for fitness to be a member of the Bar as demonstrated by the examination answers.

(c) Format and Scope of Examination

The Board shall prepare the examination and may adopt the

MBE and the MPT as part of it. The examination shall include an essay test. The Board shall define by rule the subject matter of the essay test, but the essay test shall include at least one question dealing in whole or in part with professional conduct.

(d) Grading

(1) The Board shall grade the examination and, by rule, shall establish a passing grade for the examination. The Board, by rule, may provide that an applicant may satisfy the MBE part of the Maryland examination requirement by applying a grade on an MBE taken in another state at the same examination.

(2) At any time before notifying applicants of the results, the Board, in its discretion and in the interest of fairness, may lower, but not raise, the passing grade it has established for any particular administration of the examination.

Source: This Rule is derived from former Rule 7 of the Rules Governing Admission to the Bar of Maryland (2016).

REPORTER'S NOTE

Rule 19-206 is derived from current RGAB 7 with style changes. Section (b), Purpose of Examination, is revised in accordance with Recommendation 8 of the Professionalism Center Bar Admission Task Force.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 200 - ADMISSION TO THE BAR

Rule 19-207. NOTICE OF GRADES AND REVIEW PROCEDURE

(a) Notice of Grades; Alteration

The Board shall send notice of examination results to each applicant by regular mail, postage prepaid. Successful applicants shall be notified only that they have passed. Unsuccessful applicants shall be given their grades in the detail the Board considers appropriate. Thereafter, the Board may not alter any applicant's grades except when necessary to correct a clerical error.

(b) Review Procedure

On written request filed with the Board within 60 days after the date the examination results are mailed, unsuccessful applicants, in accordance with the procedures prescribed by the Board, may (1) review their essay test answers and the Board's analysis for the essay test, (2) review their MPT answer books, (3) order the National Conference of Bar Examiners' MPT Point Sheet and Grading Guidelines, and (4) upon payment of the required costs, obtain confirmation of their MBE scores. No further review of the MBE shall be permitted.

Source: This Rule is derived from former Rule 8 of the Rules Governing Admission to the Bar of Maryland (2016).

REPORTER'S NOTE

Rule 19-207 is derived from current RGAB 8 with style changes.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 200 - ADMISSION TO THE BAR

Rule 19-208. RE-EXAMINATION AFTER FAILURE

(a) Petition for Re-examination

An unsuccessful applicant may file a petition to take another scheduled examination. The petition shall be on the form prescribed by the Board and shall be accompanied by the required examination fee.

(b) Request for Test Accommodation

An applicant who seeks a test accommodation under the ADA for the bar examination shall file with the Board an "Accommodation Request" on a form prescribed by the Board, together with any supporting documentation that the Board requires. The form and documentation shall be filed no later than the deadline stated in section (c) of this Rule for filing a petition to take a scheduled bar examination.

Committee note: An applicant who may need a test accommodation is encouraged to file an Accommodation Request as early as possible.

Cross reference: See Rule 19-205 for the procedure to appeal a denial of a request for a test accommodation.

(c) Time for Filing

An applicant who intends to take the July examination shall file the petition, together with the prescribed fee, no later than the preceding May 20. An applicant who intends to

take the examination in February shall file the petition, together with the prescribed fee, no later than the preceding December 20. Upon written request of an applicant and for good cause shown, the Board may accept a petition filed after that deadline. If the Board rejects the petition for lack of good cause for the untimeliness, the applicant may file an exception with the Court within five business days after notice of the rejection is mailed.

(d) Deferment of Re-examination

To meet scheduling needs at either the July or the February examination, the Board may require an applicant to defer re-examination for one sitting.

(e) Three or More Failures - Re-examination Conditional

If an applicant fails three or more examinations, the Board may condition retaking of the examination on the successful completion of specified additional study.

(f) No Refunds

If an applicant withdraws the petition or fails to attend and take the examination, the examination fee shall not be refunded except for good cause shown. The examination fee may not be applied to a subsequent examination unless the applicant is required by the Board to defer retaking the examination or establishes good cause for the withdrawal or failure to attend.

Source: This Rule is derived from former Rule 9 of the Rules Governing Admission to the Bar of Maryland (2016).

REPORTER'S NOTE

See the Reporter's note to Rule 19-204. The style of section (f) is conformed to the style of Rule 19-204 (e). Section (c) contains the addition of the "for lack of good cause for the untimeliness" standard that also appears in Rules 19-204 and 19-207. Also in section (c), the time for filing an exception is clarified to read, "within five business days after notice of the rejection is mailed."

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 200 - ADMISSION TO THE BAR

Rule 19-209. REPORT TO COURT - ORDER

(a) Report and Recommendations as to Applicants

As soon as practicable after each examination, the Board shall file with the Court a report containing (1) the names of the applicants who successfully completed the bar examination and (2) the Board's recommendation for admission. The Board's recommendation with respect to each applicant shall be conditioned on the outcome of any character proceedings relating to that applicant and satisfaction of the requirement of Rule 19-210.

(b) Order of Ratification

On receipt of the Board's report, the Court shall enter an order fixing a date at least 30 days after the filing of the report for ratification of the Board's recommendations. The order shall include the names of all applicants who are recommended for admission, including those who are conditionally recommended. The order shall state generally that all recommendations are conditioned on character approval and satisfaction of the requirement of Rule 19-210, but shall not identify those applicants as to whom proceedings are still pending. The order shall be posted on the Judiciary website no later than 5 days after the date of the order and remain on the

website until ratification.

(c) Exceptions

Before ratification of the Board's report, any person may file with the Court exceptions relating to any relevant matter. For good cause shown, the Court may permit the filing of exceptions after ratification of the Board's report and before the applicant's admission to the Bar. The Court shall give notice of the filing of exceptions to (1) the applicant, (2) the Board, and (3) the Character Committee that passed on the applicant's application. A hearing on the exceptions shall be held to allow the person filing exceptions, the applicant, the Board, and, if an exception involves an issue of character, the Character Committee to present evidence in support of or in opposition to the exceptions and be heard. The Court may hold the hearing or may refer the exceptions to the Board, the Character Committee, or an examiner for hearing. The Board, Character Committee, or examiner hearing the exceptions shall file with the Court, as soon as practicable after the hearing, a report of the proceedings. The Court may decide the exceptions without further hearing.

(d) Ratification of Board's Report

On expiration of the time fixed in the order entered pursuant to section (b) of this Rule, the Board's report and recommendations shall be ratified subject to the conditions stated in the recommendations and to any exceptions noted under section (c) of this Rule.

Source: This Rule is derived from former Rule 10 of the Rules Governing Admission to the Bar of Maryland (2016).

REPORTER'S NOTE

Rule 19-209 is derived from current Rule RGAB 10 and contains style changes only, except that in section (b), posting on the Judiciary website replaces publication in the Maryland Register.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 200 - ADMISSION TO THE BAR

Rule 19-210. REQUIRED ORIENTATION PROGRAM

(a) Appointment of Work Group

The Court of Appeals shall appoint a work group of not more than seven individuals to develop and present to the Court for its approval an orientation program for effectively informing applicants of certain core requirements, established by Rules of the Court or other law, for engaging in the practice of law in Maryland.

(b) Contents of Program

The program shall include information regarding (1) reporting requirements established by Rules of the Court, (2) obligations to the Client Protection Fund and the Disciplinary Fund established by Rule or statute, (3) Rules governing attorney trust accounts and the handling of client funds and papers, and (4) the Rules of Professional Conduct regarding competence, scope of representation, diligence, communications with clients, fees, confidentiality, conflicts of interest, declining representation, meritorious claims, candor toward tribunals, and law firms.

(c) Timing

The program shall be given at the times and for the periods directed by the Court.

(d) Duration; Materials; Participation from Remote Location

The program shall not exceed three hours in duration. It may include the provision of written materials distributed in a manner determined by the Court but, to the extent practicable, it shall be given in electronic form, so that an applicant may participate from a remote location, subject to appropriate verification of the applicant's actual participation.

(e) Participation Requirement

Commencing June 1, 2016, an applicant may not be admitted to the Bar unless (1) prior to admission, the applicant has produced evidence satisfactory to the Board that the applicant satisfactorily participated in the program, or (2) the applicant has been excused from that requirement by Order of the Court of Appeals.

Committee note: The purpose of the orientation program is to assure that newly admitted attorneys are familiar with core requirements for practicing law in Maryland, the violation of which may result in their authority to practice law being suspended or revoked. The program is not intended to take the place of broader programs on professionalism offered by law schools, bar associations, and other entities, in which the Court of Appeals strongly encourages all attorneys to participate.

Source: This Rule is derived from former Rule 11 of the Rules Governing Admission to the Bar of Maryland (2016).

REPORTER'S NOTE

This Rule carries forward the revisions to RGAB 11 that were adopted effective January 1, 2016, with stylistic changes.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 200 - ADMISSION TO THE BAR

Rule 19-211. ORDER OF ADMISSION; TIME LIMITATION

(a) Order of Admission

When the Court has determined that an applicant is qualified to practice law and is of good moral character, it shall enter an order directing that the applicant be admitted to the Bar on taking the oath required by law.

(b) Time Limitation for Taking Oath - Generally

An applicant who has passed the Maryland Bar examination may not take the oath of admission to the Bar later than 24 months after the date that the Court of Appeals ratified the Board's report for that examination.

(c) Extension

For good cause, the Board may extend the time for taking the oath, but the applicant's failure to take action to satisfy admission requirements does not constitute good cause.

(d) Consequence of Failure to Take Oath Timely

An applicant who fails to take the oath within the required time period shall reapply for admission and retake the bar examination, unless excused by the Court.

Cross reference: See Code, Business Occupations and Professions Article, §10-212, for form of oath.

Source: This Rule is derived from former Rule 12 of the Rules Governing Admission to the Bar of Maryland (2016).

REPORTER'S NOTE

The Rules Committee recommends that the "conditions precedent" be referred to in a separate Rule rather than a cross reference. See proposed new Rule 19-218, *infra*.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 200 - ADMISSION TO THE BAR

Rule 19-212. ELIGIBILITY OF OUT-OF-STATE ATTORNEYS FOR
ADMISSION BY ATTORNEY EXAMINATION

(a) Generally

An individual is eligible for admission to the Bar of this State under this Rule if the individual:

(1) is a member of the Bar of a state;

(2) has passed a written bar examination in a state or is admitted to a state bar by diploma privilege after graduating from a law school accredited by the American Bar Association;

(3) has the professional experience required by this Rule;

(4) successfully completes the attorney examination prescribed by Rule 19-213; and

(5) possesses the good moral character and fitness necessary for the practice of law.

(b) Required Professional Experience

The professional experience required for admission under this Rule shall be on a full time basis as (1) a practitioner of law as provided in section (c) of this Rule; (2) a teacher of law at a law school accredited by the American Bar Association; (3) a judge of a court of record in a state; or (4) a combination thereof.

(c) Practitioner of Law

(1) Subject to subsections (c) (2) and (3) of this Rule, a practitioner of law is an individual who has regularly engaged in the authorized practice of law:

(A) in a state;

(B) as the principal means of earning a livelihood; and

(C) whose professional experience and responsibilities have been sufficient to satisfy the Board that the individual should be admitted under this Rule and Rule 19-213.

(2) As evidence of the requisite professional experience, for purposes of subsection (c) (1) (C) of this Rule, the Board may consider, among other things:

(A) the extent of the individual's experience in the practice of law;

(B) the individual's professional duties and responsibilities, the extent of contacts with and responsibility to clients or other beneficiaries of the individual's professional skills, the extent of professional contacts with practicing attorneys and judges, and the individual's professional reputation among those attorneys and judges; and

(C) any professional articles or treatises that the individual has written.

(3) The Board may consider as the equivalent of practice of law in a state practice outside the United States if the Board concludes that the nature of the practice makes it the functional equivalent of practice within a state.

(d) Duration of Professional Experience

(1) An individual shall have the professional experience required by section (b) of this Rule for (A) a total of ten years, or (B) at least five of the ten years immediately preceding the filing of a petition pursuant to Rule 19-213.

(e) Exceptional Cases

In exceptional cases, the Board may treat an individual's actual experience, although not meeting the literal requirements of subsections (c)(1) or section (d) of this Rule, as the equivalent of the professional experience otherwise required by this Rule.

Source: This Rule is derived from sections (a) through (e) of former Rule 13 of the Rules Governing Admission to the Bar of Maryland (2016).

REPORTER'S NOTE

Rule 19-212 is derived from sections (a) through (e) of current Rule 13 of the Rules Governing Admission to the Bar.

Rule 13 (a)(2) contains a provision that an out-of-state attorney who seeks admission to the Maryland Bar may take the attorney examination, rather than the regular bar examination, if the individual has passed a written bar examination in another state. Some attorneys from Wisconsin who wish to be admitted to the Maryland Bar contend that this provision discriminates against them because, in Wisconsin, an individual who has graduated from an A.B.A.-accredited law school in that state may be admitted to the Wisconsin Bar under "diploma privilege," without taking a written bar examination. The State Board of Law Examiners has considered this matter and has approved the proposed addition of language to Rule 19-212 to allow out-of-state attorneys who have graduated from an A.B.A.-accredited law school and were admitted to the Bar of another state pursuant to "diploma privilege" in that state to be eligible to take the attorneys examination, rather than the regular bar examination.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 200 - ADMISSION TO THE BAR

Rule 19-213. ADMISSION OF OUT-OF-STATE ATTORNEYS BY ATTORNEY
EXAM - PROCEDURE

(a) Petition

(1) An individual eligible pursuant to Rule 19-212 shall file with the Board a petition under oath on a form prescribed by the Board, accompanied by the fees required by the Board and the costs assessed for the character and fitness investigation and report by the National Conference of Bar Examiners.

(2) The petitioner shall list (A) each state in which the petitioner has been admitted to the Bar and whether each admission was by examination, by diploma privilege or on motion; and (B) the additional facts showing that the petitioner meets the requirements of section (a) of Rule 19-212 or should be qualified under section (e) of Rule 19-212.

(3) The petitioner shall file with the petition the supporting data required by the Board as to the petitioner's professional experience, character, and fitness to practice law.

(4) The petitioner shall be under a continuing obligation to report to the Board any material change in information previously furnished.

(b) Request for Test Accommodation

A petitioner who seeks a test accommodation under the ADA

for the attorney examination shall file with the Board an "Accommodation Request" on a form prescribed by the Board, together with any supporting documentation that the Board requires. The form and documentation shall be filed no later than the deadline stated in section (d) of this Rule for filing a petition to take a scheduled attorney examination.

Committee note: A petitioner who may need a test accommodation is encouraged to file an Accommodation Request as early as possible.

Cross reference: See Rule 19-205 for the procedure to appeal a denial of a request for a test accommodation.

(c) Refunds

If the Board determines on the face of the petition that the petitioner is not qualified to sit for the attorney's examination and the petitioner elects to withdraw the petition without further proceedings, all fees shall be refunded. If, in other circumstances, a petitioner withdraws the petition or fails to attend and take the examination without permission from the Board, no fees shall be refunded and the examination fee may not be applied to a subsequent examination unless the petitioner establishes good cause for the withdrawal or failure to attend.

(d) Time for Filing

The petition shall be filed at least 60 days before the scheduled attorney examination that the petitioner wishes to take. On written request of the petitioner and for good cause shown, the Board may accept a petition filed after the deadline. If the Board rejects the petition for lack of good cause for the

untimeliness, the petitioner may file an exception with the Court within five business days after notice of the rejection is mailed.

Cross reference: See Board Rule 2.

(e) Standard for Admission and Burden of Proof

(1) The petitioner bears the burden of proving to the Board and the Court that the petitioner is qualified on the basis of professional experience and possesses the good moral character and fitness necessary to practice law in this State.

(2) If the petitioner does not meet the burden of proof, the Board shall recommend rejection of the petition. Failure or refusal to answer fully and candidly any relevant questions asked by the Board, either orally or in writing, is sufficient cause for rejection of the petition.

(f) Action by Board on Petition

The Board shall investigate the matters set forth in the petition.

(1) If the Board decides that the petition should be accepted, it shall mail to the petitioner notice of its decision to recommend acceptance of the petition.

(2) If the Board concludes that there may be grounds for rejecting the petition, the Board shall notify the petitioner and shall afford the petitioner an opportunity for a hearing. The hearing shall not be held until after the National Conference of Bar Examiners completes its investigation of the petitioner's character and fitness to practice law and reports to the Board.

The petitioner may be represented by an attorney at the hearing. Promptly after the Board makes its final decision to recommend acceptance or rejection of the petition, the Board shall mail notice of its decision to the petitioner.

(3) If the Board decides to recommend rejection of the petition, it shall file with the Court a report of its decision and all papers relating to the matter.

(g) Exceptions

Within 30 days after the Board mails notice of its adverse decision to the petitioner, the petitioner may file with the Court exceptions to the Board's decision. The petitioner shall mail or deliver to the Board a copy of the exceptions. The Court may hear the exceptions or may appoint an examiner to hear the evidence and shall afford the Board an opportunity to be heard on the exceptions.

(h) Attorney Examination

In order to be admitted to the Maryland Bar, the petitioner shall pass an attorney examination prescribed by the Board. The Board, by rule, shall define the subject matter of the examination, prepare the examination, and establish the passing grade. The Board shall administer the attorney examination on a date and at a time during the administration of the regular examination pursuant to Rule 19-206 and shall publish at least 30 days in advance notice of the date and time of the examination. The Board shall grade the examination and shall send notice of examination results to each petitioner by first-

class mail. Successful petitioners shall be notified only that they have passed. Unsuccessful petitioners shall be given their grades in the detail the Board considers appropriate.

Thereafter, the Board may not alter any petitioner's grades except to correct a clerical error. Review by unsuccessful petitioners shall be in accordance with the provisions of Rule 19-207 (b).

(i) Re-examination

In the event of failure on the first attorney examination, a petitioner may file a petition to retake the examination, but a petitioner may not be admitted under this Rule after failing four examinations. A petition for re-examination shall be accompanied by the required fees. Failure to pass the attorney examination shall not preclude any individual from taking the regular examination.

(j) Report to Court - Order

The Board shall file a report and recommendations pursuant to Rule 19-209. Proceedings on the report, including the disposition of any exceptions filed, shall be as prescribed in that Rule. If the Court determines that the petitioner has met all the requirements of this Rule, it shall enter an order directing that the petitioner be admitted to the Bar of Maryland on taking the oath required by law.

(k) Required Orientation Program

A petitioner recommended for admission pursuant to section (j) of this Rule shall comply with Rule 19-210.

(1) Time Limitation for Admission to the Bar

A petitioner under this Rule is subject to the time limitation of Rule 19-211.

Cross reference: See Code, Business Occupations and Professions Article, §10-212, for the form of oath.

Source: This Rule is derived from sections (f) through (q) of former Rule 13 of the Rules Governing Admission to the Bar of Maryland (2016).

REPORTER'S NOTE

Rule 19-213 is derived from sections (f) through (q) of current RGAB 13 with style changes. Section (d) contains the addition of the same standard that was added to Rules 19-204 and 19-208 for the Board to reject a petition to take the attorney examination. Also in section (d), the time for filing an exception is clarified to read, "within five business days after notice of the rejection is mailed." In section (h), a sentence is added to conform to parallel procedures for the general bar examination contained in Rule 19-207 (a). In section (k), a required orientation program replaces the previously required course on professionalism.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 200 - ADMISSION TO THE BAR

Rule 19-214. SPECIAL ADMISSION OF OUT-OF-STATE ATTORNEYS PRO HAC VICE

(a) Motion for Special Admission

(1) Generally

A member of the Bar of this State who (A) is an attorney of record in an action pending (i) in any court of this State, or (ii) before an administrative agency of this State or any of its political subdivisions, or (B) is representing a client in an arbitration taking place in this State that involves the application of Maryland law, may move that an attorney who is a member in good standing of the Bar of another state be admitted to practice in this State for the limited purpose of appearing and participating in the action as co-counsel with the movant.

Committee note: "Special admission" is a term equivalent to "admission pro hac vice." It should not be confused with "special authorization" permitted by Rules 19-215 and 19-216.

(2) Where Filed

(A) If the action is pending in a court, the motion shall be filed in that court.

(B) If the action is pending before an administrative agency, the motion shall be filed in the circuit court for the county in which the principal office of the agency is located or in any other circuit court in which an action for judicial review

of the decision of the agency may be filed.

(C) If the matter is pending before an arbitrator or arbitration panel, the motion shall be filed in the circuit court for the county in which the arbitration hearing is to be held or in any other circuit court in which an action to review an arbitral award entered by the arbitrator or panel may be filed.

(3) Other Requirements

The motion shall be in writing and shall include the movant's certification that copies of the motion have been served on the agency or the arbitrator or arbitration panel, and all parties of record.

Cross reference: See Appendix 19-A following Title 19, Chapter 200 of these Rules for Forms 19-A.1 and 19-A.2, providing the form of a motion and order for the Special Admission of an out-of-state attorney.

(b) Certification by Out-of-State Attorney

The attorney whose special admission is moved shall certify in writing the number of times the attorney has been specially admitted during the twelve months immediately preceding the filing of the motion. The certification may be filed as a separate paper or may be included in the motion under an appropriate heading.

(c) Order

The court by order may admit specially or deny the special admission of an attorney. In either case, the clerk shall forward a copy of the order to the State Court Administrator, who shall maintain a docket of all attorneys granted or denied

special admission. When the order grants or denies the special admission of an attorney in an action pending before an administrative agency, the clerk also shall forward a copy of the order to the agency.

(d) Limitations on Out-of-State Attorney's Practice

An attorney specially admitted pursuant to this Rule may act only as co-counsel for a party represented by an attorney of record in the action who is admitted to practice in this State. The specially admitted attorney may participate in the court or administrative proceedings only when accompanied by the Maryland attorney, unless the latter's presence is waived by the judge or administrative hearing officer presiding over the action. An attorney specially admitted is subject to the Maryland Attorneys' Rules of Professional Conduct during the pendency of the action or arbitration.

Cross reference: See Code, Business Occupations and Professions Article, §10-215.

Committee note: This Rule is not intended to permit extensive or systematic practice by attorneys not admitted in Maryland. Because specialized expertise or other special circumstances may be important in a particular case, however, the Committee has not recommended a numerical limitation on the number of special admissions to be allowed any out-of-state attorney.

Source: This Rule is derived from former Rule 14 of the Rules Governing Admission to the Bar of Maryland (2016).

REPORTER'S NOTE

Rule 19-214 contains style changes and a new Committee note after subsection (a) (1), which clarifies the term "admission pro hac vice." Part of the cross reference after subsection (a) (3) has been deleted as superfluous. The Committee note at the end of the Rule has been shortened by deleting superfluous language.

Rule 19-214

Forms RGAB-14/M and RGAB-14/O, providing the form of a motion and order for the Special Admission of an out-of-state attorney under Rule 19-214 are renumbered Form 19-A.1 and Form 19-A.2, respectively, and placed in an appendix to Chapter 200 of Title 19 (Appendix 19-A: Forms for Special Admission of Out-of-State Attorney).

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 200 - ADMISSION TO THE BAR

Rule 19-215. SPECIAL AUTHORIZATION FOR OUT-OF-STATE
ATTORNEYS AFFILIATED WITH PROGRAMS PROVIDING LEGAL SERVICES TO
LOW-INCOME INDIVIDUALS

(a) Definition

As used in this Rule, "legal services program" means a program operated by (1) an entity that provides civil legal services to low-income individuals in Maryland who meet the financial eligibility requirements of the Maryland Legal Services Corporation and is on a list of such programs provided by the Corporation to the State Court Administrator and posted on the Judiciary website pursuant to Rule 19-505; (2) the Maryland Office of the Public Defender; (3) a clinic offering pro bono legal services and operating in a courthouse facility; or (4) a local pro bono committee or bar association affiliated project that provides pro bono legal services.

(b) Eligibility

Pursuant to this Rule, a member of the Bar of another state who is employed by or associated with a legal services program may practice in this State pursuant to that program if (1) the individual is a graduate of a law school meeting the requirements of Rule 19-201 (a) (2) and (2) the individual will practice under the supervision of a member of the Bar of this

State.

Cross reference: For the definition of "State," see Rule 19-101 (i).

(c) Proof of Eligibility

To obtain authorization to practice under this Rule, the out-of-state attorney shall file with the Clerk of the Court of Appeals a written request accompanied by (1) evidence of graduation from a law school as defined in Rule 19-201 (a)(2), (2) a certificate of the highest court of another state certifying that the attorney is a member in good standing of the Bar of that state, and (3) a statement signed by the Executive Director of the legal services program that includes (A) a certification that the attorney is currently employed by or associated with the program, (B) a statement as to whether the attorney is receiving any compensation other than reimbursement of reasonable and necessary expenses, and (C) an agreement that, within ten days after cessation of the attorney's employment or association, the Executive Director will file the Notice required by section (e) of this Rule.

(d) Certificate of Authorization to Practice

Upon the filing of the proof of eligibility required by this Rule, the Clerk of the Court of Appeals shall issue a certificate under the seal of the Court certifying that the attorney is authorized to practice under this Rule, subject to the automatic termination provision of section (e) of this Rule. The certificate shall state (1) the effective date, (2) whether

the attorney (A) is authorized to receive compensation for the practice of law under this Rule or (B) is authorized to practice exclusively as a pro bono attorney pursuant to Rule 19-504, and (3) any expiration date of the special authorization to practice. If the attorney is receiving compensation for the practice of law under this Rule, the expiration date shall be no later than two years after the effective date. If the attorney is receiving no compensation other than reimbursement of reasonable and necessary expenses, no expiration date shall be stated.

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

(e) Automatic Termination

Authorization to practice under this Rule is automatically terminated if the attorney ceases to be employed by or associated with the legal services program. Within ten days after cessation of the attorney's employment or association, the Executive Director of the legal services program shall file with the Clerk of the Court of Appeals notice of the termination of authorization.

(f) Disciplinary Proceedings in Another Jurisdiction

Promptly upon the filing of a disciplinary proceeding in another jurisdiction, an attorney authorized to practice under this Rule shall notify the Executive Director of the legal services program of the disciplinary matter. An attorney authorized to practice under this Rule who in another jurisdiction (1) is disbarred, suspended, or otherwise

disciplined, (2) resigns from the bar while disciplinary or remedial action is threatened or pending in that jurisdiction, or (3) is placed on inactive status based on incapacity shall inform Bar Counsel and the Clerk of the Court of Appeals promptly of the discipline, resignation, or inactive status.

(g) Revocation or Suspension

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

(h) Special Authorization not Admission

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

(i) Rules of Professional Conduct

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

(j) Reports

Upon request by the Administrative Office of the Courts,

Rule 19-215

an attorney authorized to practice under this Rule shall timely file an IOLTA Compliance Report in accordance with Rule 19-409 and a Pro Bono Legal Service Report in accordance with Rule 19-503.

Source: This Rule is derived from former Rule 15 of the Rules Governing Admission to the Bar of Maryland (2016).

REPORTER'S NOTE

Rule 19-215 carries forward the provisions of current RGAB 15.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 200 - ADMISSION TO THE BAR

Rule 19-216. SPECIAL AUTHORIZATION FOR MILITARY SPOUSE
ATTORNEYS

(a) Definition

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

Cross reference: For the definition of "State," see Rule 19-101 (i).

(b) Eligibility

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

(1) is a graduate of a law school meeting the requirements of Rule 19-201 (a) (2);

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

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

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

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

(6) certifies that the individual will comply with the requirements of Rule 19-605; and

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

Cross reference: See Rule 19-305.1 (5.1) for the responsibilities of a supervising attorney.

(c) Proof of Eligibility

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

(1) evidence of graduation from a law school meeting the requirements of Rule 19-201 (a) (2);

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

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

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

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

(A) resides in Maryland;

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

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

(D) will comply with the requirements of Rule 19-605; and

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

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

authorized to handle.

(d) Certificate of Authorization to Practice

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

(e) Automatic Termination

(1) Cessation of Employment

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

of authorization.

(2) Change in Status

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

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

(f) Disciplinary Proceedings in Another Jurisdiction

Promptly upon the filing of a disciplinary proceeding in another jurisdiction, a military spouse attorney shall notify the supervising attorney of the disciplinary matter. A military spouse attorney who in another jurisdiction (1) is disbarred, suspended, or otherwise disciplined, (2) resigns from the bar

while disciplinary or remedial action is threatened or pending in that jurisdiction, or (3) is placed on inactive status based on incapacity shall inform Bar Counsel and the Clerk of the Court of Appeals promptly of the discipline, resignation, or inactive status.

(g) Revocation or Suspension

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

(h) Special Authorization not Admission

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

(i) Rules of Professional Conduct; Required Payments

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

(j) Reports

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

Rule 19-216

Rule 19-409 and a Pro Bono Legal Service Report in accordance with Rule 19-503.

Source: This Rule is derived from former Rule 15.1 of the Rules Governing Admission to the Bar of Maryland (2016).

REPORTER'S NOTE

Rule 19-216 carries forward the provisions of current RGAB 15.1.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 200 - ADMISSION TO THE BAR

Rule 19-217. LEGAL ASSISTANCE BY LAW STUDENTS

(a) Definitions

As used in this Rule, the following terms have the following meanings:

(1) Law School

"Law school" means a law school that meets the requirements of Rule 19-201 (a) (2).

(2) Clinical Program

"Clinical program" means a law school program for credit in which a student obtains experience in the operation of the legal system by engaging in the practice of law that (A) is under the direction of a faculty member of the school and (B) has been approved by the Section Council of the Section of Legal Education and Admission to the Bar of the Maryland State Bar Association, Inc.

(3) Externship

"Externship" means a field placement for credit in a government or not-for-profit organization in which a law student obtains experience in the operation of the legal system by engaging in the practice of law, that (A) is under the direction of a faculty member of a law school, (B) is in compliance with the applicable American Bar Association standard for study

outside the classroom, (C) has been approved by the Section Council of the Section of Legal Education and Admission to the Bar of Maryland State Bar Association, Inc., and (D) is not part of a clinical program of a law school.

(4) Supervising Attorney

"Supervising attorney" means an attorney who is a member in good standing of the Bar of this State and whose service as a supervising attorney for the clinical program or externship is approved by the dean of the law school in which the law student is enrolled or by the dean's designee.

(b) Eligibility

A law student enrolled in a clinical program or externship is eligible to engage in the practice of law as provided in this Rule if the student:

(1) is enrolled in a law school;

(2) has read and is familiar with the Maryland Attorneys' Rules of Professional Conduct and the relevant Maryland Rules of Procedure; and

(3) has been certified in accordance with section (c) of this Rule.

(c) Certification

(1) Contents and Filing

The dean of the law school shall file the certification of a student with the Clerk of the Court of Appeals. The certification shall state that the student is in good academic standing and has successfully completed legal studies in the law

school amounting to the equivalent of at least one-third of the total credit hours required to complete the law school program. It also shall state its effective date and expiration date, which shall be no later than one year after the effective date.

(2) Withdrawal or Suspension

The dean may withdraw the certification at any time by mailing a notice to that effect to the Clerk of the Court of Appeals. The certification shall be suspended automatically upon the issuance of an unfavorable report of the Character Committee made in connection with the student's application for admission to the Bar. Upon any reversal of the unfavorable report, the certification shall be reinstated.

(d) Practice

In connection with a clinical program or externship, a law student for whom a certification is in effect may appear in any trial court or the Court of Special Appeals, or before any administrative agency, and may otherwise engage in the practice of law in Maryland, provided that the supervising attorney (1) is satisfied that the student is competent to perform the duties assigned, (2) assumes responsibility for the quality of the student's work, (3) directs and assists the student to the extent necessary, in the supervising attorney's professional judgment, to ensure that the student's participation is effective on behalf of the client the student represents, and (4) accompanies the student when the student appears in court or before an administrative agency. The law student shall neither ask for nor

receive personal compensation of any kind for service rendered under this Rule, but may receive academic credit pursuant to the clinical program or externship.

Source: This Rule is derived from former Rule 16 of the Rules Governing Admission to the Bar of Maryland (2016).

REPORTER'S NOTE

Rule 19-217 is derived from current RGAB 16 and contains style changes. At the request of the Maryland State Bar Association's Section Council for Legal Education and Admission to the Bar, the Rule is made applicable to "externships" in addition to "clinical programs."

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 200 - ADMISSION TO THE BAR

Rule 19-218. ADDITIONAL CONDITIONS PRECEDENT TO THE PRACTICE OF
LAW

Maryland Rule 19-605 (Obligations of Attorneys) and Maryland Rule 19-705 (Disciplinary Fund) require individuals admitted to the Maryland Bar, as a condition precedent to the practice of law in this State, to pay an annual assessment to the Client Protection Fund of the Bar of Maryland and the Attorney Grievance Commission Disciplinary Fund. Except as otherwise provided in Rule 19-215 (h), out-of-state attorneys specially authorized to practice pursuant to Rule 19-215 and military spouse attorneys specially authorized to practice pursuant to Rule 19-216 also shall pay the annual assessments required by Rules 19-605 and 19-705.

Source: This Rule is new but is derived from the cross reference to former Rule 12 of the Rules Governing Admission to the Bar of Maryland (2016).

REPORTER'S NOTE

The language added to Rule 19-218 is the substance of the language of the cross reference to current RGAB 12 with the addition of specific references to "specially authorized" out-of-state attorneys and military spouse attorneys.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 200 - ADMISSION TO THE BAR

Rule 19-219. SUSPENSION OR REVOCATION OF ADMISSION

If an attorney admitted to the Bar of this State is discovered to have been ineligible for admission under circumstances that do not warrant disbarment or other disciplinary proceedings, the Court of Appeals, upon a recommendation by the Board and after notice and opportunity to be heard, may suspend or revoke the attorney's admission. In the case of a suspension, the Court shall specify in its order the duration of the suspension and the conditions upon which the suspension may be lifted.

Source: This Rule is derived from former Rule 21 of the Rules Governing Admission to the Bar of Maryland (2016).

REPORTER'S NOTE

Rule 19-219 is derived from current RGAB 21 with style changes.

MARYLAND RULES OF PROCEDURE

RULES OF THE BOARD

Board Rule 1. APPLICATION FEES

- (a) General Bar Examination
- (b) Out-of-State Attorney Examination

Board Rule 2. FILING LATE FOR GOOD CAUSE

Board Rule 3. TEST ACCOMMODATIONS PURSUANT TO THE AMERICANS WITH DISABILITIES ACT

- (a) Policy
- (b) Requesting Test Accommodations
- (c) Review by Board
 - (1) Initial Review for Sufficiency
 - (2) Board Determination
- (d) Appeal to the Accommodations Review Committee

Board Rule 4. EXAMINATION - SUBJECT MATTER

Board Rule 5. EXAMINATION FORMAT, SCORING, AND PASSING STANDARD

- (a) Authority
- (b) Multistate Bar Examination (MBE)
- (c) Written Test: Board's Essay Test and the Multistate
- (d) Combining MBE and Essay Test Scores to Calculate Total Examination Score
- (e) Passing Standard
- (f) No Carryover of MBE Score or Essay Score from Prior Examinations
- (g) Recognition of MBE Score Achieved Concurrently in Another State
- (h) Adjustment of Passing Standard

Board Rule 6. OUT-OF-STATE ATTORNEY EXAMINATION

- (a) Subject Matter
- (b) Time - Duration
- (c) Requirement for Passing

Board Rule 7. ELIGIBILITY TO TAKE THE EXAMINATION PURSUANT TO
RULE 19-201 (b) (2)

MARYLAND RULES OF PROCEDURE

RULES OF THE BOARD

Board Rule 1. APPLICATION FEES

(a) General Bar Examination

(1) An application filed pursuant to Rule 19-202 shall be accompanied by a check or money order payable to the State Board of Law Examiners in the amount of \$275.

(2) An updated application filed pursuant to Rule 19-202 (e) shall be accompanied by a check or money order payable to the State Board of Law Examiners in the amount of \$70.

(3) A petition to take a scheduled bar examination pursuant to Rule 19-204 shall be accompanied by a check or money order in the amount of \$250.

(b) Out-of-State Attorney Examination

(1) A petition filed pursuant to Rule 19-212 shall be accompanied by a check or money order payable to the State Board of Law Examiners in the amount of \$700 and a separate check, money order, or credit card authorization for the National Conference of Bar Examiners in the amount required to cover the cost of the character and fitness investigation and report.

(2) A petition for re-examination filed pursuant to Rule 19-213 shall be accompanied by a check or money order payable to the State Board of Law Examiners in the amount of \$250.

REPORTER'S NOTE

Board Rule 1 contains style changes. With the elimination of a dual filing deadline in Rule 19-202, the filing fee provision in section (a) of Board Rule 1 is changed to a single sum. Subsection (a)(2) is new. Section (c) has been deleted as unnecessary.

MARYLAND RULES OF PROCEDURE

RULES OF THE BOARD

Board Rule 2. FILING LATE FOR GOOD CAUSE

An applicant's written request for acceptance of an application or petition filed late for good cause pursuant to Rule 19-202 (c) (3), Rule 19-204, or Rule 19-213 (d) shall include a statement indicating:

(a) whether the applicant's failure to timely file was due to facts and circumstances beyond the applicant's control, and stating those facts and circumstances;

(b) whether the applicant presently has a bar application pending in any other state;

(c) whether the applicant presently is a member of the Bar of any other state; and

(d) the specific nature of the hardship that would result if the applicant's request is denied.

REPORTER'S NOTE

Board Rule 2 contains style changes only.

MARYLAND RULES OF PROCEDURE

RULES OF THE BOARD

Board Rule 3. TEST ACCOMMODATIONS PURSUANT TO THE AMERICANS WITH DISABILITIES ACT

(a) Policy

In accordance with the ADA, the Board shall provide test accommodations to an applicant taking the Maryland Bar examination, to the extent that such accommodations are reasonable, consistent with the nature and purpose of the examination and necessitated by the applicant's disability.

(b) Requesting Test Accommodations

An individual shall be an applicant for admission to the Bar of Maryland prior to requesting test accommodations. In order to request test accommodations an applicant shall file a completed Applicant's Accommodations Request Form along with the specified supporting documentation. The Applicant's Accommodations Request Form shall be filed not later than the deadline for filing the petition to sit for the bar examination pursuant to Rules 19-204, 19-208, or 19-213.

(c) Review by Board

(1) Initial Review for Sufficiency

The Board's staff shall conduct an initial review of a request for test accommodations. The Board's staff shall reject a request if the request fails to adequately specify the test accommodations required or if the supporting documentation is

substantially incomplete or is otherwise deficient. If the request is rejected, the Board's staff shall advise the applicant in writing of the deficiencies in the request and supporting documents.

(2) Board Determination

If there is uncertainty about whether the requested test accommodation is warranted pursuant to the ADA, the applicant's request and all supporting documentation may be referred to a qualified expert retained by the Board to review and analyze whether the applicant has documented a disability and requested a reasonable accommodation. Thereafter, a designated member of the Board shall determine whether test accommodations should be granted after examining the applicant's request and the report of the Board's expert. The Board's staff shall advise the applicant in writing whether the request for test accommodations is granted or denied in whole or in part.

(d) Appeal to the Accommodations Review Committee

If the Board denies a request for test accommodations in whole or in part, the applicant may file an appeal with the Accommodations Review Committee pursuant to Rule 19-205.

REPORTER'S NOTE

Board Rule 3 contains only stylistic changes.

MARYLAND RULES OF PROCEDURE

RULES OF THE BOARD

Board Rule 4. EXAMINATION - SUBJECT MATTER

Pursuant to section (c) of Rule 19-206, the subject matter of the Board's essay test is defined as follows:

AGENCY

The law of agency shall be included on the examination only to the extent provided in the definitions of Business Associations, Contracts and Torts.

BUSINESS ASSOCIATIONS

The legal principles pertaining to forming, organizing, operating and dissolving business entities in Maryland and related principles of agency. The business entities include: (a) corporations, (b) close corporations, (c) limited liability companies, (d) professional service corporations, (e) general, limited, and limited liability partnerships, (f) joint ventures, (g) unincorporated associations, and (h) sole proprietorships. The subject also includes: (a) the rights, powers, duties and liabilities of owners, partners, member, shareholders, managers, directors, officers, (b) the issuance of shares or other ownership interests in business entities, (c) the distribution of dividends and assets, and (d) the allocation of profits and losses from business entities.

COMMERCIAL TRANSACTIONS

The law governing commercial transactions derived from the

following titles of the Maryland Code, Commercial Law Article: Sales (Title 2); Leases (Title 2A); Negotiable Instruments (Title 3); Bank Deposits and Collections (Title 4); Bulk Transfers (Title 6); and Secured Transactions (Title 9).

CONSTITUTIONAL LAW

The interpretation of the Constitution of the United States and its amendments, division of powers between the states and national government, powers of the President, the Congress, and the Supreme Court, limitations on the powers of the state and national government.

CONTRACTS

The consideration of agreements enforceable at law. The subject includes: (a) formation of contracts - offer and acceptance, mistake, fraud, misrepresentation or duress, contractual capacity, effect of illegality, consideration; informal contracts; (b) third-party beneficiary contracts; (c) assignment of contracts; (d) statute of frauds; (e) parol evidence rule, interpretation of contracts; (f) performance-conditions, failure of consideration, aleatory promises, rights of defaulting plaintiff, substantial performance, specific performance, (g) breach of contract and remedies therefor, including measure of damages; (h) impossibility of performance, frustration of purpose; and (i) discharge of contracts. This subject may also include law dealing with an agent's ability to bind a principal to a contract, and the agent's personal liability on a contract made

for a principal.

CRIMINAL LAW AND PROCEDURE

The law of crimes against the person; crimes against public peace and morals; property crimes; crimes involving the breach of public trust or civic duty, obstruction of justice; criminal responsibility, causation, justification and other defenses; constitutional limitations and protections. The law of criminal procedure includes the provisions of the Criminal Procedure Article of the Annotated Code of Maryland, Maryland Rules, Title 4, Criminal Causes, and to prosecutions for violations of criminal law.

EVIDENCE

The law governing the proof of issues of fact in civil and criminal trials including functions of the court and jury; competence of witnesses; examination, cross-examination and impeachment of witnesses; presumptions, burden of producing evidence and burden of persuasion; privileges against disclosure of information; relevancy; demonstrative, experimental and scientific evidence; opinion evidence; admissibility of writings; parol evidence rule; hearsay rule; judicial notice. The Board's Test shall cover only the Maryland substantive Law of Evidence, common law and statute, including the Maryland Rules of Evidence.

FAMILY LAW

The principles of Maryland law regarding creation of (or the existence of) the marriage relationship; termination of the marriage; alimony and support of the marriage partner; support

and custody of children; marital property issues; and prenuptial agreements. Includes both statutory and common law principles of Maryland law and procedure except for matters of adoption, paternity, and juvenile law.

MARYLAND CIVIL PROCEDURE

The various procedural steps and matters involved in an action at law or in equity, from commencement of the action to final disposition on appeal. The subject includes: (a) jurisdiction of courts; (b) venue; (c) parties and process; (d) forms of pleading; (e) motions and other means of raising procedural objections or defenses, including affirmative defenses and counter-claims; (f) discovery and other pre-trial procedures; (g) trial practice; (h) entry, effect and enforcement of judgments; (i) methods of taking appeal or otherwise securing appellate review; and (j) appellate practice and procedure. The subject embraces civil procedure and practice in the State courts. Federal Rules of practice and procedure are not covered on the examination.

PROFESSIONAL CONDUCT

The Maryland Attorneys' Rules of Professional Conduct set forth in Title 19, Chapter 300 of the Maryland Rules.

PROPERTY

The fundamentals of real property law including concepts of possession; concurrent and consecutive future estates in land (and their counterparts in testamentary and inter vivos trusts); leaseholds and landlord-tenant relationships; fixtures and the

distinction between real and personal property; covenants enforceable in equity; easements, profits and licenses; rights of user and exploitation in land (including rights to lateral and subjacent support); contracts of sale of real estate; the statute of limitations on real actions (adverse possession) and prescription; conveyancing priorities and recording (including marketable title); remedies. Problems of rules against perpetuities shall appear only on the MBE test.

TORTS

The law of civil wrongs. The subject includes, but is not limited to: (a) negligent torts including causation, standard of care, primary negligence, comparative and contributory negligence, assumption of risk, limitations on liability, contribution and indemnity; impact of insurance; (b) intentional torts; (c) strict liability, products liability; (d) nuisance; (e) invasion of privacy; (f) defamation; (g) vicarious liability; and (h) defenses, immunity and privilege, and damages in connection with any of these areas.

REPORTER'S NOTE

Language has been added to the section entitled "Evidence" to clarify that the Maryland Rules of Evidence are covered. The other changes are stylistic only.

MARYLAND RULES OF PROCEDURE

RULES OF THE BOARD

Board Rule 5. EXAMINATION FORMAT, SCORING, AND PASSING STANDARD

(a) Authority

Pursuant to section (c) of Rule 19-206, the State Board of Law Examiners adopts the Multistate Bar Examination and the Multistate Performance Test as part of the Maryland Bar Examination. Pursuant to section (d) of Rule 19-206, the Board establishes the policies and standards set forth in the following sections of this Board Rule to govern the format, scoring, and passing standard for the Maryland Bar Examination.

(b) Multistate Bar Examination (MBE)

(1) One part of the Maryland Bar Examination is the Multistate Bar Examination (MBE). The MBE is published and scored by the National Conference of Bar Examiners (NCBE) and its agents.

(2) The MBE is a multiple choice test. An applicant's MBE raw score is the number of questions answered correctly. MBE raw scores are scaled to adjust for possible differences in average question difficulty across administrations of the exam. As a result of scaling, a given MBE scale score indicates about the same level of performance regardless of the particular administration of the examination on which it is earned.

(c) Written Test: Board's Essay Test and the Multistate Performance Test (MPT)

Board Rule 5

(1) The other part of the Maryland Bar Examination is the Written Test, which comprises the Board's Essay Test and one MPT question. The Board shall prepare and grade the Board's Essay test. The MPT is published by the NCBE and graded by the Board.

(2) The Board's Essay test shall consist entirely of questions requiring essay answers. Questions shall not be labeled by subject matter. Single questions may involve two or more subject matters from the list in Board Rule 4.

(3) The format and specifications for the MPT are determined by the NCBE.

(4) The raw score for the Written Test shall be calculated as follows:

$$\text{Written Test raw score} = \text{Sum of Board's Essay test raw scores} + (\text{MPT raw score} \times 1.5)$$

(5) The Written Test raw score shall be converted to the same scale of measurement as that used on the MBE to adjust for possible differences in average question difficulty across administrations of the examination.

(d) Combining MBE and Written Test Scores to Calculate Total Examination Score

(1) For purposes of calculating an applicant's total scale score, both the MBE and Written scale scores shall be rounded to the nearest whole number.

(2) The Written Test shall be weighted twice as heavily as the MBE in the computation of the total scale score. The following formula shall be used to compute an applicant's total

scale score on the Maryland Bar Examination:

$$\text{Total Test Scale Score} = (\text{Written Scale Score} \times 2) + \text{MBE Scale Score}$$

(e) Passing Standard

In order to pass the Maryland Bar Examination, an applicant shall achieve a total scale score, as defined in subsection (d) (2), of 406 or higher.

(f) No Carryover of MBE Score or Written Score from Prior Examinations

For purposes of the Board's calculation of the total scale score and determination of the applicant's pass/fail status, an applicant shall achieve both the MBE and Written Test scale scores on the same administration of the Bar Examination.

(g) Recognition of MBE Score Achieved Concurrently in Another State

The Board shall accept an MBE score which an applicant achieves in another state in an administration of the MBE which is concurrent with Maryland's administration of the Written Test to the applicant. For purposes of the Board's calculation of the total scale score and determination of the applicant's pass/fail status, the concurrent MBE score shall be treated exactly as though it were achieved in Maryland.

(h) Adjustment of Passing Standard

For any particular administration of the bar examination, the Board may, in the interest of fairness, lower (but not raise) the passing score standard at any time before notices of the

examination results are mailed.

REPORTER'S NOTE

Board Rule 5 contains only stylistic changes.

MARYLAND RULES OF PROCEDURE

RULES OF THE BOARD

Board Rule 6. OUT-OF-STATE ATTORNEY EXAMINATION

(a) Subject Matter

The out-of-state attorney examination shall be prepared and graded by the Board and shall consist entirely of questions requiring essay answers. It shall relate to:

(1) Maryland Rules of Procedure governing practice and procedure in civil cases and criminal causes in all the Courts of the State of Maryland, including the Appendix of forms,

(2) the Maryland Attorneys' Rules of Professional Conduct, as set forth in Title 19, Chapter 300 of the Maryland Rules,

(3) the provisions of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland, and

(4) the provisions of the Criminal Procedure Article of the Annotated Code of Maryland.

(b) Time - Duration

The attorney examination shall be conducted during a part of the essay day of each regularly scheduled bar examination. A total of three hours writing time shall be allowed for the entire test. The point score allotted for each question shall be noted on the examination sheet.

(c) Requirement for Passing

In order to pass the examination, a petitioner shall attain a score of at least 70% of the total point score allotted

to the entire test.

REPORTER'S NOTE

Board Rule 6 contains only stylistic changes.

MARYLAND RULES OF PROCEDURE

RULES OF THE BOARD

Board Rule 7. ELIGIBILITY TO TAKE THE EXAMINATION PURSUANT TO
RULE 19-201 (b) (2)

In order for an additional degree from an ABA approved law school in Maryland to qualify under Rule 19-201 (b):

(a) the requirements of the award of the degree from the applicant's law school in Maryland shall contain a minimum of 26 credit hours in the bar examination subjects listed in Board Rule 4 and;

(b) the applicant shall furnish the following documents and certifications in a form required by the Board:

(1) a certification from the dean, assistant dean or acting dean of an ABA approved law school in Maryland that the applicant's foreign legal education, together with the applicant's approved law school degree, is the equivalent of that required for an LL.B. or a J.D. Degree in that law school;

(2) a certification from the dean, assistant dean or acting dean of an ABA approved law school in Maryland that the applicant has successfully completed a minimum of 26 credit hours in the bar examination subjects listed in Board Rule 4; and

(3) all documents considered for admission of the applicant to the degree program of an ABA approved law school in Maryland must be submitted by the law school and translated into the English language.

REPORTER'S NOTE

Board Rule 7 contains only stylistic changes.

MARYLAND RULES OF PROCEDURE
APPENDIX 19-A: FORMS FOR SPECIAL ADMISSION OF
OUT-OF-STATE ATTORNEY

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ATTORNEY UNDER Rule 19-214

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MARYLAND RULES OF PROCEDURE

APPENDIX 19-A: FORMS FOR SPECIAL ADMISSION OF
OUT-OF-STATE ATTORNEY

Form 19-A.1. MOTION FOR SPECIAL ADMISSION OF OUT-OF-
STATE ATTORNEY UNDER RULE 19-214

(Caption)

MOTION FOR SPECIAL ADMISSION OF OUT-OF-STATE ATTORNEY
UNDER RULE 19-214

I,, attorney of record in this case,
move that the court admit, of
(name)
....., an
(address)
out-of-state attorney who is a member in good standing of the Bar
of, for the limited
purpose of appearing and participating in this case as co-counsel
with me.

Unless the court has granted a motion for reduction or
waiver, the \$100.00 fee required by Code, Courts and Judicial
Proceedings Article, §7-202 (e) is attached to this motion.

I [] do [] do not request that my presence be waived under
Rule 19-214 (d).

.....
Signature of Moving Attorney

.....
Name

.....
Address

.....
Telephone

Attorney for

CERTIFICATE AS TO SPECIAL ADMISSIONS

I,, certify on this
..... day of,, that during the
preceding twelve months, I have been specially admitted in the
State of Maryland times.

.....
Signature of
Out-of-State Attorney

.....
Name

.....
Address

.....
Telephone

(Certificate of Service)

Source: This Form is derived from former Form RGAB-14/M (2016).

REPORTER'S NOTE

Form 19-A.1 carries forward the provisions of current Form
RGAB-14/M.

MARYLAND RULES OF PROCEDURE
APPENDIX 19-A: FORMS FOR SPECIAL ADMISSION OF
OUT-OF-STATE ATTORNEY

Form 19-A.2. ORDER

(Caption)

ORDER

ORDERED, this day of, by the
..... Court for,
Maryland, that

[] is admitted specially for the limited
purpose of appearing and participating in this case as co-counsel
for The presence of the Maryland
lawyer [] is [] is not waived.

[] That the Special Admission of is
denied for the following reasons:
.....
and the Clerk shall return any fee paid for the Special Admission
and it is further

ORDERED, that the Clerk forward a true copy of the Motion and
of this Order to the State Court Administrator.

.....
Judge

Source: This Form is derived from former Form RGAB-14/O (2016).

REPORTER'S NOTE

Form 19-A.2 carries forward the provisions of current Form RGAB-14/O.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

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MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-300.1. PREAMBLE

Preamble: An attorney's responsibilities

[1] An attorney, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.

[2] As a representative of clients, an attorney performs various functions. As advisor, an attorney provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, an attorney zealously asserts the client's position under the rules of the adversary system. As negotiator, an attorney seeks a result advantageous to the client but consistent with requirements of honest dealing with others. As evaluator, an attorney acts by examining a client's legal affairs and reporting about them to the client or to others.

[3] In addition to these representational functions, an attorney may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these Rules apply directly to attorneys who are or have served as third-party neutrals. See, e.g., Rules

19-301.12 and 19-302.4 (1.12 and 2.4). In addition, there are Rules that apply to attorneys who are not active in the practice of law or to practicing attorneys even when they are acting in a nonprofessional capacity. For example, an attorney who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. See Rule 19-308.4 (8.4).

[4] In all professional functions an attorney should be competent, prompt and diligent. An attorney should maintain communication with a client concerning the representation. An attorney should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Maryland Attorneys' Rules of Professional Conduct or other law.

[5] An attorney's conduct should conform to the requirements of the law, both in professional service to clients and in the attorney's business and personal affairs. An attorney should use the law's procedures only for legitimate purposes and not to harass or intimidate others. An attorney should demonstrate respect for the legal system and for those who serve it, including judges, other attorneys and public officials. While it is an attorney's duty, when necessary, to challenge the rectitude of official action, it is also an attorney's duty to uphold legal process.

[6] As a public citizen, an attorney should seek improvement of the law, access to the legal system, the administration of

justice and the quality of service rendered by the legal profession. As a member of a learned profession, an attorney should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, an attorney should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. An attorney should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all attorneys should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal advice or representation. An attorney should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

[7] Many of an attorney's professional responsibilities are prescribed in the Maryland Attorneys' Rules of Professional Conduct, as well as substantive and procedural law. However, an attorney is also guided by personal conscience and the approbation of professional peers. An attorney should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.

[8] An attorney's responsibilities as a representative of clients, an officer of the legal system and a public citizen are usually harmonious. Thus, when an opposing party is well represented, an attorney can be a zealous advocate on behalf of a client and at the same time assume that justice is being done. So also, an attorney can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

[9] In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between an attorney's responsibilities to clients, to the legal system and to the attorney's own interest in remaining an ethical individual while earning a satisfactory living. The Maryland Attorneys' Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. These principles include the attorney's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.

[10] The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

[11] To the extent that attorneys meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.

[12] The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every attorney is responsible for observance of the Maryland Attorneys' Rules of Professional Conduct. An attorney should also aid in securing their observance by other attorneys. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.

[13] Attorneys play a vital role in the preservation of

society. The fulfillment of this role requires an understanding by attorneys of their relationship to our legal system. The Maryland Attorneys' Rules of Professional Conduct, when properly applied, serve to define that relationship.

Scope

[14] The Maryland Attorneys' Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the Rules are imperatives, cast in the terms "shall" or "shall not." These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may," are permissive and define areas under the Rules in which the attorney has discretion to exercise professional judgment. No disciplinary action should be taken when the attorney chooses not to act or acts within the bounds of such discretion. Other Rules define the nature of relationships between the attorney and others. The Rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a attorney's professional role. Many of the Comments use the term "should." Comments do not add obligations to the Rules but provide guidance for practicing in compliance with the Rules.

[15] The Rules presuppose a larger legal context shaping the attorney's role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of attorneys and substantive and procedural law in

general. The Comments are sometimes used to alert attorneys to their responsibilities under such other law.

[16] Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings. The Rules do not, however, exhaust the moral and ethical considerations that should inform an attorney, for no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical practice of law.

[17] Furthermore, for purposes of determining the attorney's authority and responsibility, principles of substantive law external to these Rules determine whether a client-attorney relationship exists. Most of the duties flowing from the client-attorney relationship attach only after the client has requested the attorney to render legal services and the attorney has agreed to do so. But there are some duties, such as that of confidentiality under Rule 19-301.6 (1.6), that attach when the attorney agrees to consider whether a client-attorney relationship shall be established. See Rule 19-301.18 (1.18). Whether a client-attorney relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

[18] Under various legal provisions, including constitutional, statutory and common law, the responsibilities of

government attorneys may include authority concerning legal matters that ordinarily reposes in the client in private client-attorney relationships. For example, an attorney for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Such authority in various respects is generally vested in the attorney general and the state's attorney in state government, and their federal counterparts, and the same may be true of other government law officers. Also, attorneys under the supervision of these officers may be authorized to represent several government agencies in intra-governmental legal controversies in circumstances where a private attorney could not represent multiple private clients. These Rules do not abrogate any such authority.

[19] Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process. The Rules presuppose that disciplinary assessment of an attorney's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that an attorney often has to act upon uncertain or incomplete evidence of the situation. Moreover, the Rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations.

[20] Violation of a Rule 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. In addition, violation of a Rule does not necessarily warrant any other non-disciplinary remedy, such as disqualification of an attorney in pending litigation. The Rules are designed to provide guidance to attorneys and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for an attorney's self-assessment, or for sanctioning an attorney under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Nevertheless, in some circumstances, an attorney's violation of a Rule may be evidence of breach of the applicable standard of conduct. Nothing in this Preamble and Scope is intended to detract from the holdings of the Court of Appeals in *Post v. Bregman*, 349 Md. 142 (1998) and *Son v. Margolius, Mallios, Davis, Rider & Tomar*, 349 Md. 441 (1998).

[21] The Comment accompanying each Rule explains and illustrates the meaning and purpose of the Rule. The Preamble and this note on Scope provide general orientation. The Comments are intended as guides to interpretation, but the text of each Rule is authoritative.

Citation of Rules

[22] Rather than continue the practice of having all of the Maryland Attorneys' Rules of Professional Conduct (MARPC) incorporated into one Maryland Rule, each Rule is made a separate Maryland Rule, as each relates to a different topic. They all follow the numbering format of the American Bar Association Model Rules, however, and, for consistency, may be cited in that format, with the Maryland Rule designation in parenthesis. As an example, Rule 19-301.3 may be cited as MARPC 1.3 (Md. Rule 19-301.3).

REPORTER'S NOTE

Rule 19-300.1 is derived from the current Preamble and Scope sections of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-301.0. TERMINOLOGY (1.0)

(a) "Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

(b) "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that an attorney promptly transmits to the person confirming an oral informed consent. See section (f) of this Rule for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the attorney must obtain or transmit it within a reasonable time thereafter.

(c) "Consult" or "consultation" denotes communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question.

(d) "Firm" or "law firm" denotes:

(1) an association of an attorney or attorneys in a law partnership, professional corporation, sole proprietorship or other association formed for the practice of law; or

(2) a legal services organization or the legal department of a corporation, government or other organization.

(e) "Fraud" or "fraudulent" denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.

(f) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the attorney has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

(g) "Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(h) "Law firm." See Rule 19-301.0 (d) (1.0).

(i) "Partner" denotes a member of a partnership, a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.

(j) "Reasonable" or "reasonably" when used in relation to conduct by an attorney denotes the conduct of a reasonably prudent and competent attorney.

(k) "Reasonable belief" or "reasonably believes" when used in reference to an attorney denotes that the attorney believes the matter in question and that the circumstances are such that the belief is reasonable.

(l) "Reasonably should know" when used in reference to an attorney denotes that an attorney of reasonable prudence and competence would ascertain the matter in question.

(m) "Screened" denotes the isolation of an attorney from any

participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated attorney is obligated to protect under these Rules or other law.

(n) "Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.

(o) "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal decision directly affecting a party's interests in a particular matter.

(p) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or video-recording and e-mail. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

COMMENT

Confirmed in Writing - [1] If it is not feasible to obtain or transmit a written confirmation at the time the client gives informed consent, then the attorney must obtain or transmit it within a reasonable time thereafter. If an attorney has obtained a client's informed consent, the attorney may act in reliance on that consent so long as it is confirmed in writing within a reasonable time thereafter.

Firm - [2] Whether two or more attorneys constitute a firm within section (c) of this Rule can depend on the specific facts. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way that suggests that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the Rules. The terms of any formal agreement between associated attorneys are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the Rule that is involved. A group of attorneys could be regarded as a firm for purposes of the Rule providing that the same attorney should not represent opposing parties in litigation, while it might not be so regarded for purposes of the Rule that information acquired by one attorney is attributed to another.

[3] With respect to the law department of an organization, including the government, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Maryland Attorneys' Rules of Professional Conduct. There can be uncertainty, however, as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.

[4] Similar questions can also arise with respect to attorneys in legal aid and legal services organizations. Depending upon the structure of the organization, the entire organization or different components of it may constitute a firm or firms for purposes of these Rules.

Fraud - [5] When used in these Rules, the terms "fraud" or "fraudulent" refer to conduct that is characterized as such under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive. This does not include merely negligent misrepresentation or negligent failure to apprise another of relevant information. For purposes of these Rules, it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform.

Informed Consent - [6] Many of the Maryland Attorneys' Rules of Professional Conduct require the attorney to obtain the informed consent of a client or other person (e.g., a former client or, under certain circumstances, a prospective client) before accepting or continuing representation or pursuing a

course of conduct. See, e.g., Rules 19-301.2 (c) (1.2), 19-301.6 (a) (1.6) and 19-301.7 (b) (1.7). The communication necessary to obtain such consent will vary according to the Rule involved and the circumstances giving rise to the need to obtain informed consent. The attorney must make reasonable efforts to ensure that the client or other person possesses information reasonably adequate to make an informed decision. Ordinarily, this will require communication that includes a disclosure of the facts and circumstances giving rise to the situation, any explanation reasonably necessary to inform the client or other person of the material advantages and disadvantages of the proposed course of conduct and a discussion of the client's or other person's options and alternatives. In some circumstances it may be appropriate for an attorney to advise a client or other person of facts or implications already known to the client or other person to seek the advice of another attorney. An attorney need not inform a client or other person of facts or implications already known to the client or other person; nevertheless, an attorney who does not personally inform the client or other person assumes the risk that the client or other person is inadequately informed and the consent is invalid. In determining whether the information and explanation provided are reasonably adequate, relevant factors include whether the client or other person is experienced in legal matters generally and in making decisions of the type involved, and whether the client or other person is independently represented by another attorney in giving the consent. Normally, such persons need less information and explanation than others, and generally a client or other person who is independently represented by another attorney in giving the consent should be assumed to have given informed consent.

[7] Obtaining informed consent will usually require an affirmative response by the client or other person. In general, an attorney may not assume consent from a client's or other person's silence. Consent may be inferred, however, from the conduct of the client or other person who has reasonably adequate information about the matter. A number of Rules require that a person's consent be confirmed in writing. See Rules 19-301.7 (b) (1.7) and 19-301.9 (a) (1.9). For a definition of "writing" and "confirmed in writing," see sections (p) and (b) of this Rule. Other Rules require that a client's consent be obtained in a writing signed by the client. See, e.g., Rules 19-301.5 (c) (1.5) and 19-301.8 (a) (1.8). For a definition of "signed," see section (p) of this Rule.

Screened - [8] This definition applies to situations where screening of a personally disqualified attorney is permitted to remove imputation of a conflict of interest under Rules 19-301.10 (1.10), 19-301.11 (1.11), 19-301.12 (1.12) or 19-301.18 (1.18).

[9] The purpose of screening is to assure the affected

parties that confidential information known by the personally disqualified attorney remains protected. The personally disqualified attorney should acknowledge the obligation not to communicate with any of the other attorneys in the firm with respect to the matter. Similarly, other attorneys in the firm who are working on the matter should be informed that the screening is in place and that they may not communicate with the personally disqualified attorney with respect to the matter. Additional screening measures that are appropriate for the particular matter will depend on the circumstances. To implement, reinforce and remind all affected attorneys of the presence of the screening, it may be appropriate for the firm to undertake such procedures as a written undertaking by the screened attorney to avoid any communication with other firm personnel and any contact with any firm files or other materials relating to the matter, written notice and instructions to all other firm personnel forbidding any communication with the screened attorney relating to the matter, denial of access by the screened attorney to firm files or other materials relating to the matter and periodic reminders of the screen to the screened attorney and all other firm personnel.

[10] In order to be effective, screening measures must be implemented as soon as practical after an attorney or law firm knows or reasonably should know that there is a need for screening.

Model Rules Comparison - Rule 19-301.0 (1.0) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct except for the retention of the definition of "consult" and "consultation," the addition of a cross reference to "law firm," and the appropriate redesignation of subsections.

REPORTER'S NOTE

Rule 19-301.0 is derived from current Rule 1.0 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

CLIENT-ATTORNEY RELATIONSHIP

Rule 19-301.1. COMPETENCE (1.1)

An attorney shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

COMMENT

Legal knowledge and skill - [1] In determining whether an attorney employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the attorney's general experience, the attorney's training and experience in the field in question, the preparation and study the attorney is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, an attorney of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

[2] An attorney need not necessarily have special training or prior experience to handle legal problems of a type with which the attorney is unfamiliar. A newly admitted attorney can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. An attorney can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of an attorney of established competence in the field in question.

[3] In an emergency an attorney may give advice or assistance in a matter in which the attorney does not have the skill ordinarily required where referral to or consultation or association with another attorney would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill-considered action under emergency conditions can jeopardize the client's interest.

[4] An attorney may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to an attorney who is appointed as an attorney for an unrepresented person. See also Rule 19-306.2 (6.2).

Thoroughness and preparation - [5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity. An agreement between the attorney and the client regarding the scope of the representation may limit the matters for which the attorney is responsible. See Rule 19-301.2 (c) (1.2).

Maintaining competence - [6] To maintain the requisite knowledge and skill, an attorney should keep abreast of changes in the law and its practice, engage in continuing study and education and comply with all continuing legal education requirements to which the attorney is subject.

Model Rules Comparison - Rule 19-301.1 (1.1) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct.

REPORTER'S NOTE

Rule 19-301.1 is derived from current Rule 1.1 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-301.2. SCOPE OF REPRESENTATION AND ALLOCATION OF
AUTHORITY BETWEEN CLIENT AND ATTORNEY (1.2)

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

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

(c) An attorney may limit the scope of the representation in accordance with applicable Maryland Rules if (1) the limitation is reasonable under the circumstances, (2) the client gives informed consent, and (3) the scope and limitations of any representation, beyond an initial consultation or brief advice

provided without a fee, are clearly set forth in a writing, including any duty on the part of the attorney under Rule 1-324 to forward notices to the client.

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

COMMENT

Scope of Representation - [1] Both attorney and client have authority and responsibility in the objectives and means of representation. The client has ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the attorney's professional obligations. Within those limits, a client also has a right to consult with the attorney about the means to be used in pursuing those objectives. At the same time, an attorney is not required to pursue objectives or employ means simply because a client may wish that the attorney do so. A clear distinction between objectives and means sometimes cannot be drawn, and in many cases the client-attorney relationship partakes of a joint undertaking. In questions of means, the attorney should assume responsibility for technical and legal tactical issues, but should defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected.

[2] On occasion, however, an attorney and a client may disagree about the means to be used to accomplish the client's objectives. Because of the varied nature of the matters about which an attorney and client might disagree and because the actions in question may implicate the interests of a tribunal or other persons, this Rule does not prescribe how such disagreements are to be resolved. Other law, however, may be applicable and should be consulted by the attorney. The attorney should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the attorney has a fundamental disagreement with the client, the attorney may withdraw from the representation. See Rule 19-301.16 (b) (4) (1.16). Conversely, the client may resolve the disagreement by discharging the attorney. See Rule

19-301.16 (a) (3) (1.16).

[3] At the outset of a representation, the client may authorize the attorney to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to Rule 19-301.4 (1.4), an attorney may rely on such an advance authorization. The client may, however, revoke such authority at any time.

[4] In a case in which the client appears to be suffering diminished capacity, the attorney's duty to abide by the client's decisions is to be guided by reference to Rule 19-301.14 (1.14).

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

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

[7] Although this Rule affords the attorney and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the attorney and client may agree that the attorney's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt an attorney from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 19-301.1 (1.1).

[8] An attorney and a client may agree that the scope of the

representation is to be limited to clearly defined specific tasks or objectives, including: (1) without entering an appearance, filing papers, or otherwise participating on the client's behalf in any judicial or administrative proceeding, (i) giving legal advice to the client regarding the client's rights, responsibilities, or obligations with respect to particular matters, (ii) conducting factual investigations for the client, (iii) representing the client in settlement negotiations or in private alternative dispute resolution proceedings, (iv) evaluating and advising the client with regard to settlement options or proposed agreements, or (v) drafting documents, performing legal research, and providing advice that the client or another attorney appearing for the client may use in a judicial or administrative proceeding; or (2) in accordance with applicable Maryland Rules, representing the client in discrete judicial or administrative proceedings, such as a court-ordered alternative dispute resolution proceeding, a *pendente lite* proceeding, or proceedings on a temporary restraining order, a particular motion, or a specific issue in a multi-issue action or proceeding. Before entering into such an agreement, the attorney shall fully and fairly inform the client of the extent and limits of the attorney's obligations under the agreement, including any duty on the part of the attorney under Rule 1-324 to forward notices to the client.

[9] Representation of a client in a collaborative law process is a type of permissible limited representation. It requires a collaborative law participation agreement that complies with the requirements of Code, Courts Article, §3-1902 and Rule 17-503 (b) and is signed by all parties after informed consent.

[10] All agreements concerning an attorney's representation of a client must accord with the Maryland Attorneys' Rules of Professional Conduct and other law. See, e.g., Rule 19-301.1 (1.1), 19-301.8 (1.8) and 19-305.6 (5.6).

Criminal, Fraudulent and Prohibited Transactions - [11] Section (d) of this Rule prohibits an attorney from knowingly counseling or assisting a client to commit a crime or fraud. This prohibition, however, does not preclude the attorney from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. The fact that a client uses advice in a course of action that is criminal or fraudulent does not, of itself, make an attorney a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

[12] When the client's course of action has already begun

and is continuing, the attorney's responsibility is especially delicate. The attorney is required to avoid assisting the client, for example, by drafting or delivering documents that the attorney knows are fraudulent or by suggesting how the wrongdoing might be concealed. An attorney may not continue assisting a client in conduct that the attorney originally supposed was legally proper but then discovers is criminal or fraudulent. The attorney must, therefore, withdraw from the representation of the client in the matter. See Rule 19-301.16 (a) (1.16). In some cases withdrawal alone might be insufficient. It may be necessary for the attorney to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. See Rules 19-301.6 (1.6), 19-304.1 (4.1).

[13] Where the client is a fiduciary, the attorney may be charged with special obligations in dealings with a beneficiary.

[14] Section (d) of this Rule applies whether or not the defrauded party is a party to the transaction. Hence, an attorney must not participate in a transaction to effectuate criminal or fraudulent avoidance of tax liability. Section (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of section (d) of this Rule recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

[15] If an attorney comes to know or reasonably should know that a client expects assistance not permitted by the Maryland Attorneys' Rules of Professional Conduct or other law or if the attorney intends to act contrary to the client's instructions, the attorney must consult with the client regarding the limitations on the attorney's conduct. See Rule 19-301.4 (a) (4) (1.4).

Model Rules Comparison - Rule 19-301.2 (1.2) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct except for wording changes in Rule 19-301.2 (a) (1.2), the addition of Comments [8] and [9], and the retention of existing Maryland language in Comment [1].

REPORTER'S NOTE

Rule 19-301.2 is derived from current Rule 1.2 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-301.3. DILIGENCE (1.3)

An attorney shall act with reasonable diligence and promptness in representing a client.

COMMENT

[1] An attorney should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the attorney, and may take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. An attorney must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. An attorney is not bound, however, to press for every advantage that might be realized for a client. For example, an attorney may have authority to exercise professional discretion in determining the means by which a matter should be pursued. See Rule 19-301.2 (1.2). The attorney's duty to act with reasonable diligence does not require the use of offensive tactics or permit treating any person involved in the legal process without courtesy and respect.

[2] An attorney's workload must be controlled so that each matter can be handled competently.

[3] Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when an attorney overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the attorney's trustworthiness. An attorney's duty to act with reasonable promptness, however, does not preclude the attorney from agreeing to a reasonable request for a postponement that will not prejudice the attorney's client.

[4] Unless the relationship is terminated as provided in Rule 19-301.16 (1.16), an attorney should carry through to conclusion all matters undertaken for a client. If an attorney's employment is limited to a specific matter, the relationship

terminates when the matter has been resolved. If an attorney has served a client over a substantial period in a variety of matters, the client sometimes may assume that the attorney will continue to serve on a continuing basis unless the attorney gives notice of withdrawal. Doubt about whether a client-attorney relationship still exists should be clarified by the attorney, preferably in writing, so that the client will not mistakenly suppose the attorney is looking after the client's affairs when the attorney has ceased to do so. For example, if an attorney has handled a judicial or administrative proceeding that produced a result adverse to the client and the attorney and client have not agreed that the attorney will handle the matter on appeal, the attorney must consult with the client about the possibility of appeal before relinquishing responsibility for the matter. See Rule 19-301.4 (1.4). Similarly, the attorney must inform the client if, following a result favorable to the client, another party files an appeal. Whether the attorney is obligated to prosecute the appeal for the client depends on the scope of the representation the attorney has agreed to provide to the client. See Rule 19-301.2 (1.2).

[5] To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent attorney to review client files, notify each client of the attorney's death or disability, and determine whether there is a need for immediate protective action. Cf. Md. Rule 19-734 (providing for appointment of a conservator to inventory the files of an attorney who is deceased or has abandoned the practice of law, and to take other appropriate action to protect the attorney's clients in the absence of a plan to protect clients' interests).

Model Rules Comparison - Rule 19-301.3 (1.3) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct except for Comment [5], which incorporates Maryland law.

REPORTER'S NOTE

Rule 19-301.3 is derived from current Rule 1.3 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-301.4. COMMUNICATION (1.4)

(a) An attorney shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 19-301.0 (f) (1.0), is required by these Rules;

(2) keep the client reasonably informed about the status of the matter;

(3) promptly comply with reasonable requests for information; and

(4) consult with the client about any relevant limitation on the attorney's conduct when the attorney knows that the client expects assistance not permitted by the Maryland Attorneys' Rules of Professional Conduct or other law.

(b) An attorney shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

COMMENT

[1] Reasonable communication between the attorney and the client is necessary for the client effectively to participate in the representation.

Communicating with Client - [2] If these Rules require that a particular decision about the representation be made by the

client, subsection (a)(1) of this Rule requires that the attorney promptly consult with and secure the client's consent prior to taking action unless prior discussions with the client have resolved what action the client wants the attorney to take. For example, an attorney who receives from an opposing attorney an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case must promptly inform the client of its substance unless the client has previously indicated that the proposal will be acceptable or unacceptable or has authorized the attorney to accept or to reject the offer. See Rule 19-301.2 (a) (1.2).

[3] Under Rule 19-301.2 (a) (1.2), an attorney is required, when appropriate, to consult with the client about the means to be used to accomplish the client's objectives. In some situations - depending on both the importance of the action under consideration and the feasibility of consulting with the client - this duty will require consultation prior to taking action. In other circumstances, such as during a trial when an immediate decision must be made, the exigency of the situation may require the attorney to act without prior consultation. In such cases the attorney must nonetheless act reasonably to inform the client of actions the attorney has taken on the client's behalf. Additionally, subsection (a)(2) of this Rule requires that the attorney keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation.

[4] An attorney's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, subsection (a)(3) of this Rule requires prompt compliance with the request, or if a prompt response is not feasible, that the attorney, or a member of the attorney's staff, acknowledge receipt of the request and advise the client when a response may be expected. Client telephone calls should be promptly returned or acknowledged.

Explaining Matters - [5] The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. Adequacy of communication depends in part on the kind of advice or assistance that is involved. For example, where there is time to explain a proposal made in a negotiation, the attorney should review all important provisions with the client before proceeding to an agreement. In litigation an attorney should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that are likely to result in significant expense or to injure or coerce others. On the other hand, an attorney ordinarily will not be expected to

describe trial or negotiation strategy in detail. The guiding principle is that the attorney should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation. In certain circumstances, such as when an attorney asks a client to consent to a representation affected by a conflict of interest, the client must give informed consent, as defined in Rule 19-301.0 (f) (1.0).

[6] Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from diminished capacity. See Rule 19-301.14 (1.14). When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the attorney should address communications to the appropriate officials of the organization. See Rule 19-301.13 (1.13). Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client.

Withholding Information - [7] In some circumstances, an attorney may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, an attorney might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. An attorney may not withhold information to serve the attorney's own interest or convenience or the interests or convenience of another person. Rules or court orders governing litigation may provide that information supplied to an attorney may not be disclosed to the client. Rule 19-303.4 (c) (3.4) directs compliance with such rules or orders.

Model Rules Comparison - Rule 19-301.4 (1.4) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct except for the deletion of Model Rule 1.4 (a) (2) and the redesignation of subsections as appropriate, and wording changes to Comment [3].

REPORTER'S NOTE

Rule 19-301.4 is derived from current Rule 1.4 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-301.5. FEES (1.5)

(a) An attorney shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment of the attorney;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the attorney or attorneys performing the services; and

(8) whether the fee is fixed or contingent.

(b) The scope of the representation and the basis or rate of

the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the attorney will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by section (d) of this Rule or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the attorney in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be responsible whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the attorney shall provide the client with a written statement stating the outcome of the matter, and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) An attorney shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or

amount of which is contingent upon the securing of a divorce or custody of a child or upon the amount of alimony or support or property settlement, or upon the amount of an award pursuant to Md. Code, Family Law Article, §§8-201 through 8-213; or

(2) a contingent fee for representing a defendant in a criminal case.

(e) A division of a fee between attorneys who are not in the same firm may be made only if:

(1) the division is in proportion to the services performed by each attorney or each attorney assumes joint responsibility for the representation;

(2) the client agrees to the joint representation and the agreement is confirmed in writing; and

(3) the total fee is reasonable.

COMMENT

Reasonableness of Fee and Expenses - [1] Section (a) of this Rule requires that attorneys charge fees that are reasonable under the circumstances. The factors specified in subsection (a)(1) through (8) of this Rule are not exclusive. Nor will each factor be relevant in each instance. Section (a) of this Rule also requires that expenses for which the client will be charged must be reasonable. An attorney may seek reimbursement for the cost of services performed in-house, such as copying, or for other expenses incurred in-house, such as telephone charges, either by charging a reasonable amount to which the client has agreed in advance or by charging an amount that reasonably reflects the cost incurred by the attorney.

Basis or Rate of Fee - [2] When the attorney has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee and the expenses for which the client will be responsible. In a new client-attorney relationship, however, an understanding as to fees and expenses must be promptly established. Generally, it is desirable to furnish the client with at least a simple memorandum

or copy of the attorney's customary fee arrangements that states the general nature of the legal services to be provided, the basis, rate, or total amount of the fee and whether and to what extent the client will be responsible for any costs, expenses or disbursements in the course of representation. A written statement concerning the terms of the engagement reduces the possibility of misunderstanding.

[3] Contingent fees, like any other fees, are subject to the reasonableness standard of section (a) of this Rule. In determining whether a particular contingent fee is reasonable, or whether it is reasonable to charge any form of contingent fee, an attorney must consider the factors that are relevant under the circumstances. Applicable law may impose limitations on contingent fees, such as a ceiling on the percentage allowable, or may require an attorney to offer clients an alternative basis for the fee. Applicable law may also apply to situations other than a contingent fee, for example, government regulations regarding fees in certain tax matters.

Terms of Payment - [4] An attorney may require advance payment of a fee, but is obliged to return any unearned portion. See Rule 19-301.15 (c) (1.15); Comment [3] to Rule 19-301.15 (1.15); Rule 19-301.16 (d) (1.16). An attorney may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to Rule 19-301.8 (i) (1.8). However, a fee paid in property instead of money may be subject to the requirements of Rule 19-301.8 (a) (1.8) because such fees often have the essential qualities of a business transaction with the client.

[5] An agreement may not be made whose terms might induce the attorney improperly to curtail services for the client or perform them in a way contrary to the client's interest. For example, an attorney should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client's ability to pay. An attorney should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures.

Prohibited Contingent Fees - [6] Section (d) of this Rule prohibits an attorney from charging a contingent fee in a domestic relations matter when payment is contingent upon the securing of a divorce or upon the amount of alimony or support or

property settlement to be obtained. This provision does not preclude a contract for a contingent fee for legal representation in connection with the recovery of post-judgment balances due under support, alimony or other financial orders because such contracts do not implicate the same policy concerns.

Division of Fee - [7] A division of fee is a single billing to a client covering the fee of two or more attorneys who are not in the same firm. A division of fee facilitates association of more than one attorney in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring attorney and a trial specialist. Section (e) of this Rule permits the attorneys to divide a fee on either the basis of the proportion of services they render or by agreement between the participating attorneys if all assume responsibility for the representation as a whole and the client agrees to the joint representation, which is confirmed in writing. Contingent fee agreements must be in a writing signed by the client and must otherwise comply with section (c) of this Rule. Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the attorneys were associated in a partnership. An attorney should only refer a matter to an attorney whom the referring attorney reasonably believes is competent to handle the matter. See Rule 19-301.1 (1.1).

[8] Section (e) of this Rule does not prohibit or regulate division of fees to be received in the future for work done when attorneys were previously associated in a law firm.

Disputes over Fees - [9] If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by the bar, the attorney must comply with the procedure when it is mandatory, and even when it is voluntary, the attorney should conscientiously consider submitting to it. Law may prescribe a procedure for determining an attorney's fee, for example, in representation of an executor or administrator, a class or a person entitled to a reasonable fee as part of the measure of damages. The attorney entitled to such a fee and an attorney representing another party concerned with the fee should comply with the prescribed procedure.

Cross reference: See *Post v. Bregman*, 349 Md. 142 (1998) and *Son v. Margolius*, 349 Md. 441 (1998).

Model Rules Comparison - Rule 19-301.5 (1.5) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct except that it retains existing Maryland language in Rule 19-301.5 (d)(1) (1.5) and adds wording changes to Rule 19-301.5 (e)(2) (1.5) and Comment [7].

REPORTER'S NOTE

Rule 19-301.5 is derived from current Rule 1.5 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-301.6. CONFIDENTIALITY OF INFORMATION (1.6)

(a) An attorney shall not reveal information relating to representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by section (b) of this Rule.

(b) An attorney may reveal information relating to the representation of a client to the extent the attorney reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

(2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the attorney's services;

(3) to prevent, mitigate, or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the attorney's services;

(4) to secure legal advice about the attorney's compliance with these Rules, a court order or other law;

(5) to establish a claim or defense on behalf of the attorney in a controversy between the attorney and the client, to establish a defense to a criminal charge, civil claim, or disciplinary complaint against the attorney based upon conduct in which the client was involved or to respond to allegations in any proceeding concerning the attorney's representation of the client; or

(6) to comply with these Rules, a court order or other law.

COMMENT

[1] This Rule governs the disclosure by an attorney of information relating to the representation of a client during the attorney's representation of the client. See Rule 19-301.18 (1.18) for the attorney's duties with respect to information provided to the attorney by a prospective client, Rule 19-301.9 (c)(2) (1.9) for the attorney's duty not to reveal information relating to the attorney's prior representation of a former client and Rules 19-301.8 (b) (1.8) and 19-301.9 (c)(1) (1.9) for the attorney's duties with respect to the use of such information to the disadvantage of clients and former clients.

[2] A fundamental principle in the client-attorney relationship is that, in the absence of the client's informed consent, the attorney must not reveal information relating to the representation. See Rule 19-301.0 (f) (1.0) for the definition of informed consent. This contributes to the trust that is the hallmark of the client-attorney relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the attorney even as to embarrassing or legally damaging subject matter. The attorney needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to attorneys in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, attorneys know that almost all clients follow the advice given, and the law is upheld.

[3] The principle of client-attorney confidentiality is given effect by related bodies of law: the attorney-client privilege, the work product doctrine and the rule of confidentiality established in professional ethics. The

attorney-client privilege and work-product doctrine apply in judicial and other proceedings in which an attorney may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-attorney confidentiality applies in situations other than those where evidence is sought from the attorney through compulsion of law. The confidentiality rule, for example, applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. An attorney may not disclose such information except as authorized or required by the Maryland Attorneys' Rules of Professional Conduct or other law. See also Scope.

[4] Section (a) of this Rule prohibits an attorney from revealing information relating to the representation of a client. This prohibition also applies to disclosures by an attorney that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person. An attorney's use of a hypothetical to discuss issues relating to the representation is permissible so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved.

Implied Authority to Disclose - [5] Except to the extent that the client's instructions or special circumstances limit that authority, an attorney is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation. In some situations, for example, an attorney may be impliedly authorized to admit a fact that cannot properly be disputed, or to make a disclosure that facilitates a satisfactory conclusion to a matter. Attorneys in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified attorneys.

Disclosure Adverse to Client - [6] Although the public interest is usually best served by a strict rule requiring attorneys to preserve the confidentiality of information relating to the representation of their clients, the confidentiality rule is subject to limited exceptions. Section (b) of this Rule, however, permits disclosure only to the extent the attorney reasonably believes the disclosure is necessary to accomplish one of the purposes specified. Where practicable, the attorney should first seek to persuade the client to take suitable action to obviate the need for disclosure. In any case, a disclosure adverse to the client's interest should be no greater than the attorney reasonably believes necessary to accomplish the purpose. If the disclosure will be made in connection with a judicial proceeding, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having

a need to know it and appropriate protective orders or other arrangements should be sought by the attorney to the fullest extent practicable.

[7] Section (b) of this Rule permits, but does not require the disclosure of information relating to a client's representation to accomplish the purposes specified in subsections (b)(1) through (b)(6) of this Rule. In exercising the discretion conferred by this Rule, the attorney may consider such factors as the nature of the attorney's relationship with the client and with those who might be injured by the client, the attorney's own involvement in the transaction and factors that may extenuate the conduct in question. An attorney's decision not to disclose as permitted by section (b) of this Rule does not violate this Rule. Disclosure may be required, however, by other Rules regardless of whether the disclosure is permitted by Rule 19-301.6 (1.6). See Rules 19-301.2 (d) (1.2), 19-303.3 (a) (4) (3.3), 19-304.1 (b) (4.1), 19-308.1 (8.1) and 19-308.3 (8.3). An attorney representing an organization may in some circumstances be permitted to disclose information regardless of whether the disclosure is permitted by Rule 19-301.6 (b) (1.6). See Rule 19-301.13 (c) (1.13).

[8] Subsection (b)(1) of this Rule recognizes the overriding value of life and physical integrity and permits disclosure reasonably believed necessary to prevent reasonably certain death or substantial bodily harm. Such harm is reasonably certain to occur if it will be suffered imminently or if there is a present and substantial threat that a person will suffer such harm at a later date if the attorney fails to take action necessary to eliminate the threat. Thus, an attorney who knows that a client has accidentally discharged toxic waste into a town's water supply may reveal this information to the authorities if there is a present and substantial risk that a person who drinks the water will contract a life-threatening or debilitating disease, and the attorney reasonably believes disclosure is necessary to eliminate the threat or reduce the number of victims.

[9] Subsection (b)(2) of this Rule is a limited exception to the rule of confidentiality that permits the attorney to reveal information to the extent necessary to enable affected persons or appropriate authorities to prevent the client from committing a crime or a fraud, as defined in Rule 19-301.0 (e) (1.0), that is reasonably certain to result in substantial injury to the financial or property interests of another and in furtherance of which the client has used or is using the attorney's services. Such a serious abuse of the client-attorney relationship by the client forfeits the protection of this Rule. The client can, of course, prevent such disclosure by refraining from the wrongful conduct. Although subsection (b)(2) of this Rule does not require the attorney to reveal the client's misconduct, the

attorney may not counsel or assist the client in conduct the attorney knows is criminal or fraudulent. See Rule 19-301.2 (d) (1.2). See also Rule 19-301.16 (1.16) with respect to the attorney's obligation or right to withdraw from the representation of the client in such circumstances. Where the client is an organization, the attorney should consult Rule 19-301.13 (b) (1.13).

[10] Subsection (b) (3) of this Rule addresses the situation in which the attorney does not learn of a client's criminal or fraudulent act in furtherance of which the attorney's services were used until after the act has occurred. Although the client no longer has the option of preventing disclosure by refraining from the wrongful conduct, there will be situations in which the loss suffered by the affected person can be prevented, rectified or mitigated. In such situations, the attorney may disclose information relating to the representation to the extent necessary to enable the affected persons to prevent or mitigate reasonably certain losses or to attempt to recoup their losses. Subsection (b) (3) of this Rule does not apply when a person who has committed a crime or fraud thereafter employs an attorney for representation concerning that offense.

[11] An attorney's confidentiality obligations do not preclude an attorney from securing confidential legal advice about the attorney's personal responsibility to comply with these Rules, a court order or other law. In most situations, disclosing information to secure such advice will be impliedly authorized for the attorney to carry out the representation. Even when the disclosure is not impliedly authorized, subsection (b) (4) of this Rule permits such disclosure because of the importance of an attorney's compliance with the law.

Withdrawal - [12] If the attorney knows that the attorney's services will be used by the client in materially furthering a course of criminal or fraudulent conduct, the attorney must withdraw, as stated in Rule 19-301.16 (a) (1) (1.16). After withdrawal the attorney is required to refrain from making disclosure of the client's confidences, except as otherwise provided in Rule 19-301.6 (1.6) or in other Rules.

[13] If the attorney knows that despite the withdrawal the client is continuing in conduct that is criminal or fraudulent, and is making use of the fact that the attorney was involved in the matter, the attorney may have to take positive steps to avoid being held to have assisted the conduct. See Rules 19-301.2 (d) (1.2) and 19-304.1 (b) (4.1). In other situations not involving such assistance, the attorney has discretion to make disclosure of otherwise confidential information only in accordance with Rules 19-301.6 (1.6) and 19-301.13 (c) (1.13). Neither this Rule nor Rule 19-301.8 (b) (1.8) nor Rule 19-301.16 (d) (1.16)

prevents the attorney from giving notice of the fact of withdrawal, and the attorney may also withdraw or disaffirm any opinion, document, affirmation, or the like.

Dispute Concerning Attorney's Conduct - [14] Where a legal claim or disciplinary charge alleges complicity of the attorney in a client's conduct or other misconduct of the attorney involving representation of the client, the attorney may respond to the extent the attorney reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. Such a charge can arise in a civil, criminal, disciplinary or other proceeding and can be based on a wrong allegedly committed by the attorney against the client or on a wrong alleged by a third person, for example, a person claiming to have been defrauded by the attorney and client acting together. The attorney's right to respond arises when an assertion of such complicity has been made. Subsection (b) (5) of this Rule does not require the attorney to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend also applies, of course, where a proceeding has been commenced.

[15] An attorney entitled to a fee is permitted by subsection (b) (5) of this Rule to prove the services rendered in an action to collect it. This aspect of the rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary.

Disclosures Otherwise Required or Authorized - [16] As noted in Comment 7, Rules 19-303.3 (b) (3.3) and 19-304.1 (b) (4.1) require disclosure in some circumstances regardless of whether the disclosure is permitted by Rule 19-301.6 (1.6). Circumstances may be such that disclosure is required under other Rules, for example, Rule 19-301.2 (d) (1.2), in order to avoid assisting a client to perpetrate a crime or fraud.

[17] Other law may require that an attorney disclose information about a client. Whether such a law supersedes Rule 19-301.6 (1.6) is a question of law beyond the scope of these Rules. When disclosure of information relating to the representation appears to be required by other law, the attorney must discuss the matter with the client to the extent required by Rule 19-301.4 (1.4). If, however, the other law supersedes this Rule and requires disclosure, subsection (b) (6) of this Rule permits the attorney to make such disclosures as are necessary to comply with the law.

[18] An attorney may be ordered to reveal information relating to the representation of a client by a court or by

another tribunal or governmental entity claiming authority pursuant to other law to compel the disclosure. Absent informed consent of the client to do otherwise, the attorney should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law. In the event of an adverse ruling, the attorney must consult with the client about the possibility of appeal to the extent required by Rule 19-301.4 (1.4). Unless review is sought, however, subsection (b)(6) of this Rule permits the attorney to comply with the court's order.

Acting Competently to Preserve Confidentiality - [19] An attorney must act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the attorney or other persons who are participating in the representation of the client or who are subject to the attorney's supervision. See Rules 19-301.1 (1.1), 19-305.1 (5.1) and 19-305.3 (5.3).

[20] When transmitting a communication that includes information relating to the representation of a client, the attorney must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the attorney use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the attorney's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the attorney to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule.

Former Client - [21] The duty of confidentiality continues after the client-attorney relationship has terminated. See Rule 19-301.9 (c)(2) (1.9). See Rule 19-301.9 (c)(1) (1.9) for the prohibition against using such information to the disadvantage of the former client.

Model Rules Comparison - Rule 19-301.6 (1.6) retains elements of former Rule 1.6 language, incorporates some changes from the Ethics 2000 Amendments to the ABA Model Rules, and incorporates further revisions.

REPORTER'S NOTE

Rule 19-301.6 is derived from current Rule 1.6 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-301.7. CONFLICT OF INTEREST - GENERAL RULE (1.7)

(a) Except as provided in section (b) of this Rule, an attorney shall not represent a client if the representation involves a conflict of interest. A conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the attorney's responsibilities to another client, a former client or a third person or by a personal interest of the attorney.

(b) Notwithstanding the existence of a conflict of interest under section (a) of this Rule, an attorney may represent a client if:

(1) the attorney reasonably believes that the attorney will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the attorney in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

COMMENT

General Principles - [1] Loyalty and independent judgment are essential elements in the attorney's relationship to a client. Conflicts of interest can arise from the attorney's responsibilities to another client, a former client or a third person or from the attorney's own interests. For specific Rules regarding certain conflicts of interest, see Rule 19-301.8 (1.8). For former client conflicts of interest, see Rule 19-301.9 (1.9). For conflicts of interest involving prospective clients, see Rule 19-301.18 (1.18). For definitions of "informed consent" and "confirmed in writing," see Rule 19-301.0 (f) and (b) (1.0).

[2] Resolution of a conflict of interest problem under this Rule requires the attorney to: (1) clearly identify the client or clients; (2) determine whether a conflict of interest exists; (3) decide whether the representation may be undertaken despite the existence of a conflict, i.e., whether the conflict is consentable; and (4) if so, consult with the clients affected under section (a) of this Rule and obtain their informed consent, confirmed in writing. The clients affected under section (a) of this Rule include both of the clients referred to in subsection (a)(1) of this Rule and the one or more clients whose representation might be materially limited under subsection (a)(2) of this Rule.

[3] A conflict of interest may exist before representation is undertaken, in which event the representation must be declined, unless the attorney obtains the informed consent of each client under the conditions of section (b) of this Rule. To determine whether a conflict of interest exists, an attorney should adopt reasonable procedures, appropriate for the size and type of firm and practice, to determine in both litigation and non-litigation matters the persons and issues involved. See also Comment to Rule 19-305.1 (5.1). Ignorance caused by a failure to institute such procedures will not excuse an attorney's violation of this Rule. As to whether a client-attorney relationship exists or, having once been established, is continuing, see Comment to Rule 19-301.3 (1.3) and Scope.

[4] If a conflict arises after representation has been undertaken, the attorney ordinarily must withdraw from the representation, unless the attorney has obtained the informed consent of the client under the conditions of section (b) of this Rule. See Rule 19-301.16 (1.16). Where more than one client is involved, whether the attorney may continue to represent any of the clients is determined both by the attorney's ability to

comply with duties owed to the former client and by the attorney's ability to represent adequately the remaining client or clients, given the attorney's duties to the former client. See Rule 19-301.9 (1.9). See also Comments [5] and [29].

[5] Unforeseeable developments, such as changes in corporate and other organizational affiliations or the addition or realignment of parties in litigation, might create conflicts in the midst of a representation, as when a company sued by the attorney on behalf of one client is bought by another client represented by the attorney in an unrelated matter. Depending on the circumstances, the attorney may have the option to withdraw from one of the representations in order to avoid the conflict. The attorney must seek court approval where necessary and take steps to minimize harm to the clients. See Rule 19-301.16 (1.16). The attorney must continue to protect the confidences of the client from whose representation the attorney has withdrawn. See Rule 19-301.9 (c) (1.9).

Identifying Conflicts of Interest: Directly Adverse - [6] Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed consent. Thus, absent consent, an attorney may not act as an advocate in one matter against a person the attorney represents in some other matter, even when the matters are wholly unrelated. The client as to whom the representation is directly adverse is likely to feel betrayed, and the resulting damage to the client-attorney relationship is likely to impair the attorney's ability to represent the client effectively. In addition, the client on whose behalf the adverse representation is undertaken reasonably may fear that the attorney will pursue that client's case less effectively out of deference to the other client, i.e., that the representation may be materially limited by the attorney's interest in retaining the current client. Similarly, a directly adverse conflict may arise when an attorney is required to cross-examine a client who appears as a witness in a lawsuit involving another client, as when the testimony will be damaging to the client who is represented in the lawsuit. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only economically adverse, such as representation of competing economic enterprises in unrelated litigation, does not ordinarily constitute a conflict of interest and thus may not require consent of the respective clients.

[7] Directly adverse conflicts can also arise in transactional matters. For example, if an attorney is asked to represent the seller of a business in negotiations with a buyer represented by the attorney, not in the same transaction but in another, unrelated matter, the attorney could not undertake the representation without the informed consent of each client.

Identifying Conflicts of Interest: Material Limitation -

[8] Even where there is no direct adverseness, a conflict of interest exists if there is a significant risk that an attorney's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the attorney's other responsibilities or interests. For example, an attorney asked to represent several individuals seeking to form a joint venture is likely to be materially limited in the attorney's ability to recommend or advocate all possible positions that each might take because of the attorney's duty of loyalty to the others. The conflict in effect forecloses alternatives that would otherwise be available to the client. The mere possibility of subsequent harm does not itself require disclosure and consent. The critical questions are the likelihood that a difference in interests will eventuate and, if it does, whether it will materially interfere with the attorney's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client.

Attorney's Responsibilities to Former Clients and Other

Third Persons - [9] In addition to conflicts with other current clients, an attorney's duties of loyalty and independence may be materially limited by responsibilities to former clients under Rule 19-301.9 (1.9) or by the attorney's responsibilities to other persons, such as fiduciary duties arising from an attorney's service as a trustee, executor or corporate director.

Personal Interest Conflicts - [10] The attorney's own

interests should not be permitted to have an adverse effect on representation of a client. For example, if the probity of an attorney's own conduct in a transaction is in serious question, it may be difficult or impossible for the attorney to give a client detached advice. Similarly, when an attorney has discussions concerning possible employment with an opponent of the attorney's client, or with a law firm representing the opponent, such discussions could materially limit the attorney's representation of the client. In addition, an attorney may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the attorney has an undisclosed financial interest. See Rule 19-301.8 (1.8) for specific Rules pertaining to a number of personal interest conflicts, including business transactions with clients. See also Rule 19-301.10 (1.10) (personal interest conflicts under Rule 19-301.7 (1.7) ordinarily are not imputed to other attorneys in a law firm).

[11] When attorneys representing different clients in the same matter or in substantially related matters are closely related by blood or marriage, there may be a significant risk that client confidences will be revealed and that the attorney's

family relationship will interfere with both loyalty and independent professional judgment. As a result, each client is entitled to know of the existence and implications of the relationship between the attorneys before the attorney agrees to undertake the representation. Thus, an attorney related to another attorney, e.g., as parent, child, sibling or spouse, ordinarily may not represent a client in a matter where that attorney is representing another party, unless each client gives informed consent. The disqualification arising from a close family relationship is personal and ordinarily is not imputed to members of firms with whom the attorneys are associated. See Rule 19-301.10 (1.10).

[12] A sexual relationship with a client, whether or not in violation of criminal law, will create an impermissible conflict between the interests of the client and those of the attorney if (1) the representation of the client would be materially limited by the sexual relationship and (2) it is unreasonable for the attorney to believe the attorney can provide competent and diligent representation. Under those circumstances, informed consent by the client is ineffective. See also Rule 19-308.4 (8.4).

Interest of Person Paying for an Attorney's Service - [13] An attorney may be paid from a source other than the client, including a co-client, if the client is informed of that fact and consents and the arrangement does not compromise the attorney's duty of loyalty or independent judgment to the client. See Rule 19-301.8 (f) (1.8). If acceptance of the payment from any other source presents a significant risk that the attorney's representation of the client will be materially limited by the attorney's own interest in accommodating the person paying the attorney's fee or by the attorney's responsibilities to a payer who is also a co-client, then the attorney must comply with the requirements of section (b) of this Rule before accepting the representation, including determining whether the conflict is consentable and, if so, that the client has adequate information about the material risks of the representation.

Prohibited Representations - [14] Ordinarily, clients may consent to representation notwithstanding a conflict. However, as indicated in section (b) of this Rule, some conflicts are nonconsentable, meaning that the attorney involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When the attorney is representing more than one client, the question of consentability must be resolved as to each client.

[15] Consentability is typically determined by considering whether the interests of the clients will be adequately protected if the clients are permitted to give their informed consent to

representation burdened by a conflict of interest. Thus, under subsection (b) (1) of this Rule, representation is prohibited if in the circumstances the attorney cannot reasonably conclude that the attorney will be able to provide competent and diligent representation. See Rule 19-301.1 (1.1) (Competence) and Rule 19-301.3 (1.3) (Diligence).

[16] Subsection (b) (2) of this Rule describes conflicts that are nonconsentable because the representation is prohibited by applicable law. For example, in some states substantive law provides that the same attorney may not represent more than one defendant in a capital case, even with the consent of the clients, and under federal criminal statutes certain representations by a former government attorney are prohibited, despite the informed consent of the former client. In addition, decisional law in some states limits the ability of a governmental client, such as a municipality, to consent to a conflict of interest.

[17] Subsection (b) (3) of this Rule describes conflicts that are nonconsentable because of the institutional interest in vigorous development of each client's position when the clients are aligned directly against each other in the same litigation or other proceeding before a tribunal. Whether clients are aligned directly against each other within the meaning of this subsection requires examination of the context of the proceeding. Although this subsection does not preclude an attorney's multiple representation of adverse parties to a mediation (because mediation is not a proceeding before a "tribunal" under Rule 19-301.0 (o) (1.0)), such representation may be precluded by subsection (b) (1) of this Rule.

Informed Consent - [18] Informed consent requires that each affected client be aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on the interests of that client. See Rule 19-301.0 (f) (1.0) (informed consent). The information required depends on the nature of the conflict and the nature of the risks involved. When representation of multiple clients in a single matter is undertaken, the information must include the implications of the common representation, including possible effects on loyalty, confidentiality and the attorney-client privilege and the advantages and risks involved. See Comments [30] and [31] (effect of common representation on confidentiality).

[19] Under some circumstances it may be impossible to make the disclosure necessary to obtain consent. For example, when the attorney represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the

attorney cannot properly ask the latter to consent. In some cases the alternative to common representation can be that each party may have to obtain separate representation with the possibility of incurring additional costs. These costs, along with the benefits of securing separate representation, are factors that may be considered by the affected client in determining whether common representation is in the client's interests.

Consent Confirmed in Writing - [20] Section (b) of this Rule requires the attorney to obtain the informed consent of the client, confirmed in writing. Such a writing may consist of a document executed by the client or one that the attorney promptly records and transmits to the client following an oral consent. See Rule 19-301.0 (b) (1.0). See also Rule 19-301.0 (p) (1.0) (writing includes electronic transmission). If it is not feasible to obtain or transmit the writing at the time the client gives informed consent, then the attorney must obtain or transmit it within a reasonable time thereafter. See Rule 19-301.0 (b) (1.0). The requirement of a writing does not supplant the need in most cases for the attorney to talk with the client, to explain the risks and advantages, if any, of representation burdened with a conflict of interest, as well as reasonably available alternatives, and to afford the client a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns. Rather, the writing is required in order to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of a writing.

Revoking Consent - [21] A client who has given consent to a conflict may revoke the consent and, like any other client, may terminate the attorney's representation at any time. Whether revoking consent to the client's own representation precludes the attorney from continuing to represent other clients depends on the circumstances, including the nature of the conflict, whether the client revoked consent because of a material change in circumstances, the reasonable expectations of the other client and whether material detriment to the other clients or the attorney would result.

Consent to Future Conflict - [22] Whether an attorney may properly request a client to waive conflicts that might arise in the future is subject to the test of section (b) of this Rule. The effectiveness of such waivers is generally determined by the extent to which the client reasonably understands the material risks that the waiver entails. The more comprehensive the explanation of the types of future representations that might arise and the actual and reasonably foreseeable adverse consequences of those representations, the greater the likelihood that the client will have the requisite understanding. Thus, if

the client agrees to consent to a particular type of conflict with which the client is already familiar, then the consent ordinarily will be effective with regard to that type of conflict. If the consent is general and open-ended, then the consent ordinarily will be ineffective, because it is not reasonably likely that the client will have understood the material risks involved. On the other hand, if the client is an experienced user of the legal services involved and is reasonably informed regarding the risk that a conflict may arise, such consent is more likely to be effective, particularly if, e.g., the client is independently represented by another attorney in giving consent and the consent is limited to future conflicts unrelated to the subject of the representation. In any case, advance consent cannot be effective if the circumstances that materialize in the future are such as would make the conflict nonconsentable under section (b).

Conflicts in Litigation - [23] Subsection (b)(3) of this Rule prohibits representation of opposing parties in the same litigation, regardless of the clients' consent. On the other hand, simultaneous representation of parties whose interests in litigation may conflict, such as coplaintiffs or codefendants, is governed by subsection (a)(2) of this Rule. A conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. Such conflicts can arise in criminal cases as well as civil. The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily an attorney should decline to represent more than one codefendant. On the other hand, common representation of persons having similar interests in civil litigation is proper if the requirements of section (b) of this Rule are met.

[24] Ordinarily an attorney may take inconsistent legal positions in different tribunals at different times on behalf of different clients. The mere fact that advocating a legal position on behalf of one client might create precedent adverse to the interests of a client represented by the attorney in an unrelated matter does not create a conflict of interest. A conflict of interest exists, however, if there is a significant risk that an attorney's action on behalf of one client will materially limit the attorney's effectiveness in representing another client in a different case; for example, when a decision favoring one client will create a precedent likely to seriously weaken the position taken on behalf of the other client. Factors relevant in determining whether the clients need to be advised of the risk include: where the cases are pending, whether the issue is substantive or procedural, the temporal relationship between the matters, the significance of the issue to the immediate and

long-term interests of the clients involved and the clients' reasonable expectations in retaining the attorney. If there is significant risk of material limitation, then absent informed consent of the affected clients, the attorney must refuse one of the representations or withdraw from one or both matters.

[25] When an attorney represents or seeks to represent a class of plaintiffs or defendants in a class-action lawsuit, unnamed members of the class are ordinarily not considered to be clients of the attorney for purposes of applying subsection (a)(1) of this Rule. Thus, the attorney does not typically need to get the consent of such a person before representing a client suing the person in an unrelated matter. Similarly, an attorney seeking to represent an opponent in a class action does not typically need the consent of an unnamed member of the class whom the attorney represents in an unrelated matter.

Nonlitigation Conflicts - [26] Conflicts of interest under subsections (a)(1) and (a)(2) of this Rule arise in contexts other than litigation. For a discussion of directly adverse conflicts in transactional matters, see Comment [7]. Relevant factors in determining whether there is significant potential for material limitation include the duration and intimacy of the attorney's relationship with the client or clients involved, the functions being performed by the attorney, the likelihood that disagreements will arise and the likely prejudice to the client from the conflict. The question is often one of proximity and degree. See Comment [8].

[27] For example, conflict questions may arise in estate planning and estate administration. An attorney may be called upon to prepare wills for several family members, such as husband and wife, and, depending upon the circumstances, a conflict of interest may be present. In estate administration the identity of the client may be unclear under the law of a particular jurisdiction. Under one view, the client is the fiduciary; under another view the client is the estate or trust, including its beneficiaries. In order to comply with conflict of interest rules, the attorney should make clear the attorney's relationship to the parties involved.

[28] Whether a conflict is consentable depends on the circumstances. For example, an attorney may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation is permissible where the clients are generally aligned in interest even though there is some difference in interest among them. Thus, an attorney may seek to establish or adjust a relationship between clients on an amicable and mutually advantageous basis; for example, in helping to organize a business in which two or more clients are entrepreneurs, working

out the financial reorganization of an enterprise in which two or more clients have an interest or arranging a property distribution in settlement of an estate. The attorney seeks to resolve potentially adverse interests by developing the parties' mutual interests. Otherwise, each party might have to obtain separate representation, with the possibility of incurring additional cost, complication or even litigation. Given these and other relevant factors, the clients may prefer that the attorney act for all of them.

Special Considerations in Common Representation - [29] In considering whether to represent multiple clients in the same matter, an attorney should be mindful that if the common representation fails because the potentially adverse interests cannot be reconciled, the result can be additional cost, embarrassment and recrimination. Ordinarily, the attorney will be forced to withdraw from representing all of the clients if the common representation fails. In some situations, the risk of failure is so great that multiple representation is plainly impossible. For example, an attorney cannot undertake common representation of clients where contentious litigation or negotiations between them are imminent or contemplated. Moreover, because the attorney is required to be impartial between commonly represented clients, representation of multiple clients is improper when it is unlikely that impartiality can be maintained. Generally, if the relationship between the parties has already assumed antagonism, the possibility that the clients' interests can be adequately served by common representation is not very good. Other relevant factors are whether the attorney subsequently will represent both parties on a continuing basis and whether the situation involves creating or terminating a relationship between the parties.

[29.1] Rule 19-301.7 (1.7) may not apply to an attorney appointed by a court to serve as a Child's Best Interest Attorney in the same way that it applies to other attorneys. For example, because the Child's Best Interest Attorney is not bound to advocate a client's objective, siblings with conflicting views may not pose a conflict of interest for a Child's Best Interest Attorney, provided that the attorney determines the siblings' best interests to be consistent. A Child's Best Interest Attorney should advocate for the children's best interests and ensure that each child's position is made a part of the record, even if that position is different from the position that the attorney advocates. See Md. Rule 9-205.1 and Appendix to the Maryland Rules: Maryland Guidelines for Practice for Court-appointed Attorneys Representing Children in Cases Involving Child Custody or Child Access.

[30] A particularly important factor in determining the appropriateness of common representation is the effect on

client-attorney confidentiality and the attorney-client privilege. With regard to the attorney-client privilege, the prevailing rule is that, as between commonly represented clients, the privilege does not attach. Hence, it must be assumed that if litigation eventuates between the clients, the privilege will not protect any such communications, and the clients should be so advised.

[31] As to the duty of confidentiality, continued common representation will almost certainly be inadequate if one client asks the attorney not to disclose to the other client information relevant to the common representation. This is so because the attorney has an equal duty of loyalty to each client, and each client has the right to be informed of anything bearing on the representation that might affect that client's interests and the right to expect that the attorney will use that information to that client's benefit. See Rule 19-301.4 (1.4). The attorney should, at the outset of the common representation and as part of the process of obtaining each client's informed consent, advise each client that information will be shared and that the attorney will have to withdraw if one client decides that some matter material to the representation should be kept from the other. In limited circumstances, it may be appropriate for the attorney to proceed with the representation when the clients have agreed, after being properly informed, that the attorney will keep certain information confidential. For example, the attorney may reasonably conclude that failure to disclose one client's trade secrets to another client will not adversely affect representation involving a joint venture between the clients and agree to keep that information confidential with the informed consent of both clients.

[32] When seeking to establish or adjust a relationship between clients, the attorney should make clear that the attorney's role is not that of partisanship normally expected in other circumstances and, thus, that the clients may be required to assume greater responsibility for decisions than when each client is separately represented. Any limitations on the scope of the representation made necessary as a result of the common representation should be fully explained to the clients at the outset of the representation. See Rule 19-301.2 (c) (1.2).

[33] Subject to the above limitations, each client in the common representation has the right to loyal and diligent representation and the protection of Rule 19-301.9 (1.9) concerning the obligations to a former client. The client also has the right to discharge the attorney as stated in Rule 19-301.16 (1.16).

Organizational Clients - [34] An attorney who represents a corporation or other organization does not, by virtue of that

representation, necessarily represent any constituent or affiliated organization, such as a parent or subsidiary. See Rule 19-301.13 (a) (1.13). Thus, the attorney for an organization is not barred from accepting representation adverse to an affiliate in an unrelated matter, unless the circumstances are such that the affiliate should also be considered a client of the attorney, there is an understanding between the attorney and the organizational client that the attorney will avoid representation adverse to the client's affiliates, or the attorney's obligations to either the organizational client or the new client are likely to limit materially the attorney's representation of the other client.

[35] An attorney for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles may conflict. The attorney may be called on to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the attorney's resignation from the board and the possibility of the corporation's obtaining legal advice from another attorney in such situations. If there is material risk that the dual role will compromise the attorney's independence of professional judgment, the attorney should not serve as a director or should cease to act as the corporation's attorney when conflicts of interest arise. The attorney should advise the other members of the board that in some circumstances matters discussed at board meetings while the attorney is present in the capacity of director might not be protected by the attorney-client privilege and that conflict of interest considerations might require the attorney's recusal as a director or might require the attorney and the attorney's firm to decline representation of the corporation in a matter.

Model Rules Comparison - Rule 19-301.7 (1.7) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct except for omitting the word "concurrent" in Rule 19-301.7 (1.7) (a) and (b) and Comment [1], and retaining most of existing Maryland language in Comment [12].

REPORTER'S NOTE

Rule 19-301.7 is derived from current Rule 1.7 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

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

(a) An attorney shall not enter into a business transaction with a client unless:

(1) the transaction and terms on which the attorney acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek independent legal advice on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the attorney's role in the transaction, including whether the attorney is representing the client in the transaction.

(b) An attorney shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

(c) An attorney shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the attorney or a person related to

the attorney any substantial gift unless the attorney or other recipient of the gift is related to the client. For purposes of this section, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the attorney or the client maintains a close, familial relationship.

(d) Prior to the conclusion of representation of a client, an attorney shall not make or negotiate an agreement giving the attorney literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) An attorney shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) an attorney may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(2) an attorney representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

(f) An attorney shall not accept compensation for representing a client from one other than the client unless:

(1) the client gives informed consent;

(2) there is no interference with the attorney's independence of professional judgment or with the client-attorney relationship; and

(3) information relating to representation of a client is

protected as required by Rule 19-301.6 (1.6).

(g) An attorney who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client or confirmed on the record before a tribunal. The attorney's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(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.

(i) An attorney shall not acquire a proprietary interest in the cause of action or subject matter of litigation the attorney is conducting for a client, except that the attorney may:

(1) acquire a lien authorized by law to secure the attorney's fee or expenses; and

(2) subject to Rule 19-301.5 (1.5), contract with a client for a reasonable contingent fee in a civil case.

(j) While attorneys are associated in a firm, a prohibition in the foregoing sections (a) through (i) of this Rule that applies to any one of them shall apply to all of them.

COMMENT

Business Transactions Between Client and Attorney - [1] An attorney's legal skill and training, together with the relationship of trust and confidence between attorney and client, create the possibility of overreaching when the attorney participates in a business, property or financial transaction with a client, for example, a loan or sales transaction or an attorney investment on behalf of a client. The requirements of section (a) of this Rule must be met even when the transaction is not closely related to the subject matter of the representation, as when an attorney drafting a will for a client learns that the client needs money for unrelated expenses and offers to make a loan to the client. Section (a) of this Rule also applies to attorneys purchasing property from estates they represent. It does not apply to ordinary fee arrangements between client and attorney, which are governed by Rule 19-301.5 (1.5), although its requirements must be met when the attorney accepts an interest in the client's business or other nonmonetary property as payment of all or part of a fee. In addition, the Rule does not apply to standard commercial transactions between the attorney and the client for products or services that the client generally markets to others, for example, banking or brokerage services, medical services, products manufactured or distributed by the client, and utilities' services. In such transactions, the attorney has no advantage in dealing with the client, and the restrictions in section (a) of this Rule are unnecessary and impracticable. For restrictions regarding attorneys engaged in the sale of goods or services related to the practice of law, see Rule 19-305.7 (5.7).

[2] Subsection (a)(1) of this Rule requires that the transaction itself be fair to the client and that its essential terms be communicated to the client, in writing, in a manner that can be reasonably understood. Subsection (a)(2) of this Rule requires that the client also be advised, in writing, of the desirability of seeking independent legal advice. It also requires that the client be given a reasonable opportunity to obtain such advice. Subsection (a)(3) of this Rule requires that the attorney obtain the client's informed consent, in a writing signed by the client, both to the essential terms of the transaction and to the attorney's role. When necessary, the attorney should discuss both the material risks of the proposed transaction, including any risk presented by the attorney's involvement, and the existence of reasonably available alternatives and should explain why independent legal advice is

desirable. See Rule 19-301.0 (f) (1.0) (definition of informed consent).

[3] The risk to a client is greatest when the client expects the attorney to represent the client in the transaction itself or when the attorney's financial interest otherwise poses a significant risk that the attorney's representation of the client will be materially limited by the attorney's financial interest in the transaction. Here the attorney's role requires that the attorney must comply, not only with the requirements of section (a) of this Rule, but also with the requirements of Rule 19-301.7 (1.7). Under that Rule, the attorney must disclose the risks associated with the attorney's dual role as both legal adviser and participant in the transaction, such as the risk that the attorney will structure the transaction or give legal advice in a way that favors the attorney's interests at the expense of the client. Moreover, the attorney must obtain the client's informed consent. In some cases, the attorney's interest may be such that Rule 19-301.7 (1.7) will preclude the attorney from seeking the client's consent to the transaction.

[4] If the client is independently represented in the transaction, subsection (a)(2) of this Rule is inapplicable, and the subsection (a)(1) of this Rule requirement for full disclosure is satisfied either by a written disclosure by the attorney involved in the transaction or by the client's independent attorney. The fact that the client was independently represented in the transaction is relevant in determining whether the agreement was fair and reasonable to the client as subsection (a)(1) of this Rule further requires.

Use of Information Related to Representation - [5] Use of information relating to the representation to the disadvantage of the client violates the attorney's duty of loyalty. Section (b) of this Rule applies when the information is used to benefit either the attorney or a third person, such as another client or business associate of the attorney. For example, if an attorney learns that a client intends to purchase and develop several parcels of land, the attorney may not use that information to purchase one of the parcels in competition with the client or to recommend that another client make such a purchase. The Rule does not prohibit uses that do not disadvantage the client. For example, an attorney who learns a government agency's interpretation of trade legislation during the representation of one client may properly use that information to benefit other clients. Section (b) of this Rule prohibits disadvantageous use of client information unless the client gives informed consent, except as permitted or required by these Rules. See Rules 19-301.2 (d) (1.2), 19-301.6 (1.6), 19-301.9 (c) (1.9), 19-303.3 (3.3), 19-304.1 (b) (4.1), 19-308.1 (8.1) and 19-308.3 (8.3).

Gifts to Attorneys - [6] An attorney may accept a gift from a client, if the transaction meets general standards of fairness. For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. If a client offers the attorney a more substantial gift, section (c) of this Rule does not prohibit the attorney from accepting it, although such a gift may be voidable by the client under the doctrine of undue influence, which treats client gifts as presumptively fraudulent. In any event, due to concerns about overreaching and imposition on clients, an attorney may not suggest that a substantial gift be made to the attorney or for the attorney's benefit, except where the attorney is related to the client as set forth in section (c) of this Rule.

[7] If effectuation of a substantial gift requires preparing a legal instrument such as a will or conveyance, the client should have the detached advice that another attorney can provide. The sole exception to this Rule is where the client is a relative of the donee.

[8] This Rule does not prohibit an attorney from seeking to have the attorney or a partner or associate of the attorney named as executor of the client's estate or to another potentially lucrative fiduciary position. Nevertheless, such appointments will be subject to the general conflict of interest provision in Rule 19-301.7 (1.7) when there is a significant risk that the attorney's interest in obtaining the appointment will materially limit the attorney's independent professional judgment in advising the client concerning the choice of an executor or other fiduciary. In obtaining the client's informed consent to the conflict, the attorney should advise the client concerning the nature and extent of the attorney's financial interest in the appointment, as well as the availability of alternative candidates for the position.

Literary Rights - [9] An agreement by which an attorney acquires literary or media rights concerning the conduct of the representation creates a conflict between the interests of the client and the personal interests of the attorney. Measures suitable in the representation of the client may detract from the publication value of an account of the representation. Section (d) of this Rule does not prohibit an attorney representing a client in a transaction concerning literary property from agreeing that the attorney's fee shall consist of a share in ownership in the property, if the arrangement conforms to Rule 19-301.5 (1.5) and sections (a) and (i) of this Rule.

Financial Assistance - [10] Attorneys may not subsidize lawsuits or administrative proceedings brought on behalf of their clients, including making or guaranteeing loans to their clients for living expenses, because to do so would encourage clients to

pursue lawsuits that might not otherwise be brought and because such assistance gives attorneys too great a financial stake in the litigation. These dangers do not warrant a prohibition on an attorney lending a client court costs and litigation expenses, including the expenses of medical examination and the costs of obtaining and presenting evidence, because these advances are virtually indistinguishable from contingent fees and help ensure access to the courts. Similarly, an exception allowing attorneys representing indigent clients to pay court costs and litigation expenses regardless of whether these funds will be repaid is warranted.

Person Paying for an Attorney's Services - [11] Attorneys are frequently asked to represent a client under circumstances in which a third person will compensate the attorney, in whole or in part. The third person might be a relative or friend, an indemnitor (such as a liability insurance company) or a co-client (such as a corporation sued along with one or more of its employees). Because third-party payers frequently have interests that differ from those of the client, including interests in minimizing the amount spent on the representation and in learning how the representation is progressing, attorneys are prohibited from accepting or continuing such representations unless the attorney determines that there will be no interference with the attorney's independent professional judgment and there is informed consent from the client. See also Rule 19-305.4 (c) (5.4) (prohibiting interference with a attorney's professional judgment by one who recommends, employs or pays the attorney to render legal services for another).

[12] Sometimes, it will be sufficient for the attorney to obtain the client's informed consent regarding the fact of the payment and the identity of the third-party payer. If, however, the fee arrangement creates a conflict of interest for the attorney, then the attorney must comply with Rule 19-301.7 (1.7). The attorney must also conform to the requirements of Rule 19-301.6 (1.6) concerning confidentiality. Under Rule 19-301.7 (a) (1.7), a conflict of interest exists if there is significant risk that the attorney's representation of the client will be materially limited by the attorney's own interest in the fee arrangement or by the attorney's responsibilities to the third-party payer (for example, when the third-party payer is a co-client). Under Rule 19-301.7 (b) (1.7), the attorney may accept or continue the representation with the informed consent of each affected client, unless the conflict is nonconsentable under that section. Under Rule 19-301.7 (b) (1.7), the informed consent must be confirmed in writing.

Aggregate Settlements - [13] Differences in willingness to make or accept an offer of settlement are among the risks of common representation of multiple clients by a single attorney.

Under Rule 19-301.7 (1.7), this is one of the risks that should be discussed before undertaking the representation, as part of the process of obtaining the clients' informed consent. In addition, Rule 19-301.2 (a) (1.2) protects each client's right to have the final say in deciding whether to accept or reject an offer of settlement and in deciding whether to enter a guilty or nolo contendere plea in a criminal case. The rule stated in this section is a corollary of both these Rules and provides that, before any settlement offer or plea bargain is made or accepted on behalf of multiple clients, the attorney must inform each of them about all the material terms of the settlement, including what the other clients will receive or pay if the settlement or plea offer is accepted. See also Rule 19-301.0 (f) (1.0) (definition of informed consent). Attorneys representing a class of plaintiffs or defendants, or those proceeding derivatively, may not have a full client-attorney relationship with each member of the class; nevertheless, such attorneys must comply with applicable rules regulating notification of class members and other procedural requirements designed to ensure adequate protection of the entire class.

Limiting Liability and Settling Malpractice Claims - [14] Agreements prospectively limiting an attorney's liability for malpractice are prohibited unless the client is independently represented in making the agreement because they are likely to undermine competent and diligent representation. Also, many clients are unable to evaluate the desirability of making such an agreement before a dispute has arisen, particularly if they are then represented by the attorney seeking the agreement. This section does not, however, prohibit an attorney from entering into an agreement with the client to arbitrate existing legal malpractice claims, provided the client is fully informed of the scope and effect of the agreement. Nor does this section limit the ability of attorneys to practice in the form of a limited-liability entity, where permitted by law, provided that each attorney remains personally liable to the client for his or her own conduct and the firm complies with any conditions required by law, such as provisions requiring client notification or maintenance of adequate liability insurance. Nor does it prohibit an agreement in accordance with Rule 19-301.2 (1.2) that defines the scope of the representation, although a definition of scope that makes the obligations of representation illusory will amount to an attempt to limit liability.

[15] Agreements settling a claim or a potential claim for malpractice are not prohibited by this Rule. Nevertheless, in view of the danger that an attorney will take unfair advantage of an unrepresented client or former client, the attorney must first advise such a person in writing of the appropriateness of independent representation in connection with such a settlement. In addition, the attorney must give the client or former client a

reasonable opportunity to find and consult independent attorney.

Acquiring Proprietary Interest in Litigation - [16] Section (i) of this Rule states the traditional general rule that attorneys are prohibited from acquiring a proprietary interest in litigation. Like section (e) of this Rule, the general rule has its basis in common law champerty and maintenance and is designed to avoid giving the attorney too great an interest in the representation. In addition, when the attorney acquires an ownership interest in the subject of the representation, it will be more difficult for a client to discharge the attorney if the client so desires. The Rule is subject to specific exceptions developed in decisional law and continued in these Rules. The exception for certain advances of the costs of litigation is set forth in section (e) of this Rule. In addition, section (i) of this Rule sets forth exceptions for liens authorized by law to secure the attorney's fees or expenses and contracts for reasonable contingent fees. The law of each jurisdiction determines which liens are authorized by law. These may include liens granted by statute, liens originating in common law and liens acquired by contract with the client. When an attorney acquires by contract a security interest in property other than that recovered through the attorney's efforts in the litigation, such an acquisition is a business or financial transaction with a client and is governed by the requirements of section (a) of this Rule. Contracts for contingent fees in civil cases are governed by Rule 19-301.5 (1.5).

Imputation of Prohibitions - [17] Under section (i) of this Rule, a prohibition on conduct by an individual attorney in sections (a) through (i) of this Rule also applies to all attorneys associated in a firm with the personally prohibited attorney. For example, one attorney in a firm may not enter into a business transaction with a client of another member of the firm without complying with section (a) of this Rule, even if the first attorney is not personally involved in the representation of the client.

Model Rules Comparison - Rule 19-301.8 (1.8) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct, except for wording changes to Rule 19-301.8 (1.8) (a), (g), (i)(2) and Comments [1], [14] and [17], and the omission of Model Rule 1.8 (j) with appropriate redesignation of subsections.

REPORTER'S NOTE

Rule 19-301.8 is derived from current Rule 1.8 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-301.9. DUTIES TO FORMER CLIENTS (1.9)

(a) An attorney who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) An attorney shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the attorney formerly was associated had previously represented a client:

(1) whose interests are materially adverse to that person;
and

(2) about whom the attorney had acquired information protected by Rules 19-301.6 (1.6) and 19-301.9 (c) (1.9) that is material to the matter; unless the former client gives informed consent, confirmed in writing.

(c) An attorney who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would

permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

COMMENT

[1] After termination of a client-attorney relationship, an attorney has certain continuing duties with respect to confidentiality and conflicts of interest and thus may not represent another client except in conformity with this Rule. Under this Rule, for example, an attorney could not properly seek to rescind on behalf of a new client a contract drafted on behalf of the former client. So also an attorney who has prosecuted an accused person could not properly represent the accused in a subsequent civil action against the government concerning the same transaction. Nor could an attorney who has represented multiple clients in a matter represent one of the clients against the others in the same or a substantially related matter after a dispute arose among the clients in that matter, unless all affected clients give informed consent. See Comment [9]. Current and former government attorneys must comply with this Rule to the extent required by Rule 19-301.11 (1.11).

[2] The scope of a "matter" for purposes of this Rule depends on the facts of a particular situation or transaction. The attorney's involvement in a matter can also be a question of degree. When an attorney has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests in that transaction clearly is prohibited. On the other hand, an attorney who recurrently handled a type of problem for a former client is not precluded for that reason alone from later representing another client in a factually distinct problem of that type even though the subsequent representation involves a position adverse to the prior client. Similar considerations can apply to the reassignment of military attorneys between defense and prosecution functions within the same military jurisdictions. The underlying question is whether the attorney was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question.

[3] Matters are "substantially related" for purposes of this Rule if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in

the subsequent matter. For example, an attorney who has represented a businessperson and learned extensive private financial information about that individual may not then represent that individual's spouse in seeking a divorce. Similarly, an attorney who has previously represented a client in securing environmental permits to build a shopping center would be precluded from representing neighbors seeking to oppose rezoning of the property on the basis of environmental considerations; however, the attorney would not be precluded, on the grounds of substantial relationship, from defending a tenant of the completed shopping center in resisting eviction for nonpayment of rent. Information that has been disclosed to the public or to other parties adverse to the former client ordinarily will not be disqualifying. Information acquired in a prior representation may have been rendered obsolete by the passage of time, a circumstance that may be relevant in determining whether two representations are substantially related. In the case of an organizational client, general knowledge of the client's policies and practices ordinarily will not preclude a subsequent representation; on the other hand, knowledge of specific facts gained in a prior representation that are relevant to the matter in question ordinarily will preclude such a representation. A former client is not required to reveal the confidential information learned by the attorney in order to establish a substantial risk that the attorney has confidential information to use in the subsequent matter. A conclusion about the possession of such information may be based on the nature of the services the attorney provided the former client and information that would in ordinary practice be learned by an attorney providing such services.

Attorneys Moving Between Firms - [4] When attorneys have been associated within a firm but then end their association, the question of whether an attorney should undertake representation is more complicated. There are several competing considerations. First, the client previously represented by the former firm must be reasonably assured that the principle of loyalty to the client is not compromised. Second, the rule should not be so broadly cast as to preclude other persons from having reasonable choice of attorneys. Third, the rule should not unreasonably hamper attorneys from forming new associations and taking on new clients after having left a previous association. In this connection, it should be recognized that today many attorneys practice in firms, that many attorneys to some degree limit their practice to one field or another, and that many move from one association to another several times in their careers. If the concept of imputation were applied with unqualified rigor, the result would be radical curtailment of the opportunity of attorneys to move from one practice setting to another and of the opportunity of clients to change attorneys.

[5] Section (b) of this Rule operates to disqualify the attorney only when the attorney involved has actual knowledge of information protected by Rules 19-301.6 (1.6) and 19-301.9 (c) (1.9). Thus, if an attorney while with one firm acquired no knowledge or information relating to a particular client of the firm, and that attorney later joined another firm, neither the attorney individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of the two clients conflict. See Rule 19-301.10 (b) (1.10) for the restrictions on a firm once an attorney has terminated association with the firm.

[6] Application of section (b) of this Rule depends on a situation's particular facts, aided by inferences, deductions or working presumptions that reasonably may be made about the way in which attorneys work together. An attorney may have general access to files of all clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such an attorney in fact is privy to all information about all the firm's clients. In contrast, another attorney may have access to the files of only a limited number of clients and participate in discussions of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such an attorney in fact is privy to information about the clients actually served but not those of other clients. In such an inquiry, the burden of proof ordinarily rests upon the firm whose disqualification is sought.

[7] Independent of the question of disqualification of a firm, an attorney changing professional association has a continuing duty to preserve confidentiality of information about a client formerly represented. See Rules 19-301.6 (1.6) and 19-301.9 (c) (1.9).

[8] Section (c) of this Rule provides that information acquired by the attorney in the course of representing a client may not subsequently be used or revealed by the attorney to the disadvantage of the client. However, the fact that an attorney has once served a client does not preclude the attorney from using generally known information about that client when later representing another client.

[9] The provisions of this Rule are for the protection of former clients and can be waived if the client gives informed consent, which consent must be confirmed in writing under sections (a) and (b) of this Rule. See Rule 19-301.0 (f) (1.0). With regard to the effectiveness of an advance waiver, see Comment [22] to Rule 19-301.7 (1.7). With regard to disqualification of a firm with which an attorney is or was formerly associated, see Rule 19-301.10 (1.10).

Model Rules Comparison - Rule 19-301.9 (1.9) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct except for wording changes to Comments [2] and [6].

REPORTER'S NOTE

Rule 19-301.9 is derived from current Rule 1.9 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-301.10. IMPUTATION OF CONFLICT OF INTEREST - GENERAL
RULE (1.10)

(a) While attorneys are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 19-301.7 (1.7) or 19-301.9 (1.9), unless the prohibition is based on a personal interest of the prohibited attorney and does not present a significant risk of materially limiting the representation of the client by the remaining attorneys in the firm.

(b) When an attorney has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated attorney and not currently represented by the firm, unless:

(1) the matter is the same or substantially related to that in which the formerly associated attorney represented the client; and

(2) any attorney remaining in the firm has information protected by Rules 19-301.6 (1.6) and 19-301.9 (c) (1.9) that is material to the matter.

(c) When an attorney becomes associated with a firm, no

attorney associated in the firm shall knowingly represent a person in a matter in which the newly associated attorney is disqualified under Rule 19-301.9 (1.9) unless the personally disqualified attorney is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.

(d) A disqualification prescribed by this Rule may be waived by the affected client under the conditions stated in Rule 19-301.7 (1.7).

(e) The disqualification of attorneys associated in a firm with former or current government attorneys is governed by Rule 19-301.11 (1.11).

COMMENT

Definition of "Firm" - [1] A "firm" is defined in Rule 19-301.0 (d) (1.0). Whether two or more attorneys constitute a firm within this definition can depend on the specific facts. See Rule 19-301.0 (1.0), Comments [2] - [4]. An attorney is deemed associated with a firm if held out to be a partner, principal, associate, of counsel, or similar designation. An attorney ordinarily is not deemed associated with a firm if the attorney no longer practices law and is held out as retired or emeritus. An attorney employed for short periods as a contract attorney ordinarily is deemed associated with the firm only regarding matters to which the attorney gives substantive attention.

Principles of Imputed Disqualification - [2] The rule of imputed disqualification stated in section (a) gives effect to the principle of loyalty to the client as it applies to attorneys who practice in a law firm. Such situations can be considered from the premise that a firm of attorneys is essentially one attorney for purposes of the rules governing loyalty to the client, or from the premise that each attorney is vicariously bound by the obligation of loyalty owed by each attorney with whom the attorney is associated. Section (a) of this Rule operates only among the attorneys currently associated in a firm. When an attorney moves from one firm to another, the situation is governed by Rules 19-301.9 (b) (1.9), 19-301.10 (b) (1.10) and 19-301.10 (c) (1.10).

[3] The rule in section (a) of this Rule does not prohibit representation where neither questions of client loyalty nor protection of confidential information are presented. Where one attorney in a firm could not effectively represent a given client because of strong political beliefs, for example, but that attorney will do no work on the case and the personal beliefs of the attorney will not materially limit the representation by others in the firm, the firm should not be disqualified. On the other hand, if an opposing party in a case were owned by an attorney in the law firm, and others in the firm would be materially limited in pursuing the matter because of loyalty to that attorney, the personal disqualification of the attorney would be imputed to all others in the firm.

[4] The rule in section (a) of this Rule also does not prohibit representation by others in the law firm where the individual prohibited from involvement in a matter is a non-attorney, such as a paralegal or legal secretary. Nor does section (a) of this Rule prohibit representation if the attorney is prohibited from acting because of events before the individual became an attorney, for example, work that the individual did while a law student. Such individuals, however, ordinarily must be screened from any personal participation in the matter to avoid communication to others in the firm of confidential information that both the non-attorneys and the firm have a legal duty to protect. See Rules 19-301.0 (m) (1.0) and 19-305.3 (5.3).

[5] Rule 19-301.10 (b) (1.10) operates to permit a law firm, under certain circumstances, to represent a person with interests directly adverse to those of a client represented by an attorney who formerly was associated with the firm. The Rule applies regardless of when the formerly associated attorney represented the client. However, the law firm may not represent a person with interests adverse to those of a present client of the firm, which would violate Rule 19-301.7 (1.7). Moreover, the firm may not represent the person where the matter is the same or substantially related to that in which the formerly associated attorney represented the client and any other attorney currently in the firm has material information protected by Rules 19-301.6 (1.6) and 19-301.9 (c) (1.9).

[6] Where the conditions of section (c) of this Rule are met, imputation is removed, and consent to the new representation is not required. Attorneys should be aware, however, that courts may impose more stringent obligations in ruling upon motions to disqualify an attorney from pending litigation.

[7] Requirements for screening procedures are stated in Rule 19-301.0 (m) (1.0). Section (c) of this Rule does not prohibit the screened attorney from receiving a salary or partnership

share established by prior independent agreement, but that attorney may not receive compensation directly related to the matter in which the attorney is disqualified.

[8] Rule 19-301.10 (d) (1.10) removes imputation with the informed consent of the affected client or former client under the conditions stated in Rule 19-301.7 (1.7). The conditions stated in Rule 19-301.7 (1.7) require the attorney to determine that the representation is not prohibited by Rule 19-301.7 (b) (1.7) and that each affected client or former client has given informed consent to the representation, confirmed in writing. In some cases, the risk may be so severe that the conflict may not be cured by client consent. For a discussion of the effectiveness of client waivers of conflicts that might arise in the future, see Rule 19-301.7 (1.7), Comment [22]. For a definition of informed consent, see Rule 19-301.0 (f) (1.0).

[9] Where an attorney has joined a private firm after having represented the government, imputation is governed by Rule 19-301.11 (b) and (c) (1.11), not this Rule. Under Rule 19-301.11 (d) (1.11), where an attorney represents the government after having served clients in private practice, nongovernmental employment or in another government agency, former-client conflicts are not imputed to government attorneys associated with the individually disqualified attorney.

[10] Where an attorney is prohibited from engaging in certain transactions under Rule 19-301.8 (1.8), section (j) of that Rule, and not this Rule, determines whether that prohibition also applies to other attorneys associated in a firm with the personally prohibited attorney.

Model Rules Comparison - Rule 19-301.10 (1.10) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct except for changes to Comment [1] and to provide for screening in Rule 19-301.10 (c) (1.10) and Comments [6] and [7], with the appropriate redesignation of sections. These screening provisions, along with Rule 19-301.0 (m) (1.0) and Comments [8]-[10] under Rule 19-301.0 (1.0) are substantially the same as former Rule 1.10 (b) (adopted January 1, 2000) with additional guidance on how to make screening effective.

REPORTER'S NOTE

Rule 19-301.10 is derived from current Rule 1.10 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-301.11. SPECIAL CONFLICT OF INTEREST FOR FORMER AND
CURRENT GOVERNMENT OFFICERS AND EMPLOYEES (1.11)

(a) Except as law may otherwise expressly permit, an attorney who has formerly served as a public officer or employee of the government:

(1) is subject to Rule 19-301.9 (c) (1.9); and

(2) shall not otherwise represent a client in connection with a matter in which the attorney participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

(b) When an attorney is disqualified from representation under section (a) of this Rule, no attorney in a firm with which that attorney is associated may knowingly undertake or continue representation in such a matter unless:

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

(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with this Rule.

(c) Except as law may otherwise expressly permit, an attorney

having information that the attorney knows is confidential government information about a person acquired when the attorney was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this Rule, the term "confidential government information" means information that has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A firm with which that attorney is associated may undertake or continue representation in the matter only if the disqualified attorney is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.

(d) Except as law may otherwise expressly permit, an attorney currently serving as a public officer or employee:

(1) is subject to Rules 19-301.7 (1.7) and 19-301.9 (1.9);

and

(2) shall not:

(A) participate in a matter in which the attorney participated personally and substantially while in private practice or non-governmental employment, unless the appropriate government agency gives its informed consent, confirmed in writing; or

(B) negotiate for private employment with any person who is

Rule 19-301.11

involved as a party or as an attorney for a party in a matter in which the attorney is participating personally and substantially, except that an attorney serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by Rule 19-301.12 (b) (1.12) and subject to the conditions stated in Rule 19-301.12 (b) (1.12).

(e) As used in this Rule, the term "matter" includes:

(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties, and

(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

COMMENT

[1] An attorney who has served or is currently serving as a public officer or employee is personally subject to the Maryland Attorneys' Rules of Professional Conduct, including the prohibition against concurrent conflicts of interest stated in Rule 19-301.7 (1.7). In addition, such an attorney may be subject to statutes and government regulations regarding conflict of interest. Such statutes and regulations may circumscribe the extent to which the government agency may give consent under this Rule. See Rule 19-301.0 (f) (1.0) for the definition of informed consent.

[2] Subsections (a) (1), (a) (2) and (d) (1) of this Rule restate the obligations of an individual attorney who has served or is currently serving as an officer or employee of the government toward a former government or private client. Rule 19-301.10 (1.10) is not applicable to the conflicts of interest addressed by this Rule. Rather, section (b) of this Rule sets forth a special imputation rule for former government attorneys that provides for screening and notice. Because of the special problems raised by imputation within a government agency, section (d) of this Rule does not impute the conflicts of an attorney currently serving as an officer or employee of the government to

other associated government officers or employees, although ordinarily it will be prudent to screen such attorneys.

[3] Subsections (a)(2) and (d)(2) of this Rule apply regardless of whether an attorney is adverse to a former client and are thus designed not only to protect the former client, but also to prevent an attorney from exploiting public office for the advantage of another client. For example, an attorney who has pursued a claim on behalf of the government may not pursue the same claim on behalf of a later private client after the attorney has left government service, except when authorized to do so by the government agency under section (a) of this Rule. Similarly, an attorney who has pursued a claim on behalf of a private client may not pursue the claim on behalf of the government, except when authorized to do so by section (d). As with subsections (a)(1) and (d)(1) of this Rule, Rule 19-301.10 (1.10) is not applicable to the conflicts of interest addressed by these subsections.

[4] This Rule represents a balancing of interests. On the one hand, where the successive clients are a government agency and another client, public or private, the risk exists that power or discretion vested in that agency might be used for the special benefit of the other client. An attorney should not be in a position where benefit to the other client might affect performance of the attorney's professional functions on behalf of the government. Also, unfair advantage could accrue to the other client by reason of access to confidential government information about the client's adversary obtainable only through the attorney's government service. On the other hand, the rules governing attorneys presently or formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and from the government. The government has a legitimate need to attract qualified attorneys as well as to maintain high ethical standards. Thus a former government attorney is disqualified only from particular matters in which the attorney participated personally and substantially. The provisions for screening and waiver in section (b) of this Rule are necessary to prevent the disqualification rule from imposing too severe a deterrent against entering public service. The limitation of disqualification in subsections (a)(2) and (d)(2) of this Rule to matters involving a specific party or parties, rather than extending disqualification to all substantive issues on which the attorney worked, serves a similar function.

[5] When an attorney has been employed by one government agency and then moves to a second government agency, it may be appropriate to treat that second agency as another client for purposes of this Rule, as when an attorney is employed by a city and subsequently is employed by a federal agency. However, because the conflict of interest is governed by section (d) of

this Rule, the latter agency is not required to screen the attorney as section (b) of this Rule requires a law firm to do. The question of whether two government agencies should be regarded as the same or different clients for conflict of interest purposes is beyond the scope of these Rules. See Rule 19-301.13 (1.13) Comment [8].

[6] Sections (b) and (c) of this Rule contemplate a screening arrangement. See Rule 19-301.0 (m) (1.0) (requirements for screening procedures). These sections do not prohibit an attorney from receiving a salary or partnership share established by prior independent agreement, but that attorney may not receive compensation directly relating the attorney's compensation to the fee in the matter in which the attorney is disqualified.

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

[8] Section (c) of this Rule operates only when the attorney in question has knowledge of the information, which means actual knowledge; it does not operate with respect to information that merely could be imputed to the attorney.

[9] Sections (a) and (d) of this Rule do not prohibit an attorney from jointly representing a private party and a government agency when doing so is permitted by Rule 19-301.7 (1.7) and is not otherwise prohibited by law.

[10] For purposes of section (e) of this Rule, a "matter" may continue in another form. In determining whether two particular matters are the same, the attorney should consider the extent to which the matters involve the same basic facts, the same or related parties, and the time elapsed.

Model Rules Comparison - Rule 19-301.11 (1.11) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct.

REPORTER'S NOTE

Rule 19-301.11 is derived from current Rule 1.11 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-301.12. FORMER JUDGE, ARBITRATOR, MEDIATOR, OR OTHER
THIRD-PARTY NEUTRAL (1.12)

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

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

(c) If an attorney is disqualified by section (a) of this Rule, no attorney in a firm with which that attorney is associated may knowingly undertake or continue representation in

the matter unless:

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

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

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

COMMENT

[1] This Rule generally parallels Rule 19-301.11 (1.11). The term "personally and substantially" signifies that a judge who was a member of a multimember court, and thereafter left judicial office to practice law, is not prohibited from representing a client in a matter pending in the court, but in which the former judge did not participate. So also the fact that a former judge exercised administrative responsibility in a court does not prevent the former judge from acting as an attorney in a matter where the judge had previously exercised remote or incidental administrative responsibility that did not affect the merits. Compare the Comment to Rule 19-301.11 (1.11).

[2] The term "adjudicative officer" includes such officials as judges pro tempore, referees, special magistrates, hearing officers and other parajudicial officers, and also attorneys who serve as part-time judges. See Title 18, Chapter 200, Maryland Code of Conduct for Judicial Appointees.

[3] Like former judges, attorneys who have served as arbitrators, mediators or other third-party neutrals may be asked to represent a client in a matter in which the attorney participated personally and substantially. This Rule forbids such representation unless all of the parties to the proceedings give their informed consent, confirmed in writing. See Rule 19-301.0 (f) and (b) (1.0). Other law or codes of ethics governing third-party neutrals may impose more stringent standards of personal or imputed disqualification. See Rule 19-302.4 (2.4).

[4] Although attorneys who serve as third-party neutrals do

not have information concerning the parties that is protected under Rule 19-301.6 (1.6), they typically owe the parties an obligation of confidentiality under law or codes of ethics governing third-party neutrals. Thus, section (c) of this Rule provides that conflicts of the personally disqualified attorney will be imputed to other attorneys in a law firm unless the conditions of this section are met.

[5] Requirements for screening procedures are stated in Rule 19-301.0 (m) (1.0). Subsection (c)(1) of this Rule does not prohibit the screened attorney from receiving a salary or partnership share established by prior independent agreement, but that attorney may not receive compensation directly related to the matter in which the attorney is disqualified.

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

Model Rules Comparison - Apart from redesignating the sections of the Comments to this Rule, Rule 19-301.12 (1.12) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct.

REPORTER'S NOTE

Rule 19-301.12 is derived from current Rule 1.12 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-301.13. ORGANIZATION AS CLIENT (1.13)

(a) An attorney employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If an attorney for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and is likely to result in substantial injury to the organization, the attorney shall proceed as is reasonably necessary in the best interest of the organization. Unless the attorney reasonably believes that it is not necessary in the best interest of the organization to do so, the attorney shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act on behalf of the organization as determined by applicable law.

(c) When the organization's highest authority insists upon action, or refuses to take action, that is clearly a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and is

reasonably certain to result in substantial injury to the organization, the attorney may take further remedial action that the attorney reasonably believes to be in the best interest of the organization. Such action may include revealing information otherwise protected by Rule 19-301.6 (1.6) only if the attorney reasonably believes that:

(1) the highest authority in the organization has acted to further the personal or financial interests of members of the authority which are in conflict with the interests of the organization; and

(2) revealing the information is necessary in the best interest of the organization.

(d) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, an attorney shall explain the identity of the client when the attorney knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the attorney is dealing.

(e) An attorney representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 19-301.7 (1.7). If the organization's consent to the dual representation is required by Rule 19-301.7 (1.7), the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

COMMENT

The Entity as the Client - [1] An organizational client is a legal entity, but it cannot act except through its officers, directors, employees, shareholders and other constituents.

[2] Officers, directors, employees and shareholders are the constituents of the corporate organizational client. The duties created by this Rule apply equally to unincorporated associations. "Other constituents" as used in this Comment means the positions equivalent to officers, directors, employees and shareholders held by persons acting for organizational clients that are not corporations.

[3] When one of the constituents of an organizational client communicates with the organization's attorney in that person's organizational capacity, the communication is protected by Rule 19-301.6 (1.6). Thus, for example, if an organizational client requests its attorney to investigate allegations of wrongdoing, interviews made in the course of that investigation between the attorney and the client's employees or other constituents are covered by Rule 19-301.6 (1.6). This does not mean, however, that constituents of an organizational client are the clients of the attorney. The attorney may not disclose to such constituents information relating to the representation except for disclosures explicitly or impliedly authorized by the organizational client in order to carry out the representation or as otherwise permitted by Rule 19-301.6 (1.6).

[4] When constituents of the organization make decisions for it, the decisions ordinarily must be accepted by the attorney even if their utility or prudence is doubtful. Decisions concerning policy and operations, including ones entailing serious risk, are not as such in the attorney's province. However, different considerations arise when the attorney knows that the organization is likely to be substantially injured by action of a constituent that is in violation of law. In such a circumstance, it may be reasonably necessary for the attorney to ask the constituent to reconsider the matter. If that fails, or if the matter is of sufficient seriousness and importance to the organization, it may be reasonably necessary for the attorney to take steps to have the matter reviewed by a higher authority in the organization, depending on the seriousness of the matter and whether the constituent in question has apparent motives to act at variance with the organization's interest. Review by the chief executive officer or by the board of directors may be required when the matter is of importance commensurate with their authority. At some point it may be useful or essential to obtain an independent legal opinion.

[5] The organization's highest authority to whom a matter

may be referred ordinarily will be the board of directors or similar governing body. However, applicable law may prescribe that under certain conditions the highest authority reposes elsewhere; for example, in the independent directors of a corporation.

[6] If an attorney can take remedial action without a disclosure of information that might adversely affect the organization, the attorney as a matter of professional discretion may take such action as the attorney reasonably believes to be in the best interest of the organization. For example, an attorney for a close corporation may find it reasonably necessary to disclose misconduct by the Board to the shareholders. However, taking such action could entail disclosure of information relating to the representation with consequent risk of injury to the client; when such is the case, the organization is threatened by alternative injuries; the injury that may result from the governing Board's action or refusal to act, and the injury that may result if the attorney's remedial efforts entail disclosure of confidential information. The attorney may pursue remedial efforts even at the risk of disclosure in the circumstances stated in subsections (c) (1) and (c) (2) of this Rule.

Relation to Other Rules - [7] The authority and responsibility provided in this Rule are concurrent with the authority and responsibility provided in other Rules. Section (c) of this Rule supplements Rule 19-301.6 (b) (1.6) by providing an additional basis upon which the attorney may reveal information relating to the representation, but does not modify, restrict, or limit the provisions of Rule 19-301.6 (b) (1)-(6) (1.6). Under section (c) of this Rule the attorney may reveal such information only when the organization's highest authority insists upon or fails to address threatened or ongoing action that is clearly a violation of law, and then only to the extent the attorney reasonably believes necessary to prevent reasonably certain substantial injury to the organization. It is not necessary that the attorney's services be used in furtherance of the violation as it is under Rules 19-301.6 (b) (2) (1.6) and 19-301.6 (b) (3) (1.6), but it is required that the matter be related to the attorney's representation of the organization. In particular, this Rule does not limit or expand the attorney's responsibility under Rules 19-301.8 (1.8), 19-301.16 (1.16), 19-303.3 (3.3) or 19-304.1 (4.1). If the attorney's services are being used by an organization to further a crime or fraud by the organization, Rules 19-301.6 (b) (2) (1.6) and 19-301.6 (b) (3) (1.6) may permit the attorney to disclose information otherwise protected by Rule 19-301.6 (a) (1.6). In such circumstances, Rule 19-301.2 (d) (1.2) may also be applicable.

Government Agency - [8] The duty defined in this Rule applies to governmental organizations. Defining precisely the

identity of the client and prescribing the resulting obligations of such attorneys may be more difficult in the government context and is a matter beyond the scope of these Rules. See Scope [18]. Although in some circumstances the client may be a specific agency, it may also be a branch of government, such as the executive branch, or the government as a whole. For example, if the action or failure to act involves the head of a bureau, either the department of which the bureau is a part or the relevant branch of government may be the client for purposes of this Rule. Moreover, in a matter involving the conduct of government officials, a government attorney may have authority under applicable law to question such conduct more extensively than that of an attorney for a private organization in similar circumstances. Thus, when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful act is prevented or rectified, for public business is involved. In addition, duties of attorneys employed by the government or attorneys in military service may be defined by statutes and regulation. This Rule does not limit that authority. See Scope.

Clarifying the Attorney's Role - [9] There are times when the organization's interest may be or become adverse to those of one or more of its constituents. In such circumstances the attorney should advise any constituent, whose interest the attorney finds adverse to that of the organization of the conflict or potential conflict of interest, that the attorney cannot represent such constituent, and that such person may wish to obtain independent representation. Care must be taken to assure that the individual understands that, when there is such adversity of interest, the attorney for the organization cannot provide legal representation for that constituent individual, and that discussions between the attorney for the organization and the individual may not be privileged.

[10] Whether such a warning should be given by the attorney for the organization to any constituent individual may turn on the facts of each case.

Dual Representation - [11] Section (e) of this Rule recognizes that an attorney for an organization may also represent a principal officer or major shareholder.

Derivative Actions - [12] Under generally prevailing law, the shareholders or members of a corporation may bring suit to compel the directors to perform their legal obligations in the supervision of the organization. Members of unincorporated associations have essentially the same right. Such an action may be brought nominally by the organization, but usually is, in fact, a legal controversy over management of the organization.

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[13] The question can arise whether an attorney for the organization may defend such an action. The proposition that the organization is the attorney's client does not alone resolve the issue. Most derivative actions are a normal incident of an organization's affairs, to be defended by the organization's attorney like any other suit. However, if the claim involves serious charges of wrongdoing by those in control of the organization, a conflict may arise between the attorney's duty to the organization and the attorney's relationship with the board. In those circumstances, Rule 19-301.7 (1.7) governs who may represent the directors and the organization.

Model Rules Comparison - Rule 19-301.13 (1.13) retains elements of existing Maryland language, incorporates further revisions, and incorporates language in Rule 1.13 (d) and Comments [5] and [8] from the Ethics 2000 Amendments to the ABA Model Rules.

REPORTER'S NOTE

Rule 19-301.13 is derived from current Rule 1.13 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-301.14. CLIENT WITH DIMINISHED CAPACITY (1.14)

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished whether because of minority, mental impairment or for some other reason, the attorney shall, as far as reasonably possible, maintain a normal client-attorney relationship with the client.

(b) When the attorney reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial, or other harm unless action is taken and cannot adequately act in the client's own interest, the attorney may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator, or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 19-301.6 (1.6).

When taking protective action pursuant to section (b) of this Rule, the attorney is impliedly authorized under Rule 19-301.6

(a) (1.6) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

COMMENT

[1] The normal client-attorney relationship is based on the

assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or suffers from a diminished mental capacity, however, maintaining the ordinary client-attorney relationship may not be possible in all respects. In particular, a severely incapacitated individual may have no power to make legally binding decisions. Nevertheless, to an increasing extent the law recognizes intermediate degrees of competence. Indeed, a client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. For example, it is recognized that some individuals of advanced age can be quite capable of handling routine financial matters while needing special legal protection concerning major transactions. In addition, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. Consideration of and, when appropriate, deference to these opinions are especially important in cases involving children in Child In Need of Assistance (CINA) and related Termination of Parental Rights (TPR) and adoption proceedings. With respect to these categories of cases, the Maryland Foster Care Court Improvement Project has prepared Guidelines of Advocacy for Attorneys Representing Children in CINA and Related TPR and Adoption Proceedings. The Guidelines are included in an appendix to the Maryland Rules. Also included in an Appendix to the Maryland Rules are Maryland Guidelines for Practice for Court-Appointed Attorneys Representing Children in Cases Involving Child Custody or Child Access, developed by the Maryland Judicial Conference Committee on Family Law.

[2] The fact that a client suffers a disability does not diminish the attorney's obligation to treat the client with attention and respect. Even if the individual has a legal representative, the attorney should as far as possible accord the represented individual the status of client, particularly in maintaining communication.

[3] The client may wish to have family members or other individuals participate in discussions with the attorney. When necessary to assist in the representation, the presence of such individuals generally does not affect the applicability of the attorney-client evidentiary privilege. Nevertheless, the attorney must keep the client's interests foremost and, except for protective action authorized under section (b) of this Rule, must look to the client, and not family members, to make decisions on the client's behalf.

[4] If a legal representative has already been appointed for the client, the attorney should ordinarily look to the representative for decisions on behalf of the client. In matters

involving a minor, whether the attorney should look to the parents as natural guardians may depend on the type of proceeding or matter in which the attorney is representing the minor. If the attorney represents the guardian as distinct from the ward, and is aware that the guardian is acting adversely to the ward's interest, the attorney may have an obligation to prevent or rectify the guardian's misconduct. See Rule 19-301.2 (d) (1.2).

Taking Protective Action - [5] If an attorney reasonably believes that a client is at risk of substantial physical, financial or other harm unless action is taken, and that a normal client-attorney relationship cannot be maintained as provided in section (a) of this Rule because the client lacks sufficient capacity to communicate or to make adequately considered decisions in connection with the representation, then section (b) of this Rule permits the attorney to take protective measures deemed necessary. Such measures could include: consulting with family members, delaying action if feasible to permit clarification or improvement of circumstances, using voluntary surrogate decision-making tools such as durable powers of attorney or consulting with support groups, professional services, adult-protective agencies or other individuals or entities that have the ability to protect the client. In taking any protective action, the attorney should be guided by such factors as the wishes and values of the client to the extent known, the client's best interests and the goals of intruding into the client's decision-making autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections.

[6] In determining the extent of the client's diminished capacity, the attorney should consider and balance such factors as: the client's ability to articulate reasoning leading to a decision; variability of state of mind and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term commitments and values of the client. In appropriate circumstances, the attorney may seek guidance from an appropriate diagnostician.

[7] If a legal representative has not been appointed, the attorney should consider whether appointment of a guardian ad litem, conservator or guardian is necessary to protect the client's interests. Thus, if a client with diminished capacity has substantial property that should be sold for the client's benefit, effective completion of the transaction may require appointment of a legal representative. In addition, rules of procedure in litigation sometimes provide that minors or individuals with diminished capacity must be represented by a guardian or next friend if they do not have a general guardian. In many circumstances, however, appointment of a legal

representative may be more expensive or traumatic for the client than circumstances in fact require. Evaluation of such circumstances is a matter entrusted to the professional judgment of the attorney. In considering alternatives, however, the attorney should be aware of any law that requires the attorney to advocate the least restrictive action on behalf of the client.

Disclosure of the Client's Condition - [8] Disclosure of the client's diminished capacity could adversely affect the client's interests. For example, raising the question of diminished capacity could, in some circumstances, lead to proceedings for involuntary commitment. Information relating to the representation is protected by Rule 19-301.6 (1.6). Therefore, unless authorized to do so, the attorney may not disclose such information. When taking protective action pursuant to section (b) of this Rule, the attorney is impliedly authorized to make the necessary disclosures, even when the client directs the attorney to the contrary. Nevertheless, given the risks of disclosure, section (c) of this Rule limits what the attorney may disclose in consulting with other individuals or entities or seeking the appointment of a legal representative. At the very least, the attorney should determine whether it is likely that the person or entity consulted with will act adversely to the client's interests before discussing matters related to the client. The attorney's position in such cases is an unavoidably difficult one.

Emergency Legal Assistance - [9] In an emergency where the health, safety or a financial interest of an individual with seriously diminished capacity is threatened with imminent and irreparable harm, an attorney may take legal action on behalf of such an individual even though the individual is unable to establish a client-attorney relationship or to make or express considered judgments about the matter, when the individual or another acting in good faith on that individual's behalf has consulted with the attorney. Even in such an emergency, however, the attorney should not act unless the attorney reasonably believes that the individual has no other attorney, agent, or other representative available. The attorney should take legal action on behalf of the individual only to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm. An attorney who undertakes to represent an individual in such an exigent situation has the same duties under these Rules as the attorney would with respect to a client.

[10] An attorney who acts on behalf of an individual with seriously diminished capacity in an emergency should keep the confidences of the individual as if dealing with a client, disclosing them only to the extent necessary to accomplish the intended protective action. The attorney should disclose to any tribunal involved and to any other attorney involved the nature

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of his or her relationship with the individual. The attorney should take steps to regularize the relationship or implement other protective solutions as soon as possible.

Model Rules Comparison - Rule 19-301.14 (1.14) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct, with the exception of retaining elements of existing Maryland language in Comment [1] and further revising Comments [5] and [10].

REPORTER'S NOTE

Rule 19-301.14 is derived from current Rule 1.14 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-301.15. SAFEKEEPING PROPERTY (1.15)

(a) An attorney shall hold property of clients or third persons that is in an attorney's possession in connection with a representation separate from the attorney's own property. Funds shall be kept in a separate account maintained pursuant to Title 19, Chapter 400 of the Maryland Rules, and records shall be created and maintained in accordance with the Rules in that Chapter. Other property shall be identified specifically as such and appropriately safeguarded, and records of its receipt and distribution shall be created and maintained. Complete records of the account funds and of other property shall be kept by the attorney and shall be preserved for a period of at least five years after the date the record was created.

(b) An attorney may deposit the attorney's own funds in a client trust account only as permitted by Rule 19-408 (b).

(c) Unless the client gives informed consent, confirmed in writing, to a different arrangement, an attorney shall deposit legal fees and expenses that have been paid in advance into a client trust account and may withdraw those funds for the attorney's own benefit only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property in which a client

or third person has an interest, an attorney shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, an attorney shall deliver promptly to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall render promptly a full accounting regarding such property.

(e) When an attorney in the course of representing a client is in possession of property in which two or more persons (one of whom may be the attorney) claim interests, the property shall be kept separate by the attorney until the dispute is resolved. The attorney shall distribute promptly all portions of the property as to which the interests are not in dispute.

COMMENT

[1] A An attorney should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property of clients or third persons, including prospective clients, must be kept separate from the attorney's business and personal property and, if money, in one or more trust accounts. Separate trust accounts may be warranted when administering estate money or acting in similar fiduciary capacities. An attorney should maintain on a current basis books and records in accordance with generally accepted accounting practice and the Rules in Title 19, Chapter 400 and comply with any other record-keeping rules established by law or court order.

[2] Normally it is impermissible to commingle the attorney's own funds with client funds, and section (b) of this Rule provides that it is permissible only as permitted by Rule 19-408 (b). Accurate records must be kept regarding which part of the funds are the attorney's.

[3] Section (c) of Rule 19-301.15 (1.15) permits advances

against unearned fees and unincurred costs to be treated as either the property of the client or the property of the attorney. Unless the client gives informed consent, confirmed in writing, to a different arrangement, the Rule's default position is that such advances be treated as the property of the client, subject to the restrictions provided in section (a) of this Rule. In any case, at the termination of an engagement, advances against fees that have not been incurred must be returned to the client as provided in Rule 19-301.16 (d) (1.16).

[4] Attorneys often receive funds from which the attorney's fee will be paid. The attorney is not required to remit the client funds that the attorney reasonably believes represent fees owed. However, an attorney may not hold funds to coerce a client into accepting the attorney's contention. The disputed portion of the funds must be kept in a trust account and the attorney should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be distributed promptly.

[5] Section (e) of this Rule also recognizes that third parties may have lawful claims against specific funds or other property in a attorney's custody, such as a client's creditor who has a lien on funds recovered in a personal injury action. An attorney may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases, when the third-party claim is not frivolous under applicable law, the attorney must refuse to surrender the funds or property to the client until the claims are resolved. An attorney should not unilaterally assume to arbitrate a dispute between the client and the third party, but, when there are substantial grounds for dispute as to the person entitled to the funds, the attorney may file an action to have a court resolve the dispute.

[6] The obligations of an attorney under this Rule are independent of those arising from activity other than rendering legal services. For example, an attorney who serves only as an escrow agent is governed by the applicable law relating to fiduciaries even though the attorney does not render legal services in the transaction and is not governed by this Rule.

Model Rules Comparison - Rule 19-301.15 (1.15) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct, with the exception of changes to Rule 19-301.15 (c) (1.15), the addition of Comment [3], and the omission of ABA Comment [6].

REPORTER'S NOTE

Rule 19-301.15 is derived from current Rule 1.15 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-301.16. DECLINING OR TERMINATING REPRESENTATION (1.16)

(a) Except as stated in section (c) of this Rule, an attorney shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

- (1) the representation will result in violation of the Maryland Attorneys' Rules of Professional Conduct or other law;
- (2) the attorney's physical or mental condition materially impairs the attorney's ability to represent the client; or
- (3) the attorney is discharged.

(b) Except as stated in section (c) of this Rule, an attorney may withdraw from representing a client if:

- (1) withdrawal can be accomplished without material adverse effect on the interests of the client;
- (2) the client persists in a course of action involving the attorney's services that the attorney reasonably believes is criminal or fraudulent;
- (3) the client has used the attorney's services to perpetrate a crime or fraud;
- (4) the client insists upon action or inaction that the attorney considers repugnant or with which the attorney has a fundamental disagreement;
- (5) the client fails substantially to fulfill an obligation

to the attorney regarding the attorney's services and has been given reasonable warning that the attorney will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the attorney or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

(c) An attorney must comply with applicable law requiring notice to or permission of a tribunal when terminating representation. When ordered to do so by a tribunal, an attorney shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, an attorney shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of another attorney, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The attorney may retain papers relating to the client to the extent permitted by other law.

COMMENT

[1] An attorney should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion. Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded. See Rules 19-301.2 (c) (1.2) and 19-306.5 (6.5). See also Rule 19-301.3 (1.3), Comment [4].

Mandatory Withdrawal - [2] An attorney ordinarily must decline or withdraw from representation if the client demands

that the attorney engage in conduct that is illegal or violates the Maryland Attorneys' Rules of Professional Conduct or other law. The attorney is not obligated to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that an attorney will not be constrained by a professional obligation.

[3] When an attorney has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. See also Rule 19-306.2 (6.2). Similarly, court approval or notice to the court is often required by applicable law before an attorney withdraws from pending litigation. Difficulty may be encountered if withdrawal is based on the client's demand that the attorney engage in unprofessional conduct. The court may request an explanation for the withdrawal, while the attorney may be bound to keep confidential the facts that would constitute such an explanation. The attorney's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient. Attorneys should be mindful of their obligation to both clients and the court under Rules 19-301.6 (1.6) and 19-303.3 (3.3).

Discharge - [4] A client has a right to discharge an attorney at any time, with or without cause, subject to liability for payment for the attorney's services. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

[5] Whether a client can discharge an appointed attorney may depend on applicable law. A client seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor attorney is unjustified, thus requiring self-representation by the client.

[6] If the client has severely diminished capacity, the client may lack the legal capacity to discharge the attorney, and in any event the discharge may be seriously adverse to the client's interests. The attorney should make special effort to help the client consider the consequences and may take reasonably necessary protective action as provided in Rule 19-301.14 (1.14).

Optional Withdrawal - [7] An attorney may withdraw from representation in some circumstances. The attorney has the option to withdraw if it can be accomplished without material adverse effect on the client's interests. Withdrawal is also justified if the client persists in a course of action that the attorney reasonably believes is criminal or fraudulent, for an attorney is not required to be associated with such conduct even if the attorney does not further it. Withdrawal is also

permitted if the attorney's services were misused in the past even if that would materially prejudice the client. The attorney may also withdraw where the client insists on taking action or inaction that the attorney considers repugnant or with which the attorney has a fundamental disagreement.

[8] An attorney may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs or an agreement limiting the objectives of the representation.

Assisting the Client Upon Withdrawal - [9] Even if the attorney has been unfairly discharged by the client, an attorney must take all reasonable steps to mitigate the consequences to the client. The attorney may retain papers as security for a fee only to the extent permitted by law, subject to the limitations in section (d) of this Rule. See Rule 19-301.15 (1.15).

Model Rules Comparison - Rule 19-301.16 (1.16) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct with the exception of the addition of "or inaction" to Rule 19-301.16 (b)(4) (1.16) and Comment [7], and the addition of "subject to the limitations in section (d) of this Rule" to Comment [9].

REPORTER'S NOTE

Rule 19-301.16 is derived from current Rule 1.16 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-301.17. SALE OF LAW PRACTICE (1.17)

(a) Subject to section (b) of this Rule, a law practice, including goodwill, may be sold if the following conditions are satisfied:

(1) Except in the case of death, disability, or appointment of the seller to judicial office, the entire practice that is the subject of the sale has been in existence at least five years prior to the date of sale;

(2) The practice is sold as an entirety to another attorney or law firm; and

(3) Written notice has been mailed to the last known address of the seller's current clients regarding:

(A) the proposed sale;

(B) the terms of any proposed change in the fee arrangement;

(C) the client's right to retain another attorney, to take possession of the file, and to obtain any funds or other property to which the client is entitled; and

(D) the fact that the client's consent to the new representation will be presumed if the client does not take any action or does not otherwise object within sixty (60) days of mailing of the notice.

(b) If a notice required by subsection (a) (3) of this Rule is returned and the client cannot be located, the representation of that client may be transferred to the purchaser only by an order of a court of competent jurisdiction authorizing the transfer. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer.

COMMENT

[1] The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to this Rule, when an attorney or an entire firm ceases to practice and another attorney or firm takes over the representation, the selling attorney or firm may obtain compensation for the reasonable value of the practice as may withdrawing partners of law firms. See Rules 19-305.4 (5.4) and 19-305.6 (5.6).

Termination of Practice by the Seller - [2] The requirement that all of the private practice be sold is satisfied if the seller in good faith makes the entire practice available for sale to the purchaser. The fact that a number of the seller's clients decide not to be represented by the purchaser but take their matters elsewhere does not therefore result in a violation. The purchase agreement for the sale of a law practice may allow for restrictions on the scope and time of the seller's reentry into practice.

Single Purchaser - [3] The Rule requires a single purchaser. The prohibition against piecemeal sale of a practice protects those clients whose matters are less lucrative and who might find it difficult to secure another attorney if a sale could be limited to substantial fee-generating matters. The purchaser is required to undertake all client matters in the practice, subject to client consent. If, however, the purchaser is unable to undertake all client matters because of a conflict of interest in a specific matter respecting which the purchaser is not permitted by Rule 19-301.7 (1.7) or another rule to represent the client, the requirement that there be a single purchaser is nevertheless satisfied.

Client Confidences, Consent and Notice - [4] Negotiations between seller and prospective purchaser prior to disclosure of

information relating to a specific representation of an identifiable client no more violate the confidentiality provisions of Rule 19-301.6 (1.6) than do preliminary discussions concerning the possible association of another attorney or mergers between firms, with respect to which client consent is not required. Providing the purchaser access to client-specific information relating to the representation and to the file, however, requires client consent. The Rule provides that before such information can be disclosed by the seller to the purchaser, written notice of the contemplated sale must be mailed to the client. The notice must include the identity of the purchaser and any proposed change in the terms of future representation, and must tell the client that the decision to consent or make other arrangements must be made within 60 days. If nothing is heard from the client within that time, consent to the new representation is presumed.

[5] An attorney or law firm ceasing to practice cannot be required to remain in practice because some clients cannot be given actual notice of the proposed purchase. Since these clients cannot themselves consent to the new representation or direct any other disposition of their files, the Rule requires an order from a court having jurisdiction authorizing their transfer or other disposition. The Court can be expected to determine whether reasonable efforts to locate the client have been exhausted, and whether the absent client's legitimate interests will be served by authorizing the transfer of the file so that the purchaser may continue the representation. Preservation of client confidences requires that the petition for a court order be considered *in camera*.

[6] All the elements of client autonomy, including the client's absolute right to discharge an attorney and transfer the representation to another, survive the sale of the practice. Additionally, the transfer of the practice does not operate to change the attorney-client privilege.

Other Applicable Ethical Standards - [7] Attorneys participating in the sale of a law practice are subject to the ethical standards applicable to the involvement of another attorney in the representation of a client. These include, for example, the seller's obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (see Rule 19-301.1 (1.1)); the obligation to avoid disqualifying conflicts, and to secure the client's informed consent for those conflicts which can be agreed to (see Rule 19-301.7 (1.7) regarding conflicts and Rule 19-301.0 (f) (1.0) for the definition of informed consent); and the obligation to protect information relating to the representation (see Rules 19-301.6 (1.6) and 19-301.9 (1.9)).

[8] If approval of the substitution of the purchasing attorney for the selling attorney is required by the rules of any tribunal in which a matter is pending, that approval must be obtained before the matter can be included in the sale (see Rule 19-301.16 (1.16)).

Applicability of the Rule - [9] This Rule applies to the sale of a law practice by representatives of a deceased or disabled attorney, or one who has disappeared. Thus, the seller may be represented by a non-attorney representative not subject to these Rules. Since, however, no attorney may participate in a sale of a law practice that does not conform to the requirements of this Rule, the representatives of the seller as well as the purchasing attorney can be expected to see to it that the requirements are met.

[10] Admission to or retirement from law partnership or professional association, retirement plans and similar arrangements, and a sale of tangible assets of a law practice, do not constitute a sale or purchase governed by this Rule.

[11] This Rule does not apply to the transfers of legal representation between attorneys when such transfers are unrelated to the sale of a practice. This Rule does not prohibit an attorney from selling his or her interest in a law practice.

Committee note: The sale of a practice does not mean that the appearance of an attorney who is in a case will be stricken.

Model Rules Comparison - This Rule substantially retains Maryland language as it existed prior to the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct except for incorporating ABA changes to Comments [2] and [3].

REPORTER'S NOTE

Rule 19-301.17 is derived from current Rule 1.17 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-301.18. DUTIES TO PROSPECTIVE CLIENT (1.18)

(a) A person who discusses with an attorney the possibility of forming a client-attorney relationship with respect to a matter is a prospective client.

(b) Even when no client-attorney relationship ensues, an attorney who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 19-301.9 (1.9) would permit with respect to information of a former client.

(c) An attorney subject to section (b) of this Rule shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the attorney received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in section (d) of this Rule. If an attorney is disqualified from representation under this section, no attorney in a firm with which that attorney is associated may knowingly undertake or continue representation in such a matter, except as provided in section (d) of this Rule.

(d) Representation is permissible if both the affected client and the prospective client have given informed consent, confirmed in writing, or the disqualified attorney is timely screened from

any participation in the matter and is apportioned no part of the fee therefrom.

COMMENT

[1] Prospective clients, like clients, may disclose information to an attorney, place documents or other property in the attorney's custody, or rely on the attorney's advice. An attorney's discussions with a prospective client usually are limited in time and depth and leave both the prospective client and the attorney free (and sometimes required) to proceed no further. Hence, prospective clients should receive some but not all of the protection afforded clients.

[2] Not all persons who communicate information to an attorney are entitled to protection under this Rule. For example, a person who communicates information unilaterally to an attorney, without any reasonable expectation that the attorney is willing to discuss the possibility of forming a client-attorney relationship, is not a "prospective client" within the meaning of section (a) of this Rule.

[3] It is often necessary for a prospective client to reveal information to the attorney during an initial consultation prior to the decision about formation of a client-attorney relationship. The attorney often must learn such information to determine whether there is a conflict of interest with an existing client and whether the matter is one that the attorney is willing to undertake. Section (b) of this Rule prohibits the attorney from using or revealing that information, except as permitted by Rule 19-301.9 (1.9), even if the client or attorney decides not to proceed with the representation. The duty exists regardless of how brief the initial conference may be.

[4] In order to avoid acquiring disqualifying information from a prospective client, an attorney considering whether or not to undertake a new matter should limit the initial interview to only such information as reasonably appears necessary for that purpose. Where the information indicates that a conflict of interest or other reason for non-representation exists, the attorney should so inform the prospective client or decline the representation. If the prospective client wishes to retain the attorney, and if consent is possible under Rule 19-301.7 (1.7), then consent from all affected present or former clients must be obtained before accepting the representation.

[5] An attorney may condition conversations with a prospective client on the person's informed consent that no information disclosed during the consultation will prohibit the attorney from representing a different client in the matter. See

Rule 19-301.0 (f) (1.0) for the definition of informed consent. If the agreement expressly so provides, the prospective client may also consent to the attorney's subsequent use of information received from the prospective client.

[6] Even in the absence of an agreement, under section (c) of this Rule, the attorney is not prohibited from representing a client with interests adverse to those of the prospective client in the same or a substantially related matter unless the attorney has received from the prospective client information that could be significantly harmful if used in the matter.

[7] Under section (c) of this Rule, the prohibition in this Rule is imputed to other attorneys as provided in Rule 19-301.10 (1.10), but, under section (d) of this Rule, imputation may be avoided if the attorney obtains the informed consent, confirmed in writing, of both the prospective and affected clients. In the alternative, imputation may be avoided if, under section (d) of this Rule, all disqualified attorneys are timely screened. See Rule 19-301.0 (m) (1.0) (requirements for screening procedures). Section (d) of this Rule does not prohibit the screened attorney from receiving a salary or partnership share established by prior independent agreement, but that attorney may not receive compensation directly related to the matter in which the attorney is disqualified.

[8] For the duty of competence of an attorney who gives assistance on the merits of a matter to a prospective client, see Rule 19-301.1 (1.1). For an attorney's duties when a prospective client entrusts valuables or papers to the attorney's care, see Rule 19-301.15 (1.15).

Model Rules Comparison - This Rule, newly added to the Model Rules by the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct, is substantially similar to the ABA Rule, with the exception of omitting portions of ABA Model Rule 1.18(d) and Comment [7], and omitting ABA Comment [8] with appropriate redesignation of the Comment section thereafter.

REPORTER'S NOTE

Rule 19-301.18 is derived from current Rule 1.18 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

COUNSELOR

Rule 19-302.1. ADVISOR (2.1)

In representing a client, an attorney shall exercise independent professional judgment and render candid advice. In rendering advice, an attorney may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

COMMENT

Scope of Advice - [1] A client is entitled to straight-forward advice expressing the attorney's honest assessment. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront. In presenting advice, an attorney endeavors to sustain the client's morale and may put advice in as acceptable a form as honesty permits. However, an attorney should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.

[2] Advice couched in narrow legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for an attorney to refer to relevant moral and ethical considerations in giving advice. Although an attorney is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.

[3] A client may expressly or impliedly ask the attorney for purely technical advice. When such a request is made by a client experienced in legal matters, the attorney may accept it at face value. When such a request is made by a client inexperienced in

legal matters, however, the attorney's responsibility as advisor may include indicating that more may be involved than strictly legal considerations.

[4] Matters that go beyond strictly legal questions may also be in the domain of another profession. Family matters can involve problems within the professional competence of psychiatry, clinical psychology or social work; business matters can involve problems within the competence of the accounting profession or of financial specialists. Where consultation with a professional in another field is itself something a competent attorney would recommend, the attorney should make such a recommendation. At the same time, an attorney's advice at its best often consists of recommending a course of action in the face of conflicting recommendations of experts.

Offering Advice - [5] In general, an attorney is not expected to give advice until asked by the client. However, when an attorney knows that a client proposes a course of action that is likely to result in substantial adverse legal consequences to the client, the attorney's duty to the client under Rule 19-301.4 (1.4) may require that the attorney offer advice if the client's course of action is related to the representation. Similarly, when a matter is likely to involve litigation and, in the opinion of the attorney, one or more forms of alternative dispute resolution are reasonable alternatives to litigation, the attorney should advise the client about those reasonable alternatives. An attorney ordinarily has no duty to initiate investigation of a client's affairs or to give advice that the client has indicated is unwanted, but an attorney may initiate advice to a client when doing so appears to be in the client's interest.

Model Rules Comparison - Rule 19-302.1 (2.1) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct.

REPORTER'S NOTE

Rule 19-302.1 is derived from current Rule 2.1 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-302.3. EVALUATION FOR USE BY THIRD PARTIES (2.3)

(a) An attorney may provide an evaluation of a matter affecting a client for the use of someone other than the client if the attorney reasonably believes that making the evaluation is compatible with other aspects of the attorney's relationship with the client.

(b) When the attorney knows or reasonably should know that the evaluation is likely to affect the client's interests materially and adversely, the attorney shall not provide the evaluation unless the client gives informed consent.

(c) Except as disclosure is authorized in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by Rule 19-301.6 (1.6).

COMMENT

Definition - [1] An evaluation may be performed at the client's direction or when impliedly authorized in order to carry out the representation. See Rule 19-301.2 (1.2). Such an evaluation may be for the primary purpose of establishing information for the benefit of third parties; for example, an opinion concerning the title of property rendered at the behest of a vendor for the information of a prospective purchaser, or at the behest of a borrower for the information of a prospective lender. In some situations, the evaluation may be required by a government agency; for example, an opinion concerning the legality of the securities registered for sale under the securities laws. In other instances, the evaluation may be required by a third person, such as a purchaser of a business.

[2] A legal evaluation should be distinguished from an investigation of a person with whom the attorney does not have a client-attorney relationship. For example, an attorney retained by a purchaser to analyze a vendor's title to property does not have a client-attorney relationship with the vendor. So also, an investigation into a person's affairs by a government attorney, or by special counsel employed by the government, is not an evaluation as that term is used in this Rule. The question is whether the attorney is retained by the person whose affairs are being examined. When the attorney is retained by that person, the general rules concerning loyalty to client and preservation of confidences apply, which is not the case if the attorney is retained by someone else. For this reason, it is essential to identify the person by whom the attorney is retained. This should be made clear not only to the person under examination, but also to others to whom the results are to be made available.

Duties Owed to Third Person and Client - [3] When the evaluation is intended for the information or use of a third person, a legal duty to that person may or may not arise. That legal question is beyond the scope of this Rule. However, since such an evaluation involves a departure from the normal client-attorney relationship, careful analysis of the situation is required. The attorney must be satisfied as a matter of professional judgment that making the evaluation is compatible with other functions undertaken in behalf of the client. For example, if the attorney is acting as advocate in defending the client against charges of fraud, it would normally be incompatible with that responsibility for the attorney to perform an evaluation for others concerning the same or a related transaction. Assuming no such impediment is apparent, however, the attorney should advise the client of the implications of the evaluation, particularly the attorney's responsibilities to third persons and the duty to disseminate the findings.

Access to and Disclosure of Information - [4] The quality of an evaluation depends on the freedom and extent of the investigation upon which it is based. Ordinarily an attorney should have whatever latitude of investigation seems necessary as a matter of professional judgment. Under some circumstances, however, the terms of the evaluation may be limited. For example, certain issues or sources may be categorically excluded, or the scope of search may be limited by time constraints or the noncooperation of persons having relevant information. Any such limitations which are material to the evaluation should be described in the report. If after an attorney has commenced an evaluation, the client refuses to comply with the terms upon which it was understood the evaluation was to have been made, the attorney's obligations are determined by law, having reference to the terms of the client's agreement and the surrounding circumstances. In no circumstances is the attorney permitted to

knowingly make a false statement of material fact or law in providing an evaluation under this Rule. See Rule 19-304.1 (4.1).

Obtaining Client's Informed Consent - [5] Information relating to an evaluation is protected by Rule 19-301.6 (1.6). In many situations, providing an evaluation to a third party poses no significant risk to the client; thus the attorney may be impliedly authorized to disclose information to carry out the representation. See Rule 19-301.6 (a) (1.6). Where, however, it is reasonably likely that providing the evaluation will affect the client's interests materially and adversely, the attorney must first obtain the client's consent after the client has been adequately informed concerning the important possible effects on the client's interests. See Rules 19-301.6 (a) (1.6) and 19-301.0 (f) (1.0).

Financial Auditors' Requests for Information - [6] When a question concerning the legal situation of a client arises at the instance of the client's financial auditor and the question is referred to the attorney, the attorney's response may be made in accordance with procedures recognized in the legal profession. Such a procedure is set forth in the American Bar Association Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information.

Model Rules Comparison - Rule 19-302.3 (2.3) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct.

REPORTER'S NOTE

Rule 19-302.3 is derived from current Rule 2.3 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-302.4. ATTORNEY SERVING AS THIRD-PARTY NEUTRAL (2.4)

(a) An attorney serves as a third-party neutral when the attorney assists two or more persons who are not clients of the attorney to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the attorney to assist the parties to resolve the matter.

(b) An attorney serving as a third-party neutral shall inform unrepresented parties that the attorney is not representing them. When the attorney knows or reasonably should know that a party does not understand the attorney's role in the matter, the attorney shall explain the difference between the attorney's role as a third-party neutral and an attorney's role as one who represents a client.

COMMENT

[1] Alternative dispute resolution has become a substantial part of the civil justice system. Aside from representing clients in dispute-resolution processes, attorneys often serve as third-party neutrals. A third-party neutral is an individual, such as a mediator, arbitrator, conciliator or evaluator, who assists the parties, represented or unrepresented, in the resolution of a dispute or in the arrangement of a transaction. Whether a third-party neutral serves primarily as a facilitator, evaluator or decision maker depends on the particular process that is either selected by the parties or mandated by a court.

[2] The role of a third-party neutral is not unique to attorneys, although, in some court-connected contexts, only attorneys are allowed to serve in this role or to handle certain types of cases. In performing this role, the attorney may be subject to court rules or other law that apply either to third-party neutrals generally or to attorneys serving as third-party neutrals. See Title 17 of the Md. Rules. Attorney-neutrals may also be subject to various codes of ethics, such as the Maryland Standards of Conduct for Mediators, Arbitrators and Other ADR Practitioners adopted by the Maryland Court of Appeals or the Code of Ethics for Arbitration in Commercial Disputes prepared by a joint committee of the American Bar Association and the American Arbitration Association.

[3] Unlike non-attorneys who serve as third-party neutrals, attorneys serving in this role may experience unique problems as a result of differences between the role of a third-party neutral and an attorney's service as a client representative. The potential for confusion is significant when the parties are unrepresented in the process. Thus, section (b) of this Rule requires a attorney-neutral to inform unrepresented parties that the attorney is not representing them. For some parties, particularly parties who frequently use dispute-resolution processes, this information will be sufficient. For others, particularly those who are using the process for the first time, more information may be required. Where appropriate, the attorney should inform unrepresented parties of the important differences between the attorney's role as third-party neutral and a attorney's role as a client representative, including the inapplicability of the attorney-client evidentiary privilege. The extent of disclosure required under this section will depend on the particular parties involved and the subject matter of the proceeding, as well as the particular features of the dispute-resolution process selected.

[4] An attorney who serves as a third-party neutral subsequently may be asked to serve as an attorney representing a client in the same matter. The conflicts of interest that arise for both the individual attorney and the attorney's law firm are addressed in Rule 19-301.12 (1.12).

[5] Attorneys who represent clients in alternative dispute-resolution processes are governed by the Maryland Attorneys' Rules of Professional Conduct. When the dispute-resolution process takes place before a tribunal, as in binding arbitration (see Rule 19-301.0 (o) (1.0)), the attorney's duty of candor is governed by Rule 19-303.3 (3.3). Otherwise, the attorney's duty of candor toward both the third-party neutral and other parties is governed by Rule 19-304.1 (4.1).

Model Rules Comparison - This Rule, newly added to the Model Rules by the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct, is substantially similar to the ABA Rule, with the exception of changing "will" to "may" in the fifth sentence of Comment [3].

REPORTER'S NOTE

Rule 19-302.4 is derived from current Rule 2.4 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

ADVOCATE

Rule 19-303.1. MERITORIOUS CLAIMS AND CONTENTIONS (3.1)

An attorney shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes, for example, a good faith argument for an extension, modification or reversal of existing law. An attorney may nevertheless so defend the proceeding as to require that every element of the moving party's case be established.

COMMENT

[1] The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed. However, the law is not always clear and never is static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.

[2] The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the attorney expects to develop vital evidence only by discovery. What is required of attorneys, however, is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions. Such action is not frivolous even though the attorney believes that the client's position ultimately will not prevail. The action is frivolous, however, if the attorney is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal

of existing law.

[3] The attorney's obligations under this Rule are subordinate to federal or state constitutional law that entitles a defendant in a criminal matter to the assistance of an attorney in presenting a claim that otherwise would be prohibited by this Rule.

Model Rules Comparison - This Rule substantially retains Maryland language as it existed prior to the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct except for: (1) adding "for example" to the text of the Rule; and (2) incorporating ABA changes to Comments [2] and [3].

REPORTER'S NOTE

Rule 19-303.1 is derived from current Rule 3.1 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-303.2. EXPEDITING LITIGATION (3.2)

An attorney shall make reasonable efforts to expedite litigation consistent with the interests of the client.

COMMENT

[1] Dilatory practices bring the administration of justice into disrepute. Although there will be occasions when an attorney may properly seek a postponement for personal reasons, it is not proper for an attorney to routinely fail to expedite litigation solely for the convenience of the advocates. Nor will a failure to expedite be reasonable if done for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent attorney acting in good faith would regard the course of action as having some substantial purpose other than delay. Financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.

Model Rules Comparison - Rule 19-303.2 (3.2) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct.

REPORTER'S NOTE

Rule 19-303.2 is derived from current Rule 3.2 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-303.3. CANDOR TOWARD THE TRIBUNAL (3.3)

(a) An attorney shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the attorney;

(2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;

(3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the attorney to be directly adverse to the position of the client and not disclosed by an opposing attorney; or

(4) offer evidence that the attorney knows to be false. If an attorney has offered material evidence and comes to know of its falsity, the attorney shall take reasonable remedial measures.

(b) The duties stated in section (a) of this Rule continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 19-301.6 (1.6).

(c) An attorney may refuse to offer evidence that the attorney reasonably believes is false.

(d) In an ex parte proceeding, an attorney shall inform the tribunal of all material facts known to the attorney which will enable the tribunal to make an informed decision, whether or not the facts are adverse.

(e) Notwithstanding sections (a) through (d) of this Rule, an attorney for an accused in a criminal case need not disclose that the accused intends to testify falsely or has testified falsely if the attorney reasonably believes that the disclosure would jeopardize any constitutional right of the accused.

COMMENT

[1] This Rule governs the conduct of an attorney who is representing a client in the proceedings of a tribunal. See Rule 19-301.0 (o) (1.0) for the definition of "tribunal." It also applies when the attorney is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition. Thus, for example, subsection (a) (4) of this Rule requires an attorney to take reasonable remedial measures if the attorney comes to know that a client who is testifying in a deposition has offered evidence that is false.

[2] This Rule sets forth special duties of attorneys as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. An attorney acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal. Consequently, although an attorney in an adversary proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause, the attorney must not allow the tribunal to be misled by false statements of law or fact or evidence that the attorney knows to be false.

Representations by an Attorney - [3] An advocate is responsible for pleadings and other documents prepared for litigation, but is usually not required to have personal knowledge of matters asserted therein, for litigation documents ordinarily present assertions by the client, or by someone on the client's behalf, and not assertions by the attorney. Compare Rule 19-303.1 (3.1). However, an assertion purporting to be on

the attorney's own knowledge, as in an affidavit by the attorney or in a statement in open court, may properly be made only when the attorney knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. The obligation prescribed in Rule 19-301.2 (d) (1.2) not to counsel a client to commit or assist the client in committing a fraud applies in litigation. Regarding compliance with Rule 19-301.2 (d) (1.2), see the Comment to that Rule. See also the Comment to Rule 19-308.4 (b) (8.4).

Misleading Legal Argument - [4] Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. An attorney is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities. Furthermore, as stated in subsection (a) (3) of this Rule, an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction which has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

False Evidence - [5] When evidence that an attorney knows to be false is provided by a person who is not the client, the attorney must refuse to offer it regardless of the client's wishes.

[6] When false evidence is offered by the client, however, a conflict may arise between the attorney's duty to keep the client's revelations confidential and the duty of candor to the court. Upon ascertaining that material evidence is false, the attorney should seek to persuade the client that the evidence should not be offered or, if it has been offered, that its false character should immediately be disclosed. If the persuasion is ineffective, the attorney must take reasonable remedial measures.

[7] Except in the defense of a criminal accused, the rule generally recognized is that, if necessary to rectify the situation, an advocate must disclose the existence of the client's deception to the court or to the other party. Such a disclosure can result in grave consequences to the client, including not only a sense of betrayal but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the attorney cooperate in deceiving the court, thereby subverting the truth-finding process which the adversary system is designed to implement. See Rule 19-301.2 (d) (1.2). Furthermore, unless it is clearly understood that the attorney will act upon the duty to disclose the existence of false evidence, the client can simply reject the attorney's advice to

reveal the false evidence and insist that the attorney keep silent. Thus the client could in effect coerce the attorney into being a party to fraud on the court.

Perjury by a Criminal Defendant - [8] Whether an advocate for a criminally accused has the same duty of disclosure has been intensely debated. While it is agreed that the attorney should seek to persuade the client to refrain from perjurious testimony, there has been dispute concerning the attorney's duty when that persuasion fails. If the confrontation with the client occurs before trial, the attorney ordinarily can withdraw. Withdrawal before trial may not be possible, however, either because trial is imminent, or because the confrontation with the client does not take place until the trial itself, or because no other attorney is available.

[9] The most difficult situation, therefore, arises in a criminal case where the accused insists on testifying when the attorney knows that the testimony is perjurious. The attorney's effort to rectify the situation can increase the likelihood of the client's being convicted as well as opening the possibility of a prosecution for perjury. On the other hand, if the attorney does not exercise control over the proof, the attorney participates, although in a merely passive way, in deception of the court.

[10] Three resolutions of this dilemma have been proposed. One is to permit the accused to testify by a narrative without guidance through the attorney's questioning. This compromises both contending principles; it exempts the attorney from the duty to disclose false evidence but subjects the client to an implicit disclosure of information imparted to the attorney. Another suggested resolution, of relatively recent origin, is that the advocate be entirely excused from the duty to reveal perjury if the perjury is that of the client. This is a coherent solution but makes the advocate a knowing instrument of perjury.

[11] The other resolution of the dilemma is that the attorney must reveal the client's perjury if necessary to rectify the situation. A criminal accused has a right to the assistance of an advocate, a right to testify and a right of confidential communication with an attorney. However, an accused should not have a right to assistance of an attorney in committing perjury. Furthermore, an advocate has an obligation, not only in professional ethics but under the law as well, to avoid implication in the commission of perjury or other falsification of evidence. See Rule 19-301.2 (d) (1.2).

Remedial Measures - [12] If perjured testimony or false evidence has been offered, the advocate's proper course ordinarily is to remonstrate with the client confidentially. If

that fails, the advocate should seek to withdraw if that will remedy the situation. If withdrawal will not remedy the situation or is impossible, the advocate should make disclosure to the court. It is for the court then to determine what should be done - making a statement about the matter to the trier of fact, ordering a mistrial or perhaps nothing. If the false testimony was that of the client, the client may controvert the attorney's version of their communication when the attorney discloses the situation to the court. If there is an issue whether the client has committed perjury, the attorney cannot represent the client in resolution of the issue, and a mistrial may be unavoidable. An unscrupulous client might in this way attempt to produce a series of mistrials and thus escape prosecution. However, a second such encounter could be construed as a deliberate abuse of the right to an attorney and as such a waiver of the right to further representation.

Constitutional Requirements - [13] The general rule - that an advocate must disclose the existence of perjury with respect to a material fact, even that of a client - applies to defense attorneys in criminal cases, as well as in other instances. However, the definition of the attorney's ethical duty in such a situation may be qualified by constitutional provisions for due process and the right to an attorney in criminal cases. Section (e) of this Rule is intended to protect from discipline the attorney who does not make disclosures mandated by sections (a) through (d) of this Rule only when the attorney acts in the "reasonable belief" that disclosure would jeopardize a constitutional right of the client. For a definition of "reasonable belief," see Rule 19-301.0 (k) (1.0).

Duration of Obligation - [14] A practical time limit on the obligation to rectify the presentation of false evidence has to be established. The conclusion of the proceeding is a reasonably definite point for the termination of the obligation. After that point, however, the attorney may be permitted to take certain actions pursuant to Rule 19-301.6 (b) (3) (1.6).

Refusing to Offer Proof Believed to Be False - [15] Generally speaking, an attorney has authority to refuse to offer testimony or other proof that the attorney reasonably believes is false. Offering such proof may reflect adversely on the attorney's ability to discriminate in the quality of evidence and thus impair the attorney's effectiveness as an advocate. In criminal cases, however, an attorney may, in some jurisdictions, be denied this authority by constitutional requirements governing the right to an attorney.

Ex Parte Proceedings - [16] Ordinarily, an advocate has the limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision; the

Rule 19-303.3

conflicting position is expected to be presented by the opposing party. However, in an ex parte proceeding, such as an application for a temporary restraining order, there is no balance of presentation by opposing advocates. The object of an ex parte proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The attorney for the represented party has the correlative duty to make disclosures of material facts known to the attorney and that the attorney reasonably believes are necessary to an informed decision.

Model Rules Comparison - Rule 19-303.3 (3.3) has been rewritten to retain elements of existing Maryland language and to incorporate some changes from the Ethics 2000 Amendments to the ABA Model Rules.

REPORTER'S NOTE

Rule 19-303.3 is derived from current Rule 3.3 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-303.4. FAIRNESS TO OPPOSING PARTY AND ATTORNEY (3.4)

An attorney shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. An attorney shall not counsel or assist another person to do any such act;

(b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

(d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

(e) in trial, allude to any matter that the attorney does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or

(f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(1) the person is a relative or an employee or other agent of a client; and

(2) the attorney reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

COMMENT

[1] The procedure of the adversary system contemplates that the evidence in a case is to be marshalled competitively by the contending parties. Fair competition in the adversary system is secured by prohibitions against destruction or concealment of evidence, improperly influencing witnesses, obstructive tactics in discovery procedure, and the like.

[2] Documents and other items of evidence are often essential to establish a claim or defense. Subject to evidentiary privileges, the right of an opposing party, including the government, to obtain evidence through discovery or subpoena is an important procedural right. The exercise of that right can be frustrated if relevant material is altered, concealed or destroyed. Applicable law in many jurisdictions makes it an offense to destroy material for purpose of impairing its availability in a pending proceeding or one whose commencement can be foreseen. Falsifying evidence is also generally a criminal offense. Section (a) of this Rule applies to evidentiary material generally, including computerized information.

[3] With regard to section (b) of this Rule, it is not improper to pay a witness's expenses, including lost earnings, or to compensate an expert witness on terms permitted by law. The common law rule in most jurisdictions is that it is improper to pay an occurrence witness any fee for testifying and that it is improper to pay an expert witness a contingent fee.

[4] Section (f) of this Rule permits an attorney to advise employees of a client to refrain from giving information to another party, for the employees may identify their interests with those of the client. See also Rule 19-304.2 (4.2).

Model Rules Comparison - Rule 19-303.4 (3.4) is substantially similar to the language of the Ethics 2000 Amendments to the ABA

Rule 19-303.4

Model Rules of Professional Conduct except that "including lost earnings" has been added to Comment [3] and the last two sentences of Comment [2] have been deleted.

REPORTER'S NOTE

Rule 19-303.4 is derived from current Rule 3.4 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-303.5. IMPARTIALITY AND DECORUM OF THE TRIBUNAL (3.5)

(a) An attorney shall not:

(1) seek to influence a judge, prospective, qualified, or sworn juror, or other official by means prohibited by law;

(2) before the trial of a case with which the attorney is connected, communicate outside the course of official proceedings with anyone known to the attorney to be on the jury list for trial of the case;

(3) during the trial of a case with which the attorney is connected, communicate outside the course of official proceedings with any member of the jury;

(4) during the trial of a case with which the attorney is not connected, communicate outside the course of official proceedings with any member of the jury about the case;

(5) after discharge of a jury from further consideration of a case with which the attorney is connected, ask questions of or make comments to a jury member that are calculated to harass or embarrass the jury member or to influence the jury member's actions in future jury service;

(6) conduct a vexatious or harassing investigation of any prospective, qualified, or sworn juror;

(7) communicate ex parte about an adversary proceeding with

the judge or other official before whom the proceeding is pending, except as permitted by law;

(8) discuss with a judge potential employment of the judge if the attorney or a firm with which the attorney is associated has a matter that is pending before the judge; or

(9) engage in conduct intended to disrupt a tribunal.

(b) An attorney who has knowledge of any violation of section (a) of this Rule, any improper conduct by a prospective, qualified, or sworn juror or any improper conduct by another towards a prospective, qualified, or sworn juror, shall report it promptly to the court or other appropriate authority.

COMMENT

[1] Many forms of improper influence upon a tribunal are proscribed by criminal law. Others are specified in Title 18, Chapter 100, Maryland Code of Judicial Conduct, with which an advocate should be familiar. An attorney is required to avoid contributing to a violation of such provisions.

[2] The advocate's function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. An attorney may stand firm against abuse by a judge but should avoid reciprocation; the judge's default is no justification for similar dereliction by an advocate. An advocate can present the cause, protect the record for subsequent review and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics.

[3] With regard to the prohibition in subsection (a)(2) of this Rule against communications with anyone on "the jury list," see Md. Rules 2-512 (c) and 4-312 (c).

Model Rules Comparison - Rule 19-303.5 (3.5) retains the former Maryland Rule text and comments, except that subsection (a)(8) is new and the reference in Comment [1] is to the Code of Judicial Conduct. Changes in ABA Model Rule 3.5 were not adopted.

REPORTER'S NOTE

Rule 19-303.5 is derived from current Rule 3.5 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-303.6. TRIAL PUBLICITY (3.6)

(a) An attorney who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the attorney knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) Notwithstanding section (a) of this Rule, an attorney may state:

(1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;

(2) information contained in a public record;

(3) that an investigation of a matter is in progress;

(4) the scheduling or result of any step in litigation;

(5) a request for assistance in obtaining evidence and information necessary thereto;

(6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and

(7) in a criminal case, in addition to subsections (b)(1) through (6) of this Rule:

(A) the identity, residence, occupation and family status of the accused;

(B) if the accused has not been apprehended, information necessary to aid in apprehension of that person;

(C) the fact, time and place of arrest; and

(D) the identity of investigating and arresting officers or agencies and the length of the investigation.

(c) Notwithstanding section (a) of this Rule, an attorney may make a statement that a reasonable attorney would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the attorney or the attorney's client. A statement made pursuant to this section shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(d) No attorney associated in a firm or government agency with an attorney subject to section (a) of this Rule shall make a statement prohibited by section (a) of this Rule.

COMMENT

[1] It is difficult to strike a balance between protecting the right to a fair trial and safeguarding the right of free expression. Preserving the right to a fair trial necessarily entails some curtailment of the information that may be disseminated about a party prior to trial, particularly where trial by jury is involved. If there were no such limits, the result would be the practical nullification of the protective effect of the rules of forensic decorum and the exclusionary rules of evidence. On the other hand, there are vital social interests served by the free dissemination of information about events having legal consequences and about legal proceedings themselves. The public has a right to know about threats to its safety and measures aimed at assuring its security. It also has a legitimate interest in the conduct of judicial proceedings,

particularly in matters of general public concern. Furthermore, the subject matter of legal proceedings is often of direct significance in debate and deliberation over questions of public policy.

[2] Special rules of confidentiality may validly govern proceedings in juvenile, domestic relations and mental disability proceedings, and perhaps other types of litigation. Rule 19-303.4 (c) (3.4) requires compliance with such rules.

[3] The Rule sets forth a basic general prohibition against an attorney's making statements that the attorney knows or should know will have a substantial likelihood of materially prejudicing an adjudicative proceeding. Recognizing that the public value of informed commentary is great and the likelihood of prejudice to a proceeding by the commentary of an attorney who is not involved in the proceeding is small, the rule applies only to attorneys who are, or who have been involved in the investigation or litigation of a case, and their associates.

[4] Section (b) of this Rule identifies specific matters about which an attorney's statements would not ordinarily be considered to present a substantial likelihood of material prejudice, and should not in any event be considered prohibited by the general prohibition of section (a) of this Rule. Section (b) of this Rule is not intended to be an exhaustive listing of the subjects upon which an attorney may make a statement, but statements on other matters may be subject to section (a) of this Rule.

[5] There are, on the other hand, certain subjects that are more likely than not to have a material prejudicial effect on a proceeding, particularly when they refer to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration. These subjects relate to:

(1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;

(2) in a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;

(3) the performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;

(4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;

(5) information that the attorney knows or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial; or

(6) the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

[6] Another relevant factor in determining prejudice is the nature of the proceeding involved. Criminal jury trials will be most sensitive to extrajudicial speech. Civil trials may be less sensitive. Non-jury hearings and arbitration proceedings may be even less affected. The Rule will still place limitations on prejudicial comments in these cases, but the likelihood of prejudice may be different depending on the type of proceeding.

[7] Finally, extrajudicial statements that might otherwise raise a question under this Rule may be permissible when they are made in response to statements made publicly by another party, another party's attorney, or third persons, where a reasonable attorney would believe a public response is required in order to avoid prejudice to the attorney's client. When prejudicial statements have been publicly made by others, responsive statements may have the salutary effect of lessening any resulting adverse impact on the adjudicative proceeding. Such responsive statements should be limited to contain only such information as is necessary to mitigate undue prejudice created by the statements made by others.

[8] See Rule 19-303.8 (e) (3.8) for additional duties of prosecutors in connection with extrajudicial statements about criminal proceedings.

Model Rules Comparison - Rule 19-303.6 (3.6) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct.

REPORTER'S NOTE

Rule 19-303.6 is derived from current Rule 3.6 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-303.7. ATTORNEY AS WITNESS (3.7)

(a) An attorney shall not act as advocate at a trial in which the attorney is likely to be a necessary witness unless:

(1) the testimony relates to an uncontested issue;

(2) the testimony relates to the nature and value of legal services rendered in the case; or

(3) disqualification of the attorney would work substantial hardship on the client.

(b) An attorney may act as advocate in a trial in which another attorney in the attorney's firm is likely to be called as a witness unless precluded from doing so by Rule 19-301.7 (1.7) or Rule 19-301.9 (1.9).

COMMENT

[1] Combining the roles of advocate and witness can prejudice the tribunal and the opposing party and can also involve a conflict of interest between the attorney and client.

Advocate Witness Rule - [2] The tribunal has proper objection when the trier of fact may be confused or misled by a an attorney serving as both advocate and witness. The opposing party has proper objection where the combination of roles may prejudice that party's rights in the litigation. A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others. It may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof.

[3] To protect the tribunal, section (a) of this Rule

prohibits an attorney from simultaneously serving as advocate and necessary witness except in those circumstances specified in subsections (a)(1) through (a)(3) of this Rule. Subsection (a)(1) of this Rule recognizes that if the testimony will be uncontested, the ambiguities in the dual role are purely theoretical. Subsection (a)(2) of this Rule recognizes that where the testimony concerns the extent and value of legal services rendered in the action in which the testimony is offered, permitting the attorneys to testify avoids the need for a second trial with a new attorney to resolve that issue. Moreover, in such a situation the judge has firsthand knowledge of the matter in issue; hence, there is less dependence on the adversary process to test the credibility of the testimony.

[4] Apart from these two exceptions, subsection (a)(3) of this Rule recognizes that a balancing is required between the interests of the client and those of the tribunal and the opposing party. Whether the tribunal is likely to be misled or the opposing party is likely to suffer prejudice depends on the nature of the case, the importance and probable tenor of the attorney's testimony, and the probability that the attorney's testimony will conflict with that of other witnesses. Even if there is risk of such prejudice, in determining whether the attorney should be disqualified due regard must be given to the effect of disqualification on the attorney's client. It is relevant that one or both parties could reasonably foresee that the attorney would probably be a witness. The conflict of interest principles stated in prior, similar Rules 19-301.7 (1.7), 19-301.9 (1.9) and 19-301.10 (1.10) have no application to this aspect of the problem.

[5] Because the tribunal is not likely to be misled when an attorney acts as advocate in a trial in which another attorney in the attorney's firm will testify as a necessary witness, section (b) of this Rule permits the attorney to do so except in situations involving a conflict of interest.

Conflict of Interest - [6] In determining if it is permissible to act as advocate in a trial in which the attorney will be a necessary witness, the attorney must also consider that the dual role may give rise to a conflict of interest that will require compliance with Rules 19-301.7 (1.7) or 19-301.9 (1.9). For example, if there is likely to be substantial conflict between the testimony of the client and that of the attorney, the representation involves a conflict of interest that requires compliance with Rule 19-301.7 (1.7). This would be true even though the attorney might not be prohibited by section (a) of this Rule from simultaneously serving as advocate and witness because the attorney's disqualification would work a substantial hardship on the client. Similarly, an attorney who might be permitted to simultaneously serve as an advocate and a witness by

subsection (a) (3) of this Rule might be precluded from doing so by Rule 19-301.9 (1.9). The problem can arise whether the attorney is called as a witness on behalf of the client or is called by the opposing party. Determining whether or not such a conflict exists is primarily the responsibility of the attorney involved. If there is a conflict of interest, the attorney must secure the client's informed consent, confirmed in writing. In some cases, the attorney will be precluded from seeking the client's consent. See Rule 19-301.7 (1.7). See Rule 19-301.0 (b) (1.0) for the definition of "confirmed in writing" and Rule 19-301.0 (f) (1.0) for the definition of "informed consent."

[7] Section (b) of this Rule provides that an attorney is not disqualified from serving as an advocate because an attorney with whom the attorney is associated in a firm is precluded from doing so by section (a) of this Rule. If, however, the testifying attorney would also be disqualified by Rule 19-301.7 (1.7) or Rule 19-301.9 (1.9) from representing the client in the matter, other attorneys in the firm will be precluded from representing the client by Rule 19-301.10 (1.10) unless the client gives informed consent under the conditions stated in Rule 19-301.7 (1.7).

Model Rules Comparison - Rule 19-303.7 (3.7) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct.

REPORTER'S NOTE

Rule 19-303.7 is derived from current Rule 3.7 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-303.8. SPECIAL RESPONSIBILITIES OF A PROSECUTOR (3.8)

The prosecutor in a criminal case shall:

(a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, an attorney and has been given reasonable opportunity to obtain an attorney;

(c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal; and

(e) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood

of heightening public condemnation of the accused and exercise reasonable care to prevent an employee or other person under the control of the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 19-303.6 (3.6) or this Rule.

COMMENT

[1] A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence. Precisely how far the prosecutor is required to go in this direction is a matter of debate and varies in different jurisdictions. Many jurisdictions have adopted the ABA Standards of Criminal Justice Relating to Prosecution Function, which in turn are the product of prolonged and careful deliberation by attorneys experienced in both criminal prosecution and defense. See also Rule 19-303.3 (d) (3.3), governing ex parte proceedings, among which grand jury proceedings are included. Applicable law may require other measures by the prosecutor and knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of Rule 19-308.4 (8.4).

[2] Section (c) of this Rule does not apply to an accused appearing self-represented with the approval of the tribunal. Nor does it forbid the lawful questioning of a suspect who has knowingly waived the rights to an attorney and silence.

[3] The exception in section (d) of this Rule recognizes that a prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest.

[4] Section (e) of this Rule supplements Rule 19-303.6 (3.6), which prohibits extrajudicial statements that have a substantial likelihood of prejudicing an adjudicatory proceeding. In the context of a criminal prosecution, a prosecutor's extrajudicial statement can create the additional problem of increasing public condemnation of the accused. Although the announcement of an indictment, for example, will necessarily have severe consequences for the accused, a prosecutor can, and should, avoid comments which have no legitimate law enforcement purpose and have a substantial likelihood of increasing public

opprobrium of the accused. Nothing in this Comment is intended to restrict the statements which a prosecutor may make which comply with Rule 19-303.6 (b) (3.6) or 19-303.6 (c) (3.6).

[5] Like other attorneys, prosecutors are subject to Rules 19-305.1 (5.1) and 19-305.3 (5.3), which relate to responsibilities regarding attorneys and non-attorneys who work for or are associated with the attorney's office. Section (e) of this Rule reminds the prosecutor of the importance of these obligations in connection with the unique dangers of improper extrajudicial statements in a criminal case. In addition, section (e) of this Rule requires a prosecutor to exercise reasonable care to prevent persons assisting or associated with the prosecutor from making improper extrajudicial statements, even when such persons are not under the direct supervision of the prosecutor. Ordinarily, the reasonable care standard will be satisfied if the prosecutor issues the appropriate cautions to law-enforcement personnel and other relevant individuals.

Model Rules Comparison - Rule 19-303.8 (3.8) has been rewritten to retain elements of existing Maryland language and to incorporate some changes from the Ethics 2000 Amendments to the ABA Model Rules. ABA Model Rule 3.8 (e) has not been adopted.

REPORTER'S NOTE

Rule 19-303.8 is derived from current Rule 3.8 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-303.9. ADVOCATE IN NON-ADJUDICATIVE PROCEEDINGS (3.9)

An attorney representing a client before a legislative body or administrative agency in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of Rules 19-303.3 (a) through (c) (3.3), 19-303.4 (a) through (c) (3.4), and 19-303.5 (3.5).

COMMENT

[1] In representation before bodies such as legislatures, municipal councils, and executive and administrative agencies acting in a rule-making or policy-making capacity, attorneys engage in activities that are comparable to those of an advocate appearing before a tribunal. For example, attorneys present facts, formulate issues and advance argument in the matters under consideration. The decision-making body, like a court, should be able to rely on the integrity of the submissions made to it. An attorney appearing before such a body should deal with it honestly and in conformity with applicable rules of procedure.

[2] Given these policies, this Rule requires that an attorney who appears before legislative bodies or administrative agencies in such nonadjudicative proceedings must adhere to Rules 19-303.3 (a) through (c) (3.3), 19-303.4 (a) through (c) (3.4), and 19-303.5 (3.5). Attorneys appearing under these circumstances must also adhere to all other applicable Rules, including Rules 19-304.1 (4.1) through 19-304.4 (4.4).

[3] Attorneys have no exclusive right to appear before nonadjudicative bodies, as they do before a court. The requirements of this Rule therefore may subject attorneys to regulations inapplicable to advocates who are not attorneys.

[4] Not all appearances before a legislative body or administrative agency are nonadjudicative within the meaning of this Rule. This Rule only applies when an attorney represents a client in connection with an official or formal hearing or

meeting to which the attorney or the attorney's client is presenting evidence or argument. Thus, this Rule does not apply to representation of a client in a negotiation or other bilateral transaction with a governmental agency; or in connection with an application for a license or other privilege or the client's compliance with generally applicable reporting requirements, such as the filing of income-tax returns. Nor does it apply to the representation of a client in connection with an investigation or examination of the client's affairs conducted by government investigators or examiners. Representation in such matters is governed by Rules 19-304.1 (4.1) through 19-304.4 (4.4).

[5] When an attorney appears before a legislative body or administrative agency acting in an adjudicative capacity, the legislative body or administrative agency is considered a "Tribunal" for purposes of these Rules, and all Rules relating to representation by an attorney before a Tribunal apply. See Rule 19-301.0 (o) (1.0) for the definition of "Tribunal."

Model Rules Comparison - Rule 19-303.9 (3.9) has been rewritten to retain elements of existing Maryland language, to incorporate some changes from the Ethics 2000 Amendments to the ABA Model Rules, and to incorporate further revisions.

REPORTER'S NOTE

Rule 19-303.9 is derived from current Rule 3.9 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

Rule 19-304.1. TRUTHFULNESS IN STATEMENTS TO OTHERS (4.1)

(a) In the course of representing a client an attorney shall not knowingly:

(1) make a false statement of material fact or law to a third person; or

(2) fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client.

(b) The duties stated in this Rule apply even if compliance requires disclosure of information otherwise protected by Rule 19-301.6 (1.6).

COMMENT

Misrepresentation - [1] An attorney is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. A misrepresentation can occur if the attorney incorporates or affirms a statement of another person that the attorney knows is false. Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements. For dishonest conduct that does not amount to a false statement or for misrepresentations by an attorney other than in the course of representing a client, see Rule 19-308.4 (8.4).

Statements of Fact - [2] This Rule refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on the circumstances. Under generally accepted conventions in negotiation, certain types of statements

ordinarily are not taken as statements of material fact. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are ordinarily in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud. Attorneys should be mindful of their obligations under applicable law to avoid criminal or tortious misrepresentation.

Fraud by Client - [3] Under Rule 19-301.2 (d) (1.2), an attorney is prohibited from counseling or assisting a client in conduct that the attorney knows is criminal or fraudulent. Subsection (a) (2) of this Rule states a specific application of the principle set forth in Rule 19-301.2 (d) (1.2) and addresses the situation where a client's crime or fraud takes the form of a lie or misrepresentation. Sometimes an attorney can avoid assisting a client's crime or fraud by withdrawing from the representation. It also may be necessary for the attorney to give notice of the fact of withdrawal and to disaffirm an opinion, document, affirmation or the like. In extreme cases, however, substantive law may require an attorney to disclose information relating to the representation to avoid being deemed to have assisted the client's crime or fraud. If the attorney can avoid assisting a client's crime or fraud only by disclosing this information, then under section (b) of this Rule the attorney is required to do so, even though the disclosure otherwise would be prohibited by Rule 19-301.6 (1.6).

Disclosure - [4] As noted in the comment to Rule 19-301.6 (1.6), the duty imposed by Rule 19-304.1 (4.1) may require an attorney to disclose information that otherwise is confidential and to correct or withdraw a statement. However, the constitutional rights of defendants in criminal cases may limit the extent to which an attorney for a defendant may correct a misrepresentation that is based on information provided by the client. See Comment to Rule 19-303.3 (3.3).

Model Rules Comparison - Rule 19-304.1 (4.1) has been rewritten to retain elements of existing Maryland language, to incorporate some changes from the Ethics 2000 Amendments to the ABA Model Rules, and to incorporate further revisions.

REPORTER'S NOTE

Rule 19-304.1 is derived from current Rule 4.1 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-304.2. COMMUNICATIONS WITH PERSONS REPRESENTED BY ~~COUNSEL~~
AN ATTORNEY (4.2)

(a) Except as provided in section (c) of this Rule, in representing a client, an attorney shall not communicate about the subject of the representation with a person who the attorney knows is represented in the matter by another attorney unless the attorney has the consent of the other attorney or is authorized by law or court order to do so.

(b) If the person represented by another attorney is an organization, the prohibition extends to each of the organization's (1) current officers, directors, and managing agents and (2) current agents or employees who supervise, direct, or regularly communicate with the organization's attorneys concerning the matter or whose acts or omissions in the matter may bind the organization for civil or criminal liability. The attorney may not communicate with a current agent or employee of the organization unless the attorney first has made inquiry to ensure that the agent or employee is not an individual with whom communication is prohibited by this section and has disclosed to the individual the attorney's identity and the fact that the attorney represents a client who has an interest adverse to the organization.

(c) An attorney may communicate with a government official about matters that are the subject of the representation if the government official has the authority to redress the grievances of the attorney's client and the attorney first makes the disclosures specified in section (b) of this Rule.

Committee note: The use of the word "person" for "party" in section (a) of this Rule is not intended to enlarge or restrict the extent of permissible law enforcement activities of government attorneys under applicable judicial precedent.

COMMENT

[1] This Rule contributes to the proper functioning of the legal system by protecting a person who has chosen to be represented by an attorney in a matter against possible overreaching by other attorneys who are participating in the matter, interference by those attorneys with the attorney-client relationship, and the uncounseled disclosure of information relating to the representation.

[2] This Rule does not prohibit communication with a person, or an employee or agent of the person, concerning matters outside the representation. For example, the existence of a controversy between two organizations does not prohibit an attorney for either from communicating with non-attorney representatives of the other regarding a separate matter. Also, parties to a matter may communicate directly with each other and an attorney having independent justification or legal authorization for communicating with a represented person is permitted to do so.

[3] Communications authorized by law include communications in the course of investigative activities of attorneys representing governmental entities, directly or through investigative agents, before the commencement of criminal or civil enforcement proceedings if there is applicable judicial precedent holding either that the activity is permissible or that the Rule does not apply to the activity. The term "civil enforcement proceedings" includes administrative enforcement proceedings. Except to the extent applicable judicial precedent holds otherwise, a government attorney who communicates with a represented criminal defendant must comply with this Rule.

[4] An attorney who is uncertain whether a communication with a represented person is permissible may seek a court order in exceptional circumstances. For example, when a represented criminal defendant expresses a desire to speak to the prosecutor

without the knowledge of the defendant's attorney, the prosecutor may seek a court order appointing substitute an attorney to represent the defendant with respect to the communication.

[5] This Rule applies to communications with any person, whether or not a party to a formal adjudicative proceeding, contract, or negotiation, who is represented by an attorney concerning the matter to which the communication relates. The Rule applies even though the represented person initiates or consents to the communication. An attorney must immediately terminate communication with a person if, after commencing communication, the attorney learns that the person is one with whom communication is not permitted by this Rule.

[6] If an agent or employee of a represented person that is an organization is represented in the matter by his or her own attorney, the consent by that attorney to a communication will be sufficient for purposes of this Rule. Compare Rule 19-303.4 (f) (3.4). In communicating with a current agent or employee of an organization, an attorney must not seek to obtain information that the attorney knows or reasonably should know is subject to an evidentiary or other privilege of the organization. Regarding communications with former employees, see Rule 19-304.4 (b) (4.4).

[7] The prohibition on communications with a represented person applies only if the attorney has actual knowledge that the person in fact is represented in the matter to be discussed. Actual knowledge may be inferred from the circumstances. The attorney cannot evade the requirement of obtaining the consent of the opposing attorney by ignoring the obvious.

[8] Rule 19-304.3 (4.3) applies to a communication by an attorney with a person not known to be represented by an attorney.

[9] Section (c) of this Rule recognizes that special considerations come into play when an attorney is seeking to redress grievances involving the government. Subject to certain conditions, it permits communications with those in government having the authority to redress the grievances (but not with any other government personnel) without the prior consent of the attorney representing the government in the matter. Section (c) of this Rule does not, however, permit an attorney to bypass attorneys representing the government on every issue that may arise in the course of disputes with the government. Rather, the section provides attorneys with access to decision makers in government with respect to genuine grievances, such as to present the view that the government's basic policy position with respect to a dispute is faulty or that government personnel are conducting themselves improperly with respect to aspects of the

dispute. It does not provide direct access on routine disputes, such as ordinary discovery disputes or extensions of time.

Model Rules Comparison - This Rule substantially retains Maryland language as it existed prior to the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct except for dividing Rule 19-304.2 (b) (4.2) into Rule 19-304.2 (b) and (c) (4.2) with no change in wording.

REPORTER'S NOTE

Rule 19-304.2 is derived from current Rule 4.2 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-304.3. DEALING WITH UNREPRESENTED PERSON (4.3)

An attorney, in dealing on behalf of a client with a person who is not represented by an attorney, shall not state or imply that the attorney is disinterested. When the attorney knows or reasonably should know that the unrepresented person misunderstands the attorney's role in the matter, the attorney shall make reasonable efforts to correct the misunderstanding.

COMMENT

[1] An unrepresented person, particularly one not experienced in dealing with legal matters, might assume that an attorney is disinterested in loyalties or is a disinterested authority on the law even when the attorney represents a client. In order to avoid a misunderstanding, an attorney will typically need to identify the attorney's client and, where necessary, explain that the client has interests opposed to those of the unrepresented person. For misunderstandings that sometimes arise when an attorney for an organization deals with an unrepresented constituent, see Rule 19-301.13 (d) (1.13).

[2] An attorney should not give legal advice to an unrepresented person, other than the advice to secure an attorney, if the attorney knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client. This distinguishes between situations involving unrepresented persons whose interests may be adverse to those of the attorney's client and those in which the person's interests are not in conflict with the client's. In the former situation, the possibility that the attorney will compromise the unrepresented person's interests is so great that the attorney should not give any advice, apart from the advice to obtain an attorney. Whether an attorney is giving impermissible advice may depend on the experience and sophistication of the unrepresented person, as well as the setting in which the behavior and comments occur. This Rule does not prohibit an attorney from negotiating

the terms of a transaction or settling a dispute with an unrepresented person. So long as the attorney has explained that the attorney represents an adverse party and is not representing the person, the attorney may inform the person of the terms on which the attorney's client will enter into an agreement or settle a matter, prepare documents that require the person's signature and explain the attorney's own view of the meaning of the document or the attorney's view of the underlying legal obligations.

Model Rules Comparison - Rule 19-304.3 (4.3) has been rewritten to retain elements of existing Maryland language, to incorporate some changes from the Ethics 2000 Amendments to the ABA Model Rules, and to incorporate further revisions.

REPORTER'S NOTE

Rule 19-304.3 is derived from current Rule 4.3 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-304.4. RESPECT FOR RIGHTS OF THIRD PERSONS (4.4)

(a) In representing a client, an attorney shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that the attorney knows violate the legal rights of such a person.

(b) In communicating with third persons, an attorney representing a client in a matter shall not seek information relating to the matter that the attorney knows or reasonably should know is protected from disclosure by statute or by an established evidentiary privilege, unless the protection has been waived. The attorney who receives information that is protected from disclosure shall (1) terminate the communication immediately and (2) give notice of the disclosure to any tribunal in which the matter is pending and to the person entitled to enforce the protection against disclosure.

Committee note: If the person entitled to enforce the protection against disclosure is represented by an attorney, the notice required by this Rule shall be given to the person's attorney. See Md. Rule 1-331 and Maryland Attorneys' Rules of Professional Conduct, Rule 19-304.2 (4.2).

COMMENT

[1] Responsibility to a client requires an attorney to subordinate the interests of others to those of the client, but

that responsibility does not imply that an attorney may disregard the rights of third persons. It is impractical to catalogue all such rights, but they include legal restrictions on methods of obtaining evidence from third persons.

[2] Third persons may possess information that is confidential to another person under an evidentiary privilege or under a law providing specific confidentiality protection, such as trademark, copyright, or patent law. For example, present or former organizational employees or agents may have information that is protected as a privileged attorney-client communication or as work product. An attorney may not knowingly seek to obtain confidential information from a person who has no authority to waive the privilege. Regarding current employees of a represented organization, see also Rule 19-304.2 (4.2).

Model Rules Comparison - This Rule substantially retains Maryland language as amended November 1, 2001 and does not adopt Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct.

REPORTER'S NOTE

Rule 19-304.4 is derived from current Rule 4.4 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

LAW FIRMS AND ASSOCIATIONS

Rule 19-305.1. RESPONSIBILITIES OF PARTNERS, MANAGERS, AND
SUPERVISORY ATTORNEYS (5.1)

(a) A partner in a law firm, and an attorney who individually or together with other attorneys possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all attorneys in the firm conform to the Maryland Attorneys' Rules of Professional Conduct.

(b) An attorney having direct supervisory authority over another attorney shall make reasonable efforts to ensure that the other attorney conforms to the Maryland Attorneys' Rules of Professional Conduct.

(c) An attorney shall be responsible for another attorney's violation of the Maryland Attorneys' Rules of Professional Conduct if:

(1) the attorney orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the attorney is a partner or has comparable managerial authority in the law firm in which the other attorney practices, or has direct supervisory authority over the other attorney, and

knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

COMMENT

[1] Section (a) of this Rule applies to attorneys who have managerial authority over the professional work of a firm. See Rule 19-301.0 (d) (1.0). This includes members of a partnership, the shareholders in a law firm organized as a professional corporation, and members of other associations authorized to practice law; attorneys having comparable managerial authority in a legal services organization or a law department of an enterprise or government agency; and attorneys who have intermediate managerial responsibilities in a firm. Section (b) of this Rule applies to attorneys who have supervisory authority over the work of other attorneys in a firm.

[2] Section (a) of this Rule requires attorneys with managerial authority within a firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all attorneys in the firm will conform to the Maryland Attorneys' Rules of Professional Conduct. Such policies and procedures include those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced attorneys are properly supervised.

[3] Other measures that may be required to fulfill the responsibility prescribed in section (a) of this Rule can depend on the firm's structure and the nature of its practice. In a small firm of experienced attorneys, informal supervision and periodic review of compliance with the required systems ordinarily will suffice. In a large firm, or in practice situations in which difficult ethical problems frequently arise, more elaborate measures may be necessary. Some firms, for example, have a procedure whereby junior attorneys can make confidential referral of ethical problems directly to a designated senior partner or special committee. See Rule 19-305.2 (5.2). Firms, whether large or small, may also rely on continuing legal education in professional ethics. In any event, the ethical atmosphere of a firm can influence the conduct of all its members and the partners may not assume that all attorneys associated with the firm will inevitably conform to the Rules.

[4] Section (c) of this Rule expresses a general principle of personal responsibility for acts of another. See also Rule 19-308.4 (a) (8.4).

[5] Subsection (c)(2) of this Rule defines the duty of a partner or other attorney having comparable managerial authority in a law firm, as well as an attorney who has direct supervisory authority over performance of specific legal work by another attorney. Whether an attorney has supervisory authority in particular circumstances is a question of fact. Partners and attorneys with comparable authority have at least indirect responsibility for all work being done by the firm, while a partner or manager in charge of a particular matter ordinarily also has supervisory responsibility for the work of other firm attorneys engaged in the matter. Appropriate remedial action by a partner or managing attorney would depend on the immediacy of that attorney's involvement and the seriousness of the misconduct. A supervisor is required to intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred. Thus, if a supervising attorney knows that a subordinate misrepresented a matter to an opposing party in negotiation, the supervisor as well as the subordinate has a duty to correct the resulting misapprehension.

[6] Professional misconduct by an attorney under supervision could reveal a violation of section (b) of this Rule on the part of the supervisory attorney even though it does not entail a violation of section (c) of this Rule because there was no direction, ratification or knowledge of the violation.

[7] Apart from this Rule and Rule 19-308.4 (a) (8.4), an attorney does not have disciplinary liability for the conduct of a partner, associate or subordinate. Whether an attorney may be liable civilly or criminally for another attorney's conduct is a question of law beyond the scope of these Rules.

[8] The duties imposed by this Rule on managing and supervising attorneys do not alter the personal duty of each attorney in a firm to abide by the Maryland Attorneys' Rules of Professional Conduct. See Rule 19-305.2 (a) (5.2).

Model Rules Comparison - Rule 19-305.1 (5.1) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct.

REPORTER'S NOTE

Rule 19-305.1 is derived from current Rule 5.1 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-305.2. RESPONSIBILITIES OF A SUBORDINATE ATTORNEY (5.2)

(a) An attorney is bound by the Maryland Attorneys' Rules of Professional Conduct notwithstanding that the attorney acted at the direction of another person.

(b) A subordinate attorney does not violate the Maryland Attorneys' Rules of Professional Conduct if that attorney acts in accordance with a supervisory attorney's reasonable resolution of an arguable question of professional duty.

COMMENT

[1] Although an attorney is not relieved of responsibility for a violation by the fact that the attorney acted at the direction of a supervisor, that fact may be relevant in determining whether an attorney had the knowledge required to render conduct a violation of the Rules. For example, if a subordinate filed a frivolous pleading at the direction of a supervisor, the subordinate would not be guilty of a professional violation unless the subordinate knew of the document's frivolous character.

[2] When attorneys in a supervisor-subordinate relationship encounter a matter involving professional judgment as to ethical duty, the supervisor may assume responsibility for making the judgment. Otherwise a consistent course of action or position could not be taken. If the question can reasonably be answered only one way, the duty of both attorneys is clear and they are equally responsible for fulfilling it. However, if the question is reasonably arguable, someone has to decide upon the course of action. That authority ordinarily reposes in the supervisor, and a subordinate may be guided accordingly. For example, if a question arises whether the interests of two clients conflict under Rule 19-301.7 (1.7), the supervisor's reasonable resolution of the question should protect the subordinate professionally if the resolution is subsequently challenged.

Model Rules Comparison - Given that the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct made no changes to this Rule, Rule 19-305.2 (5.2) has not been amended and remains substantially similar to Model Rule 5.2.

REPORTER'S NOTE

Rule 19-305.2 is derived from current Rule 5.2 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-305.3. RESPONSIBILITIES REGARDING NON-ATTORNEY ASSISTANTS (5.3)

With respect to a non-attorney employed or retained by or associated with an attorney:

(a) a partner, and an attorney who individually or together with other attorneys possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the attorney;

(b) an attorney having direct supervisory authority over the non-attorney shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the attorney;

(c) an attorney shall be responsible for conduct of such a person that would be a violation of the Maryland Attorneys' Rules of Professional Conduct if engaged in by an attorney if:

(1) the attorney orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the attorney is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the

conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action; and

(d) an attorney who employs or retains the services of a non-attorney who (1) was formerly admitted to the practice of law in any jurisdiction and (2) has been and remains disbarred, suspended, or placed on inactive status because of incapacity shall comply with the following requirements:

(A) all law-related activities of the formerly admitted attorney shall be (i) performed from an office that is staffed on a full-time basis by a supervising attorney and (ii) conducted under the direct supervision of the supervising attorney, who shall be responsible for ensuring that the formerly admitted attorney complies with the requirements of this Rule.

(B) the attorney shall take reasonable steps to ensure that the formerly admitted attorney does not:

(i) represent himself or herself to be an attorney;

(ii) render legal consultation or advice to a client or prospective client;

(iii) appear on behalf of or represent a client in any judicial, administrative, legislative, or alternative dispute resolution proceeding;

(iv) appear on behalf of or represent a client at a deposition or in any other discovery matter;

(v) negotiate or transact any matter on behalf of a client with third parties;

(vi) receive funds from or on behalf of a client or

disburse funds to or on behalf of a client; or

(vii) perform any law-related activity for (a) a law firm or attorney with whom the formerly admitted attorney was associated when the acts that resulted in the disbarment or suspension occurred or (b) any client who was previously represented by the formerly admitted attorney.

(C) the attorney, the supervising attorney, and the formerly admitted attorney shall file jointly with Bar Counsel (i) a notice of employment identifying the supervising attorney and the formerly admitted attorney and listing each jurisdiction in which the formerly admitted attorney has been disbarred, suspended, or placed on inactive status because of incapacity; and (ii) a copy of an executed written agreement between the attorney, the supervising attorney, and the formerly admitted attorney that sets forth the duties of the formerly admitted attorney and includes an undertaking to comply with requests by Bar Counsel for proof of compliance with the terms of the agreement and this Rule. As to a formerly admitted attorney employed as of July 1, 2006, the notice and agreement shall be filed no later than September 1, 2006. As to a formerly admitted attorney hired after July 1, 2006, the notice and agreement shall be filed within 30 days after commencement of the employment. Immediately upon the termination of the employment of the formerly admitted attorney, the attorney and the supervising attorney shall file with Bar Counsel a notice of the termination.

COMMENT

[1] Attorneys generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the attorney in rendition of the attorney's professional services. An attorney must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising non-attorneys should take account of the fact that they do not have legal training and are not subject to professional discipline.

[2] Section (a) of this Rule requires attorneys with managerial authority within a law firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that non-attorneys in the firm will act in a way compatible with the Maryland Attorneys' Rules of Professional Conduct. See Comment [1] to Rule 19-305.1 (5.1). Section (b) of this Rule applies to attorneys who have supervisory authority over the work of a non-attorney. Section (c) of this Rule specifies the circumstances in which an attorney is responsible for conduct of a non-attorney that would be a violation of the Maryland Attorneys' Rules of Professional Conduct if engaged in by an attorney.

[3] Section (d) of this Rule addresses formerly admitted attorneys engaging in law-related activities and does not establish a standard for what constitutes the unauthorized practice of law.

Model Rules Comparison - The language of Rule 19-305.3 (a) through (c) (5.3) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct. Section (d) of this Rule and Comment [3] are in part derived from Rule 217 (j) of the Pennsylvania Rules of Disciplinary Enforcement and in part new.

REPORTER'S NOTE

Rule 19-305.3 is derived from current Rule 5.3 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-305.4. PROFESSIONAL INDEPENDENCE OF ~~A LAWYER~~ AN ATTORNEY
(5.4)

(a) An attorney or law firm shall not share legal fees with a non-attorney, except that:

(1) an agreement by an attorney with the attorney's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the attorney's death, to the attorney's estate or to one or more specified persons;

(2) an attorney who purchases the practice of an attorney who is deceased or disabled or who has disappeared may, pursuant to the provisions of Rule 19-301.17 (1.17), pay the purchase price to the estate or representative of the attorney.

(3) an attorney who undertakes to complete unfinished legal business of a deceased, retired, disabled, or suspended attorney may pay to that attorney or that attorney's estate the proportion of the total compensation fairly allocable to the services rendered by the former attorney;

(4) an attorney or law firm may include non-attorney employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and

(5) an attorney may share court-awarded legal fees with a

nonprofit organization that employed, retained or recommended employment of the attorney in the matter.

(b) An attorney shall not form a partnership with a non-attorney if any of the activities of the partnership consist of the practice of law.

(c) An attorney shall not permit a person who recommends, employs, or pays the attorney to render legal services for another to direct or regulate the attorney's professional judgment in rendering such legal services.

(d) An attorney shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) a non-attorney owns any interest therein, except that a fiduciary representative of the estate of an attorney may hold the stock or interest of the attorney for a reasonable time during administration;

(2) a non-attorney is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or

(3) a non-attorney has the right to direct or control the professional judgment of an attorney.

Cross reference: Md. Rule 19-742.

COMMENT

[1] The provisions of this Rule express traditional limitations on sharing fees. These limitations are to protect the attorney's professional independence of judgment. Where someone other than the client pays the attorney's fee or salary,

or recommends employment of the attorney, that arrangement does not modify the attorney's obligation to the client. As stated in section (c) of this Rule, such arrangements should not interfere with the attorney's professional judgment.

[2] This Rule also expresses traditional limitations on permitting a third party to direct or regulate the attorney's professional judgment in rendering legal services to another. See also Rule 19-301.8 (f) (1.8) (attorney may accept compensation from a third party as long as there is no interference with the attorney's independent professional judgment and the client gives informed consent).

Model Rules Comparison - Rule 19-305.4 (5.4) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct with the exception of: 1) retaining existing Maryland language in Rule 19-305.4 (a) (2) (5.4); 2) retaining existing Maryland language in Rule 19-305.4 (a) (3) (5.4) with appropriate redesignation of the subsections of Rule 19-305.4 (a) (5.4).

REPORTER'S NOTE

Rule 19-305.4 is derived from current Rule 5.4 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-305.5. UNAUTHORIZED PRACTICE OF LAW; MULTI-JURISDICTIONAL PRACTICE OF LAW (5.5)

(a) An attorney shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) An attorney who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the attorney is admitted to practice law in this jurisdiction.

(c) An attorney admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with an attorney who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the attorney, or a person the attorney is assisting, is

authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the attorney's practice in a jurisdiction in which the attorney is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within subsections (c) (2) or (c) (3) of this Rule and arise out of or are reasonably related to the attorney's practice in a jurisdiction in which the attorney is admitted to practice.

(d) An attorney admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

(1) are provided to the attorney's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or

(2) are services that the attorney is authorized to provide by federal law or other law of this jurisdiction.

COMMENT

[1] An attorney may practice law only in a jurisdiction in which the attorney is authorized to practice. An attorney may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Section (a) of

this Rule applies to unauthorized practice of law by an attorney, whether through the attorney's direct action or by the attorney's assisting another person.

[2] The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. This Rule does not prohibit an attorney from employing the services of paraprofessionals and delegating functions to them, so long as the attorney supervises the delegated work and retains responsibility for their work. See Rule 19-305.3 (5.3).

[3] An attorney may provide professional advice and instruction to non-attorneys whose employment requires knowledge of law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and individuals employed in government agencies. Attorneys also may assist independent non-attorneys, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services. In addition, an attorney may counsel non-attorneys who wish to proceed self-represented.

[4] Other than as authorized by law or this Rule, an attorney who is not admitted to practice generally in this jurisdiction violates section (b) of this Rule if the attorney establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the attorney is not physically present here. Such an attorney must not hold out to the public or otherwise represent that the attorney is admitted to practice law in this jurisdiction. See also Rules 19-307.1 (a) (7.1) and 19-307.5 (b) (7.5).

[5] There are occasions in which an attorney admitted to practice in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts. Section (c) of this Rule identifies four such circumstances. The fact that conduct is not so identified does not imply that the conduct is or is not authorized.

[6] There is no single test to determine whether an attorney's services are provided on a "temporary basis" in this jurisdiction, and may therefore be permissible under section (c) of this Rule. Services may be "temporary" even though the attorney provides services in this jurisdiction on a recurring basis, or for an extended period of time, as when the attorney is

representing a client in a single lengthy negotiation or litigation.

[7] Sections (c) and (d) of this Rule apply to attorneys who are admitted to practice law in any United States jurisdiction, which includes the District of Columbia and any state, territory or commonwealth of the United States. The word "admitted" in section (c) of this Rule contemplates that the attorney is authorized to practice in the jurisdiction in which the attorney is admitted and excludes an attorney who while technically admitted is not authorized to practice, because, for example, the attorney is on inactive status.

[8] Subsection (c)(1) of this Rule recognizes that the interests of clients and the public are protected if an attorney admitted only in another jurisdiction associates with an attorney licensed to practice in this jurisdiction. For this subsection to apply, however, the attorney admitted to practice in this jurisdiction must actively participate in and share responsibility for the representation of the client.

[9] Attorneys not admitted to practice generally in a jurisdiction may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. This authority may be granted pursuant to formal rules governing admission pro hac vice or pursuant to informal practice of the tribunal or agency. Under subsection (c)(2) of this Rule, an attorney does not violate this Rule when the attorney appears before a tribunal or agency pursuant to such authority. An attorney who is not admitted to practice in this jurisdiction must obtain admission pro hac vice before appearing before a tribunal or administrative agency, as provided by Rule 19-214 of the Rules Governing Admission to the Bar of Maryland. See also Md. Code, Business Occupations and Professions Article, §10-215.

[10] Subsection (c)(2) of this Rule also provides that an attorney rendering services in this jurisdiction on a temporary basis does not violate this Rule when the attorney engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the attorney is authorized to practice law or in which the attorney reasonably expects to be admitted pro hac vice. Examples of such conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, an attorney admitted only in another jurisdiction may engage in conduct temporarily in this jurisdiction in connection with pending litigation in another jurisdiction in which the attorney is or reasonably expects to be authorized to appear, including taking depositions in this jurisdiction.

[11] When an attorney has been or reasonably expects to be admitted to appear before a court or administrative agency, subsection (c) (2) of this Rule also permits conduct by attorneys who are associated with that attorney in the matter, but who do not expect to appear before the court or administrative agency. For example, subordinate attorneys may conduct research, review documents, and attend meetings with witnesses in support of the attorney responsible for the litigation.

[12] Subsection (c) (3) of this Rule permits an attorney admitted to practice law in another jurisdiction to perform services on a temporary basis in this jurisdiction if those services are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the attorney's practice in a jurisdiction in which the attorney is admitted to practice. The attorney, however, must obtain permission pro hac vice in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so require. See Rule 19-214 of the Rules Governing Admission to the Bar of Maryland regarding admission to appear in arbitrations.

[13] Subsection (c) (4) of this Rule permits an attorney admitted in another jurisdiction to provide certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to the attorney's practice in a jurisdiction in which the attorney is admitted but are not within subsections (c) (2) or (c) (3) of this Rule. These services include both legal services and services that non-attorneys may perform but that are considered the practice of law when performed by attorneys.

[14] Subsections (c) (3) and (c) (4) of this Rule require that the services arise out of or be reasonably related to the attorney's practice in a jurisdiction in which the attorney is admitted. A variety of factors evidence such a relationship. The attorney's client may have been previously represented by the attorney, or may be resident in or have substantial contacts with the jurisdiction in which the attorney is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. In other cases, significant aspects of the attorney's work might be conducted in that jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction. The necessary relationship might arise when the client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their attorney in assessing the relative merits of each. In addition, the services may draw on the attorney's recognized expertise developed through the regular

practice of law on behalf of clients in matters involving a particular body of federal, nationally-uniform, foreign, or international law.

[15] Section (d) of this Rule identifies two circumstances in which an attorney who is admitted to practice in another United States jurisdiction, and is not disbarred or suspended from practice in any jurisdiction, may establish an office or other systematic and continuous presence in this jurisdiction for the practice of law as well as provide legal services on a temporary basis.

[16] Subsection (d)(1) of this Rule applies to an attorney who is employed by a client to provide legal services to the client or its organizational affiliates, i.e., entities that control, are controlled by, or are under common control with the employer. This subsection does not authorize the provision of personal legal services to the employer's officers or employees. The subsection applies to in-house corporate attorneys, government attorneys and others who are employed to render legal services to the employer. The attorney's ability to represent the employer outside the jurisdiction in which the attorney is licensed generally serves the interests of the employer and does not create an unreasonable risk to the client and others because the employer is well situated to assess the attorney's qualifications and the quality of the attorney's work.

[17] If an employed attorney establishes an office or other systematic presence in this jurisdiction for the purpose of rendering legal services to the employer, the attorney is governed by Md. Code, Business Occupations and Professions Article, §1-206 (d). In general, the employed attorney is subject to disciplinary proceedings under the Maryland Rules and must comply with Md. Code, Business Occupations and Professions Article, §10-215 (and Rule 19-214) for authorization to appear before a tribunal. See also Rule 19-215 (as to legal services attorneys).

[18] Subsection (d)(2) of this Rule recognizes that an attorney may provide legal services in a jurisdiction in which the attorney is not licensed when authorized to do so by federal or other law, which includes statute, court rule, executive regulation or judicial precedent.

[19] An attorney who practices law in this jurisdiction pursuant to section (c) or (d) of this Rule or otherwise is subject to the disciplinary authority of this jurisdiction. See Rule 19-308.5 (a) (8.5) and Md. Rules 19-701 and 19-711.

[20] In some circumstances, an attorney who practices law in this jurisdiction pursuant to section (c) or (d) of this Rule may

have to inform the client that the attorney is not licensed to practice law in this jurisdiction. For example, that may be required when the representation occurs primarily in this jurisdiction and requires knowledge of the law of this jurisdiction. See Rule 19-301.4 (b) (1.4).

[21] Sections (c) and (d) of this Rule do not authorize communications advertising legal services to prospective clients in this jurisdiction by attorneys who are admitted to practice in other jurisdictions. Rules 19-307.1 (7.1) to 19-307.5 (7.5) govern whether and how attorneys may communicate the availability of their services to prospective clients in this jurisdiction.

Model Rules Comparison - Rule 19-305.5 (5.5) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct.

REPORTER'S NOTE

Rule 19-305.5 is derived from current Rule 5.5 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-305.6. RESTRICTIONS ON RIGHT TO PRACTICE (5.6)

An attorney shall not participate in offering or making:

(a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of an attorney to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(b) an agreement in which a restriction on the attorney's right to practice is part of the settlement of a client controversy.

COMMENT

[1] An agreement restricting the right of attorneys to practice after leaving a firm not only limits their professional autonomy but also limits the freedom of clients to choose an attorney. Section (a) of this Rule prohibits such agreement except for restrictions incident to provisions concerning retirement benefits for service with the firm.

[2] Section (b) of this Rule prohibits an attorney from agreeing not to represent other persons in connection with settling a claim on behalf of a client.

[3] This Rule does not apply to prohibit restrictions that may be included in the terms of the sale of a law practice pursuant to Rule 19-301.17 (1.17).

Model Rules Comparison - Rule 19-305.6 (5.6) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct.

REPORTER'S NOTE

Rule 19-305.6 is derived from current Rule 5.6 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-305.7. RESPONSIBILITIES REGARDING LAW-RELATED SERVICES (5.7)

(a) An attorney shall be subject to the Maryland Attorneys' Rules of Professional Conduct with respect to the provision of law-related services, as defined in section (b) of this Rule, if the law-related services are provided:

(1) by the attorney in circumstances that are not distinct from the attorney's provision of legal services to clients; or

(2) in other circumstances by an entity controlled by the attorney individually or with others if the attorney fails to take reasonable measures to assure that a person obtaining the law-related services knows that the services are not legal services and that the protections of the client-attorney relationship do not exist.

(b) The term "law-related services" denotes services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a non-attorney.

COMMENT

[1] When an attorney performs law-related services or controls an organization that does so, there exists the potential for ethical problems. Principal among these is the possibility that the person for whom the law-related services are performed

fails to understand that the services may not carry with them the protections normally afforded as part of the client-attorney relationship. The recipient of the law-related services may expect, for example, that the protection of client confidences, prohibitions against representation of persons with conflicting interests, and obligations of an attorney to maintain professional independence apply to the provision of law-related services when that may not be the case.

[2] Rule 19-305.7 (5.7) applies to the provision of law-related services by an attorney even when the attorney does not provide any legal services to the person for whom the law-related services are performed and whether the law-related services are performed through a law firm or a separate entity. The Rule identifies the circumstances in which all of the Maryland Attorneys' Rules of Professional Conduct apply to the provision of law-related services. Even when those circumstances do not exist, however, the conduct of a attorney involved in the provision of law-related services is subject to those Rules that apply generally to attorney conduct, regardless of whether the conduct involves the provision of legal services. See, e.g., Rule 19-308.4 (8.4).

[3] When law-related services are provided by an attorney under circumstances that are not distinct from the attorney's provision of legal services to clients, the attorney in providing the law-related services must adhere to the requirements of the Maryland Attorneys' Rules of Professional Conduct as provided in subsection (a)(1) of this Rule. Even when the law-related and legal services are provided in circumstances that are distinct from each other, for example through separate entities or different support staff within the law firm, the Maryland Attorneys' Rules of Professional Conduct apply to the attorney as provided in subsection (a)(2) of this Rule unless the attorney takes reasonable measures to assure that the recipient of the law-related services knows that the services are not legal services and that the protections of the client-attorney relationship do not apply.

[4] Law-related services also may be provided through an entity that is distinct from that through which the attorney provides legal services. If the attorney individually or with others has control of such an entity's operations, the Rule requires the attorney to take reasonable measures to assure that each person using the services of the entity knows that the services provided by the entity are not legal services and that the Maryland Attorneys' Rules of Professional Conduct that relate to the client-attorney relationship do not apply. An attorney's control of an entity extends to the ability to direct its operation. Whether an attorney has such control will depend upon the circumstances of the particular case.

[5] An attorney is not required to comply with Rule 19-301.8 (a) (1.8) when referring a person to a separate law-related entity owned or controlled by the attorney for the purpose of providing services to the person. If the attorney also is providing legal services to the person, the attorney must exercise independent professional judgment in making the referral. See Rule 19-302.1 (2.1). Moreover, the attorney must explain the matter to the person to the extent necessary for the person to make an informed decision to accept the attorney's recommendation. See Rule 19-301.4 (b) (1.4).

[6] In taking the reasonable measures referred to in subsection (a) (2) of this Rule to assure that a person using law-related services understands the practical effect or significance of the inapplicability of the Maryland Attorneys' Rules of Professional Conduct, the attorney should communicate to the person receiving the law-related services, in a manner sufficient to assure that the person understands the significance of the fact, that the relationship of the person to the business entity will not be a client-attorney relationship. The communication should be made before entering into an agreement for provision of or providing law-related services, and preferably should be in writing.

[7] The burden is upon the attorney to show that the attorney has taken reasonable measures under the circumstances to communicate the desired understanding. For instance, a sophisticated user of law-related services, such as a publicly held corporation, may require a lesser explanation than someone unaccustomed to making distinctions between legal services and law-related services, such as an individual seeking tax advice from a attorney-accountant or investigative services in connection with a lawsuit.

[8] Regardless of the sophistication of potential recipients of law-related services, an attorney should take special care to keep separate the provision of law-related and legal services in order to minimize the risk that the recipient will assume that the law-related services are legal services. The risk of such confusion is especially acute when the attorney renders both types of services with respect to the same matter. Under some circumstances the legal and law-related services may be so closely entwined that they cannot be distinguished from each other, and the requirement of disclosure and consultation imposed by subsection (a) (2) of this Rule of the Rule cannot be met. In such a case an attorney will be responsible for assuring that both the attorney's conduct and, to the extent required by Rule 19-305.3 (5.3), that of non-attorney employees in the distinct entity that the attorney complies in all respects with the Maryland Attorneys' Rules of Professional Conduct.

[9] A broad range of economic and other interests of clients may be served by attorneys' engaging in the delivery of law-related services. Examples of law-related services include providing title insurance, financial planning, accounting, trust services, real estate counseling, legislative lobbying, economic analysis, social work, psychological counseling, tax preparation, and patent, medical or environmental consulting.

[10] When an attorney is obliged to accord the recipients of such services the protections of those Rules that apply to the client-attorney relationship, the attorney must take special care to heed the proscriptions of the Rules addressing conflict of interest (Rules 19-301.7 (1.7) through 19-301.11 (1.11), especially Rules 19-301.7 (a) (2) (1.7) and 19-301.8 (b) and (f) (1.8), and to scrupulously adhere to the requirements of Rule 19-301.6 (1.6) relating to disclosure of confidential information. The promotion of the law-related services must also in all respects comply with Rules 19-307.1 (7.1) through 19-307.3 (7.3), dealing with advertising and solicitation. In that regard, attorneys should take special care to identify the obligations that may be imposed as a result of a jurisdiction's decisional law.

[11] When the full protections of all of the Maryland Attorneys' Rules of Professional Conduct do not apply to the provision of law-related services, principles of law external to the Rules, for example, the law of principal and agent, govern the legal duties owed to those receiving the services. Those other legal principles may establish a different degree of protection for the recipient with respect to confidentiality of information, conflicts of interest and permissible business relationships with clients. See also Rule 19-308.4 (8.4) (Misconduct).

[12] Regarding an attorney's referrals of clients to non-attorney professionals, see Rule 19-307.2 (c) (7.2) and related Comment.

Model Rules Comparison - This Rule, newly added to the Model Rules by the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct, is substantially similar to the ABA Rule, with the exception of changes to Comment [5] and the addition of Comment [12].

REPORTER'S NOTE

Rule 19-305.7 is derived from current Rule 5.7 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

PUBLIC SERVICE

Rule 19-306.1. PRO BONO PUBLIC SERVICE (6.1)

(a) Professional Responsibility

An attorney has a professional responsibility to render pro bono publico legal service.

(b) Discharge of Professional Responsibility

An attorney in the full-time practice of law should aspire to render at least 50 hours per year of pro bono publico legal service, and an attorney in part-time practice should aspire to render at least a pro rata number of hours.

(1) Unless an attorney is prohibited by law from rendering the legal services described below, a substantial portion of the applicable hours should be devoted to rendering legal service, without fee or expectation of fee, or at a substantially reduced fee, to:

(A) people of limited means;

(B) charitable, religious, civic, community, governmental, or educational organizations in matters designed primarily to address the needs of people of limited means;

(C) individuals, groups, or organizations seeking to secure or protect civil rights, civil liberties, or public rights; or

(D) charitable, religious, civic, community, governmental, or educational organizations in matters in furtherance of their organizational purposes when the payment of the standard legal fees would significantly deplete the organization's economic resources or would otherwise be inappropriate.

(2) The remainder of the applicable hours may be devoted to activities for improving the law, the legal system, or the legal profession.

(3) An attorney also may discharge the professional responsibility set forth in this Rule by contributing financial support to organizations that provide legal services to persons of limited means.

(c) Effect of Noncompliance

This Rule is aspirational, not mandatory. Noncompliance with this Rule shall not be grounds for disciplinary action or other sanctions.

Cross reference: For requirements regarding reporting pro bono legal service, see Md. Rule 19-503.

COMMENT

[1] The ABA House of Delegates has formally acknowledged "the basic responsibility of each attorney engaged in the practice of law to provide public interest legal services" without fee, or at a substantially reduced fee, in one or more of the following areas: poverty law, civil rights law, public rights law, charitable organization representation, and the administration of justice. This Rule expresses that policy but is not intended to be enforced through the disciplinary process.

[2] The rights and responsibilities of individuals and organizations in the United States are increasingly defined in legal terms. As a consequence, legal assistance in coping with the web of statutes, rules, and regulations is imperative for

persons of modest and limited means, as well as for the relatively well-to-do.

[3] The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual attorney, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of an attorney. Every attorney, regardless of professional prominence or professional workload, should find time to participate in or otherwise support the provision of legal services to the disadvantaged. The provision of free legal services to those unable to pay reasonable fees continues to be an obligation of each attorney as well as the profession generally, but the efforts of individual attorneys are often not enough to meet the need. Thus, it has been necessary for the profession, the government, and the courts to institute additional programs to provide legal services. Accordingly, legal aid offices, attorney referral services, and other related programs have been developed, and more will be developed by the profession, the government, and the courts. Every attorney should support all proper efforts to meet this need for legal services.

[4] The goal of 50 hours per year for pro bono legal service established in section (b) of this Rule is aspirational; it is a goal, not a requirement. The number used is intended as an average yearly amount over the course of the attorney's career.

[5] An attorney in government service who is prohibited by constitutional, statutory, or regulatory restrictions from performing the pro bono legal services described in subsection (b)(1) of the Rule may discharge the attorney's responsibility by participating in activities described in subsection (b)(2) of this Rule.

Model Rules Comparison - This Rule substantially retains Maryland language as amended April 9, 2002, effective July 1, 2002, and does not adopt Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct.

REPORTER'S NOTE

Rule 19-306.1 is derived from current Rule 6.1 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-306.2. ACCEPTING APPOINTMENTS (6.2)

An attorney shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

(a) representing the client is likely to result in violation of the Maryland Attorneys' Rules of Professional Conduct or other law;

(b) representing the client is likely to result in an unreasonable financial burden on the attorney; or

(c) the client or the cause is so repugnant to the attorney as to be likely to impair the client-attorney relationship or the attorney's ability to represent the client.

COMMENT

[1] An attorney ordinarily is not obliged to accept a client whose character or cause the attorney regards as repugnant. The attorney's freedom to select clients is, however, qualified. All attorneys have a responsibility to assist in providing pro bono publico service. See Rule 19-306.1 (6.1). An individual attorney fulfills this responsibility by accepting a fair share of unpopular matters or indigent or unpopular clients. An attorney may also be subject to appointment by a court to serve unpopular clients or persons unable to afford legal services.

Appointed Attorney - [2] For good cause an attorney may seek to decline an appointment to represent a person who cannot afford to retain an attorney or whose cause is unpopular. Good cause exists if the attorney could not handle the matter competently, see Rule 19-301.1 (1.1), or if undertaking the representation would result in an improper conflict of interest, for example, when the client or the cause is so repugnant to the attorney as to be likely to impair the client-attorney relationship or the attorney's ability to represent the client.

Rule 19-306.2

An attorney may also seek to decline an appointment if acceptance would be unreasonably burdensome, for example, when it would impose a financial sacrifice so great as to be unjust.

[3] An appointed attorney has the same obligations to the client as a retained attorney, including the obligations of loyalty and confidentiality, and is subject to the same limitations on the client-attorney relationship, such as the obligation to refrain from assisting the client in violation of the Rules.

Model Rules Comparison - Given that the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct made no changes to this Rule, Rule 19-306.2 (6.2) has not been amended and remains substantially similar to Model Rule 6.2.

REPORTER'S NOTE

Rule 19-306.2 is derived from current Rule 6.2 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-306.3. MEMBERSHIP IN LEGAL SERVICES ORGANIZATION (6.3)

An attorney may serve as a director, officer or member of a legal services organization, apart from the law firm in which the attorney practices, notwithstanding that the organization serves persons having interests adverse to a client of the attorney. The attorney shall not knowingly participate in a decision or action of the organization:

(a) if participating in the decision would be incompatible with the attorney's obligations to a client under Rule 19-301.7 (1.7);
or

(b) where the decision could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the attorney.

COMMENT

[1] Attorneys should be encouraged to support and participate in legal service organizations. An attorney who is an officer or a member of such an organization does not thereby have a client-attorney relationship with persons served by the organization. However, there is potential conflict between the interests of such persons and the interests of the attorney's clients. If the possibility of such conflict disqualified an attorney from serving on the board of a legal services organization, the profession's involvement in such organizations would be severely curtailed.

[2] It may be necessary in appropriate cases to reassure a client of the organization that the representation will not be affected by conflicting loyalties of a member of the board.

Rule 19-306.3

Established, written policies in this respect can enhance the credibility of such assurances.

Model Rules Comparison - Given that the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct made no changes to this Rule, Rule 19-306.3 (6.3) has not been amended and remains substantially similar to Model Rule 6.3.

REPORTER'S NOTE

Rule 19-306.3 is derived from current Rule 6.3 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-306.4. LAW REFORM ACTIVITIES AFFECTING CLIENT INTERESTS (6.4)

An attorney may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the attorney. When the attorney knows that the interests of a client may be materially benefitted by a decision in which the attorney participates, the attorney shall disclose that fact but need not identify the client.

COMMENT

[1] Attorneys involved in organizations seeking law reform generally do not have a client-attorney relationship with the organization. Otherwise, it might follow that an attorney could not be involved in a bar association law reform program that might indirectly affect a client. See also Rule 19-301.2 (b) (1.2). For example, an attorney specializing in antitrust litigation might be regarded as disqualified from participating in drafting revisions of rules governing that subject. In determining the nature and scope of participation in such activities, an attorney should be mindful of obligations to clients under other Rules, particularly Rule 19-301.7 (1.7). An attorney is professionally obligated to protect the integrity of the program by making an appropriate disclosure within the organization when the attorney knows a private client might be materially benefitted.

Model Rules Comparison - Given that the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct made no changes to this Rule, Rule 19-306.4 (6.4) has not been amended and remains substantially similar to Model Rule 6.4.

REPORTER'S NOTE

Rule 19-306.4 is derived from current Rule 6.4 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-306.5. NONPROFIT AND COURT-ANNEXED LIMITED LEGAL SERVICES PROGRAMS (6.5)

(a) An attorney who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the attorney or the client that the attorney will provide continuing representation in the matter:

(1) is subject to Rules 19-301.7 (1.7) and 19-301.9 (a) (1.9) only if the attorney knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 19-301.10 (1.10) only if the attorney knows that another attorney associated with the attorney in a law firm is disqualified by Rule 19-301.7 (1.7) or 19-301.9 (a) (1.9) with respect to the matter.

(b) Except as provided in subsection (a)(2) of this Rule, Rule 19-301.10 (1.10) is inapplicable to a representation governed by this Rule.

COMMENT

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which attorneys provide short-term limited legal services - such as advice or the completion of legal forms - that will assist persons to address their legal problems without further representation by an attorney. In these programs, such as legal-advice hotlines, advice-only clinics, self-represented

counseling programs, or programs in which attorneys represent clients on a pro bono basis for the purposes of mediation only, a client-attorney relationship is established, but there is no expectation that the attorney's representation of the client will continue beyond the limited consultation.

[2] An attorney who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 19-301.2 (c) (1.2). If a short-term limited representation would not be reasonable under the circumstances, the attorney may offer advice to the client but must also advise the client of the need for further assistance of an attorney. Except as provided in this Rule, the Maryland Attorneys' Rules of Professional Conduct, including Rules 19-301.6 (1.6) and 19-301.9 (c) (1.9), are applicable to the limited representation.

[3] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the attorney's firm, section (b) provides that Rule 19-301.10 (1.10) is inapplicable to a representation governed by this Rule except as provided by subsection (a)(2) of this Rule. Subsection (a)(2) of this Rule requires the participating attorney to comply with Rule 19-301.10 (1.10) when the attorney knows that the attorney's firm is disqualified by Rules 19-301.7 (1.7) or 19-301.9 (a) (1.9). By virtue of section (b) of this Rule, however, an attorney's participation in a short-term limited legal services program will not preclude the attorney's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of an attorney participating in the program be imputed to other attorneys participating in the program.

[4] If, after commencing a short-term limited representation in accordance with this Rule, an attorney undertakes to represent the client in the matter on an ongoing basis, Rules 19-301.7 (1.7), 19-301.9 (a) (1.9) and 19-301.10 (1.10) become applicable.

Model Rules Comparison - This Rule, newly added to the Model Rules by the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct, is substantially similar to the ABA Rule, with the exception of changes to Comment [1] and the omission of ABA Comment [3].

REPORTER'S NOTE

Rule 19-306.5 is derived from current Rule 6.5 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

INFORMATION ABOUT LEGAL SERVICES

Rule 19-307.1. COMMUNICATIONS CONCERNING AN ATTORNEY'S SERVICES (7.1)

An attorney shall not make a false or misleading communication about the attorney or the attorney's services. A communication is false or misleading if it:

(a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

(b) is likely to create an unjustified expectation about results the attorney can achieve, or states or implies that the attorney can achieve results by means that violate the Maryland Attorneys' Rules of Professional Conduct or other law; or

(c) compares the attorney's services with other attorneys' services, unless the comparison can be factually substantiated.

COMMENT

[1] This Rule governs all communications about an attorney's services, including advertising and direct personal contact with potential clients permitted by Rules 19-307.2 (7.2) and 19-307.3 (7.3). Whatever means are used to make known an attorney's services, statements about them should be truthful. The prohibition in section (b) of this Rule of statements that may create "unjustified expectations" would ordinarily preclude advertisements about results obtained on behalf of a client, such as the amount of a damage award or the attorney's record in obtaining favorable verdicts, and advertisements containing client endorsements. Such information may create the unjustified expectation that similar results can be obtained for others

without reference to the specific factual and legal circumstances.

[2] A communication will be regarded as false or misleading if it (1) asserts the attorney's record in obtaining favorable awards, verdicts, judgments, or settlements in prior cases, unless it also expressly and conspicuously states that each case is different and that the past record is no assurance that the attorney will be successful in reaching a favorable result in any future case, or (2) contains an endorsement or testimonial as to the attorney's legal services or abilities by a person who is not a bona fide pre-existing client of the attorney and has not in fact benefitted as such from those services or abilities.

[3] See also Rule 19-308.4 (f) (8.4) for the prohibition against stating or implying an ability to influence a government agency or official or to achieve results by means that violate the Maryland Attorneys' Rules of Professional Conduct or other law.

Model Rules Comparison - This Rule substantially retains existing Maryland language and does not adopt Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct.

REPORTER'S NOTE

Rule 19-307.1 is derived from current Rule 7.1 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-307.2. ADVERTISING (7.2)

(a) Subject to the requirements of Rules 19-307.1 (7.1) and 19-307.3 (b) (7.3), an attorney may advertise services through public media, such as a telephone directory, legal directory, newspaper or other periodical, outdoor, radio or television advertising, or through communications not involving in person contact.

(b) A copy or recording of an advertisement or such other communication shall be kept for at least three years after its last dissemination along with a record of when and where it was used.

(c) An attorney shall not give anything of value to a person for recommending the attorney's services, except that an attorney may:

(1) pay the reasonable cost of advertising or written communication permitted by this Rule;

(2) pay the usual charges of a legal service plan or a not-for-profit attorney referral service;

(3) pay for a law practice purchased in accordance with Rule 19-301.17 (1.17); and

(4) refer clients to a non-attorney professional pursuant to an agreement not otherwise prohibited under these Rules that

provides for the non-attorney professional to refer clients or customers to the attorney, if:

(A) the reciprocal agreement is not exclusive, and

(B) the client is informed of the existence and nature of the agreement.

(d) Any communication made pursuant to this Rule shall include the name of at least one attorney responsible for its content.

(e) An advertisement or communication indicating that no fee will be charged in the absence of a recovery shall also disclose whether the client will be liable for any expenses.

Cross reference: Maryland Attorneys' Rules of Professional Conduct, Rule 19-301.8 (e) (1.8).

(f) An attorney, including a participant in an advertising group or lawyer referral service or other program involving communications concerning the attorney's services, shall be personally responsible for compliance with the provisions of Rules 19-307.1 (7.1), 19-307.2 (7.2), 19-307.3 (7.3), 19-307.4 (7.4), and 19-307.5 (7.5) and shall be prepared to substantiate such compliance.

COMMENT

[1] To assist the public in obtaining legal services, attorneys should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that an attorney should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by attorneys entails the

risk of practices that are misleading or over-reaching.

[2] This Rule permits public dissemination of information concerning an attorney's name or firm name, address and telephone number; the kinds of services the attorney will undertake; the basis on which the attorney's fees are determined, including prices for specific services and payment and credit arrangements; an attorney's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

[3] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television advertising, against advertising going beyond specified facts about an attorney, or against "undignified" advertising. Television is now one of the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant.

[4] Neither this Rule nor Rule 19-307.3 (7.3) prohibits communications authorized by law, such as notice to members of a class in class action litigation.

[5] Section (a) of this Rule permits communication by mail to a specific individual as well as general mailings, but does not permit contact by telephone or in person delivery of written material except through the postal service or other delivery service.

Record of Advertising - [6] Section (b) of this Rule requires that a record of the content and use of advertising be kept in order to facilitate enforcement of this Rule. It does not require that advertising be subject to review prior to dissemination. Such a requirement would be burdensome and expensive relative to its possible benefits, and may be of doubtful constitutionality.

Paying Others to Recommend an Attorney - [7] An attorney is allowed to pay for advertising permitted by this Rule and for the purchase of a law practice in accordance with the provisions of Rule 19-301.17 (1.17), but otherwise is not permitted to pay another person for channeling professional work. This restriction does not prevent an organization or person other than the attorney from advertising or recommending the attorney's

services. Thus, a legal aid agency or prepaid legal services plan may pay to advertise legal services provided under its auspices. Likewise, an attorney may participate in not-for-profit attorney referral programs and pay the usual fees charged by such programs. Section (c) of this Rule does not prohibit paying regular compensation to an assistant, such as a secretary, to prepare communications permitted by this Rule.

Assignments or Referrals from a Legal Services Plan or Attorney Referral Service - [8] An attorney who accepts assignments or referrals from a legal services plan or referrals from a attorney referral service must act reasonably to assure that the activities of the plan or service are compatible with the attorney's professional obligations. See Rule 19-305.3 (5.3). Legal service plans and attorney referral services may communicate with prospective clients, but such communications must be in conformity with these Rules. Thus, advertising must not be false or misleading, as would be the case if the communications of a group advertising program or a group legal services plan would mislead prospective clients to think that it was attorney referral service sponsored by a state agency or bar association. Nor could the attorney allow in-person, telephonic, or real-time contacts that would violate Rule 19-307.3 (7.3).

Reciprocal Referral Agreements with Non-attorney Professionals - [9] An attorney may agree to refer clients to a non-attorney professional, in return for the undertaking of that person to refer clients or customers to the attorney to provide them with legal services. Such reciprocal referral arrangements must not be exclusive or otherwise interfere with the attorney's professional judgment as to making referrals or as to providing substantive legal services. See Rules 19-302.1 (2.1) and 19-305.4 (c) (5.4). The client must also be informed of the existence and nature of the referral agreement. Reciprocal referral agreements should not be of indefinite duration and should be reviewed periodically to determine whether they comply with these Rules. Conflicts of interest created by such arrangements are governed by Rule 19-301.7 (1.7). Referral agreements between attorneys who are not in the same firm are governed by Rule 19-301.5 (e) (1.5).

Responsibility for Compliance - [10] Every attorney who participates in communications concerning the attorney's services is responsible for assuring that the specified Rules are complied with and must be prepared to substantiate compliance with those Rules. That may require retaining records for more than the three years specified in section (b) of this Rule.

Model Rules Comparison - This Rule substantially retains existing Maryland language and does not adopt Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct, with the exception

Rule 19-307.2

of: (1) adding in substantial part ABA Rule 7.2 (c) (4) as adopted by the ABA House of Delegates on August 13, 2002; (2) adding ABA Comment [7] (Comment [8] above); (3) adding ABA Comment [8] (Comment [9] above).

REPORTER'S NOTE

Rule 19-307.2 is derived from current Rule 7.2 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-307.3. DIRECT CONTACT WITH PROSPECTIVE CLIENTS (7.3)

(a) An attorney shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the attorney's doing so is the attorney's pecuniary gain, unless the person contacted:

(1) is an attorney; or

(2) has a family, close personal, or prior professional relationship with the attorney.

(b) An attorney shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, telephone, or real-time electronic contact even when not otherwise prohibited by section (a), if:

(1) the attorney knows or reasonably should know that the physical, emotional or mental state of the prospective client is such that the prospective client could not exercise reasonable judgment in employing an attorney;

(2) the prospective client has made known to the attorney a desire not to be solicited by the attorney; or

(3) the solicitation involves coercion, duress, or harassment.

(c) Every written, recorded, or electronic communication from

an attorney soliciting professional employment from a prospective client known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in subsections (a)(1) or (a)(2) of this Rule.

(d) Notwithstanding the prohibitions in section (a) of this Rule, an attorney may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the attorney that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

Cross reference: For additional restrictions and requirements for certain communications, see Md. Code, Business Occupations and Professions Article, §§10-605.1 and 10-605.2.

COMMENT

[1] There is a potential for abuse inherent in direct in-person, live telephone or real-time electronic contact by an attorney with a prospective client known to need legal services. These forms of contact between an attorney and a prospective client subject the layperson to the private importuning of the trained advocate in a direct interpersonal encounter. The prospective client, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the attorney's presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.

[2] This potential for abuse inherent in direct in-person, live telephone or real-time electronic solicitation of

prospective clients justifies its prohibition, particularly since attorney advertising and written and recorded communication permitted under Rule 19-307.2 (7.2) offer alternative means of conveying necessary information to those who may be in need of legal services. Advertising and written and recorded communications which may be mailed or autodialed make it possible for a prospective client to be informed about the need for legal services, and about the qualifications of available attorneys and law firms, without subjecting the prospective client to direct in-person, telephone or real-time electronic persuasion that may overwhelm the client's judgment.

[3] The use of general advertising and written, recorded or electronic communications to transmit information from attorney to prospective client, rather than direct in-person, live telephone or real-time electronic contact, will help to assure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under Rule 19-307.2 (7.2) can be permanently recorded so that they cannot be disputed and may be shared with others who know the attorney. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications, in violation of Rule 19-307.1 (7.1). The contents of direct in-person, live telephone or real-time electronic conversations between an attorney and a prospective client can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.

[4] There is far less likelihood that an attorney would engage in abusive practices against a person who is a former client, or with whom the attorney has a close personal or family relationship, or in situations in which the attorney is motivated by considerations other than the attorney's pecuniary gain. Nor is there a serious potential for abuse when the person contacted is an attorney. Consequently, the general prohibition in Rule 19-307.3 (a) (7.3) and the requirements of Rule 19-307.3 (c) (7.3) are not applicable in those situations. Also, section (a) is not intended to prohibit an attorney from participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to its members or beneficiaries.

[5] But even permitted forms of solicitation can be abused. Thus, any solicitation which contains information which is false or misleading within the meaning of Rule 19-307.1 (7.1), which involves coercion, duress or harassment within the meaning of

Rule 19-307.3 (b) (2) (7.3), or which involves contact with a prospective client who has made known to the attorney a desire not to be solicited by the attorney within the meaning of Rule 19-307.3 (b) (2) (7.3) is prohibited. Moreover, if after sending a letter or other communication to a client as permitted by Rule 19-307.2 (7.2) the attorney receives no response, any further effort to communicate with the prospective client may violate the provisions of Rule 19-307.3 (b) (7.3).

[6] This Rule is not intended to prohibit an attorney from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the attorney or attorney's firm is willing to offer. This form of communication is not directed to a prospective client. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the attorney. Under these circumstances, the activity which the attorney undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 19-307.2 (7.2).

[7] The requirement in Rule 19-307.3 (c) (7.3) that certain communications be marked "Advertising Material" does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. General announcements by attorneys, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this Rule.

[8] Section (d) of this Rule permits an attorney to participate with an organization that uses personal contact to solicit members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any attorney who would be a provider of legal services through the plan. The organization must not be owned by or directed (whether as manager or otherwise) by any attorney or law firm that participates in the plan. For example, section (d) of this Rule would not permit an attorney to create an organization controlled directly or indirectly by the attorney and use the organization for the in-person or telephone solicitation of legal employment of the attorney through memberships in the plan or otherwise. The communication permitted by these organizations also must not be directed to a person known to need legal services in a particular matter, but is to be designed to inform potential plan members generally of another means of affordable legal services.

Rule 19-307.3

Attorneys who participate in a legal service plan must reasonably assure that the plan sponsors are in compliance with Rules 19-307.1 (7.1), 19-307.2 (7.2) and 19-307.3 (b) (7.3). See 19-308.4 (a) (8.4).

Model Rules Comparison - Rule 19-307.3 (7.3) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct, with the exception of retaining existing Maryland language in 19-307.3 (b) (1) (7.3) and accordingly redesignating the subsections of Rule 19-307.3 (b) (7.3).

REPORTER'S NOTE

Rule 19-307.3 is derived from current Rule 7.3 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-307.4. COMMUNICATION OF FIELDS OF PRACTICE (7.4)

(a) An attorney may communicate the fact that the attorney does or does not practice in particular fields of law, subject to the requirements of Rule 19-307.1 (7.1). An attorney shall not hold himself or herself out publicly as a specialist.

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

COMMENT

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

[2] Section (b) of this Rule recognizes the long-established policy of the Patent and Trademark Office for the designation of attorneys practicing before the Office.

Model Rules Comparison - This Rule substantially retains existing Maryland language and does not adopt Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct, with the exception of: 1) adding ABA Rule 7.4 (c) (incorporated as Rule 19-307.4 (b) (7.4) above); 2) the first sentence of ABA Comment [2] (included as Comment [2] above).

REPORTER'S NOTE

Rule 19-307.4 is derived from current Rule 7.4 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-307.5. FIRM NAMES AND LETTERHEADS (7.5)

(a) An attorney shall not use a firm name, letterhead or other professional designation that violates Rule 19-307.1 (7.1). A trade name may be used by an attorney in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 19-307.1 (7.1).

(b) A law firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but identification of the attorneys in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) The name of an attorney holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the attorney is not actively and regularly practicing with the firm.

(d) Attorneys may state or imply that they practice in a partnership or other organization only when that is the fact.

COMMENT

[1] A firm may be designated by the names of all or some of its members, by the names of deceased or retired members where there has been a continuing succession in the firm's identity or by a trade name such as the "ABC Legal Clinic." A firm may not be designated by the names of non-attorneys. See Rule 19-305.4

(5.4). Although the United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice, use of such names in law practice is acceptable so long as it is not misleading. It may be observed that any firm name including the name of a deceased partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of an attorney not associated with the firm or a predecessor of the firm, or the name of a non-attorney.

[2] An attorney in private practice may not practice under a name which implies any connection with the government or any agency of the federal government, any state or any political subdivision, or with a public or charitable legal services organization. This is to prevent a situation where non-attorneys might conclude that they are dealing with an agency established or sanctioned by the government, or one funded by either the government or public contributions and thus charging lower fees. The use of any of the following ordinarily would violate this Rule:

(1) The proper name of a government unit, whether or not identified with the type of unit. Thus, a name could be the basis of a disciplinary proceeding if it included the designation "Annapolis" or "City of Annapolis," "Baltimore," or "Baltimore County," "Maryland," or "Maryland State" (which could be a violation as a confusing although mistaken reference to the state or under Comment [3]).

(2) The generic name of any form of government unit found in the same area where the firm practices, e.g. national, state, county, or municipal.

(3) The name of or a reference to a college, university, or other institution of higher learning, regardless of whether it has a law school, unless the provider of legal higher learning. For example, the names "Georgetown Legal Clinic (or "Law Office," etc.)" and "U.B. Legal Clinic (or "Law Office," etc.)" could both violate this Rule if used by unaffiliated organizations.

(4) The words "public," "government," "civic," "legal aid," "community," "neighborhood," or other words of similar import suggesting that the legal services offered are at least in part publicly funded. Although names such as "Neighborhood Legal Clinic of John Doe" might otherwise appear unobjectionable, the terms "legal aid," "community" and "neighborhood" have become so associated with public or charitable legal services organizations as to form the basis of disciplinary proceedings.

[3] Firm names which include geographical names which are

not also government units, or adjectives merely suggesting the context of the practice (e.g., "urban," "rural") ordinarily would not violate Rule 19-307.5 (7.5). The acceptability of the use of a proper or generic name of a government unit when coupled with an adjective or further description (beyond mere reference to the provision of legal services) should be judged by the general policy underlying Rule 19-307.5 (7.5), and any doubt regarding the misleading connotations of a name may be resolved against use of the name.

[4] With regard to section (d) of this Rule, attorneys sharing office facilities, but who are not in fact partners, may not denominate themselves as, for example, "Smith and Jones," for that title suggests partnership in the practice of law.

Model Rules Comparison - This Rule substantially retains existing Maryland language and does not adopt Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct, with the exception of changes to Comment [1].

REPORTER'S NOTE

Rule 19-307.5 is derived from current Rule 7.5 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 19-308.1. BAR ADMISSION AND DISCIPLINARY MATTERS (8.1)

An applicant for admission or reinstatement to the bar, or an attorney in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(a) knowingly make a false statement of material fact; or

(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 19-301.6 (1.6).

COMMENT

[1] The duty imposed by this Rule extends to persons seeking admission or reinstatement to the bar as well as to attorneys. Hence, if a person makes a material false statement in connection with an application for admission or for reinstatement, the statement may be the basis for subsequent disciplinary action if the person is admitted or reinstated, and in any event may be relevant in a subsequent admission application. The duty imposed by this Rule applies to an attorney's own admission or discipline as well as that of others. Thus, it is a separate professional offense for an attorney to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the attorney's own conduct. This Rule also requires affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware.

Rule 19-308.1

[2] The Court of Appeals has considered this Rule applicable when information is sought by the Attorney Grievance Commission from any attorney on any matter, whether or not the attorney is personally involved. See *Attorney Grievance Commission v. Oswinkle*, 364 Md. 182 (2001).

[3] This Rule is subject to the provisions of the Fifth Amendment of the United States Constitution and corresponding provisions of state constitutions. A person relying on such a provision in response to a question, however, should do so openly and not use the right of nondisclosure as a justification for failure to comply with this Rule.

[4] An attorney representing an applicant for admission to the bar, or representing an attorney who is the subject of a disciplinary inquiry or proceeding, is governed by the rules applicable to the client-attorney relationship.

Cross reference: Md. Rule 19-701 (k) (defining "Reinstatement").

Model Rules Comparison - This Rule substantially retains existing Maryland language with some further revisions and does not adopt Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct.

REPORTER'S NOTE

Rule 19-308.1 is derived from current Rule 8.1 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-308.2. JUDICIAL AND LEGAL OFFICIALS (8.2)

(a) An attorney shall not make a statement that the attorney knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) Rule 18-104.1 (c) (2) (D) (4.1) of the Maryland Code of Judicial Conduct, set forth in Title 18, Chapter 100, provides that an attorney becomes a candidate for a judicial office when the attorney files a certificate of candidacy in accordance with Maryland election laws, but no earlier than two years prior to the general election for that office. A candidate for a judicial office:

(1) shall maintain the dignity appropriate to the office and act in a manner consistent with the impartiality, independence and integrity of the judiciary;

(2) with respect to a case, controversy, or issue that is likely to come before the court, shall not make a commitment, pledge, or promise that is inconsistent with the impartial performance of the adjudicative duties of the office;

Committee note: Rule 19-308.2 (b) (2) (8.2) does not prohibit a candidate from making a commitment, pledge, or promise respecting improvements in court administration or the faithful and

impartial performance of the duties of the office.

(3) shall not knowingly misrepresent his or her identity or qualifications, the identity or qualifications of an opponent, or any other fact;

(4) shall not allow any other person to do for the candidate what the candidate is prohibited from doing; and

(5) may respond to a personal attack or an attack on the candidate's record as long as the response does not otherwise violate this Rule.

COMMENT

[1] Assessments by attorneys are relied on in evaluating the professional or personal fitness of individuals being considered for election or appointment to judicial office and to public legal offices, such as attorney general, prosecuting attorney and public defender. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by an attorney can unfairly undermine public confidence in the administration of justice.

[2] To maintain the fair and independent administration of justice, attorneys are encouraged to continue traditional efforts to defend judges and courts unjustly criticized.

Model Rules Comparison - Rule 19-308.2 (8.2) revises prior Maryland language without adopting Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct.

REPORTER'S NOTE

Rule 19-308.2 is derived from current Rule 8.2 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-308.3. REPORTING PROFESSIONAL MISCONDUCT (8.3)

(a) An attorney who knows that another attorney has committed a violation of the Maryland Attorneys' Rules of Professional Conduct that raises a substantial question as to that attorney's honesty, trustworthiness or fitness as an attorney in other respects, shall inform the appropriate professional authority.

(b) An attorney who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This Rule does not require disclosure of information otherwise protected by Rule 19-301.6 (1.6) or information gained by an attorney or judge while participating in an attorney or judge assistance or professional guidance program.

COMMENT

[1] Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Maryland Attorneys' Rules of Professional Conduct. Attorneys have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense. For the definition of "knows" under these Rules, see Rule 19-301.0 (g) (1.0).

[2] A report about misconduct is not required where it would involve violation of Rule 19-301.6 (1.6). However, an attorney

should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client's interests.

[3] If an attorney were obliged to report every violation of the Rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions but proved to be unenforceable. This Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this Rule. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the attorney is aware. A report should be made to the bar disciplinary agency unless some other agency, such as a peer review agency, is more appropriate in the circumstances. Similar considerations apply to the reporting of judicial misconduct.

[4] The duty to report professional misconduct does not apply to an attorney retained to represent an attorney whose professional conduct is in question. Such a situation is governed by the rules applicable to the client-attorney relationship.

[5] Information about an attorney's or judge's misconduct or fitness may be received by an attorney in the course of that attorney's participation in an approved attorney or judge assistance or professional guidance program. In that circumstance, providing for an exception to the reporting requirements of sections (a) and (b) of this Rule encourages attorneys and judges to seek assistance through such a program. Conversely, without such an exception, attorneys and judges may hesitate to seek assistance from these programs, which may then result in harm to their professional careers and injury to the welfare of client and the public. These Rules do not otherwise address the confidentiality of information received by an attorney or judge participating in such programs; such an obligation, however, may be imposed by the rules of the program or other law.

Model Rules Comparison - Rule 19-308.3 (8.3) is substantially similar to the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct, with the exception of wording changes to Rule 19-308.3 (c) (8.3) and Comment [5].

REPORTER'S NOTE

Rule 19-308.3 is derived from current Rule 8.3 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-308.4. MISCONDUCT (8.4)

It is professional misconduct for an attorney to:

(a) violate or attempt to violate the Maryland Attorneys' Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the attorney's honesty, trustworthiness or fitness as an attorney in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) knowingly manifest by words or conduct when acting in a professional capacity bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status when such action is prejudicial to the administration of justice, provided, however, that legitimate advocacy is not a violation of this section;

(f) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Maryland Attorneys' Rules of Professional Conduct or other law; or

(g) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

COMMENT

[1] Attorneys are subject to discipline when they violate or attempt to violate the Maryland Attorneys' Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another, as when they request or instruct an agent to do so on the attorney's behalf. Section (a) of this Rule, however, does not prohibit an attorney from advising a client concerning action the client is legally entitled to take.

[2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offense carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although an attorney is personally answerable to the entire criminal law, attorney should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, or breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

[3] Sexual misconduct or sexual harassment involving colleagues, clients, or co-workers may violate section (d) or (e) of this Rule. This could occur, for example, where coercion or undue influence is used to obtain sexual favor in exploitation of these relationships. See *Attorney Grievance Commission v. Goldsborough*, 330 Md. 342 (1993). See also Rule 19-301.7 (1.7).

[4] Section (e) of this Rule reflects the premise that a commitment to equal justice under the law lies at the very heart of the legal system. As a result, even when not otherwise unlawful, an attorney who, while acting in a professional capacity, engages in the conduct described in section (e) of this Rule and by so doing prejudices the administration of justice commits a particularly egregious type of discrimination. Such conduct manifests a lack of character required of members of the legal profession. A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not

alone establish a violation of this rule. A judge, however, must require attorneys to refrain from the conduct described in section (e) of this Rule. See Md. Rule 18-102.3.

[5] An attorney may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 19-301.2 (d) (1.2) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges to legal regulation of the practice of law.

[6] Attorneys holding public office assume legal responsibilities going beyond those of other citizens. A attorney's abuse of public office can suggest an inability to fulfill the professional role of attorney. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

Model Rules Comparison - Rule 19-308.4 (8.4) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct, with the exception of adding Rule 19-308.4 (e) (8.4) and redesignating the subsections of Rule 19-308.4 (8.4) as appropriate, adding Comment [4] above, and retaining Comment [3] above from existing Maryland language.

REPORTER'S NOTE

Rule 19-308.4 is derived from current Rule 8.4 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

Rule 19-308.5. DISCIPLINARY AUTHORITY; CHOICE OF LAW (8.5)

(a) Disciplinary Authority

(1) An attorney admitted by the Court of Appeals to practice in this State is subject to the disciplinary authority of this State, regardless of where the attorney's conduct occurs.

(2) An attorney not admitted to practice in this State is also subject to the disciplinary authority of this State if the attorney:

(A) provides or offers to provide any legal services in this State,

(B) holds himself or herself out as practicing law in this State, or

(C) has an obligation to supervise or control another attorney practicing law in this State whose conduct constitutes a violation of these Rules.

Cross reference: Md. Rule 19-701 (a).

(3) An attorney may be subject to the disciplinary authority of both this State and another jurisdiction for the same conduct.

(b) Choice of Law

In any exercise of the disciplinary authority of this State, the rule of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the attorney's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. An attorney shall not be subject to discipline if the attorney's conduct conforms to the rules of a jurisdiction in which the attorney reasonably believes the predominant effect of the attorney's conduct will occur.

COMMENT

Disciplinary Authority. - [1] It is longstanding law that the conduct of an attorney admitted to practice in this State is subject to the disciplinary authority of this State. Extension of the disciplinary authority of this State to other attorneys who provide or offer to provide legal services in this State is for the protection of the citizens of this State. Reciprocal enforcement of a jurisdiction's disciplinary findings and sanctions will further advance the purposes of this Rule. An attorney who is subject to the disciplinary authority of this State under Rule 19-308.5 (a) (8.5) appoints an official to be designated by this Court to receive service of process in this State.

Choice of Law. - [2] An attorney may be potentially subject to more than one set of rules of professional conduct that impose different obligations. The attorney may be licensed to practice in more than one jurisdiction with differing rules, or may be admitted to practice before a particular court with rules that differ from those of the jurisdiction or jurisdictions in which the attorney is licensed to practice. Additionally, the attorney's conduct may involve significant contacts with more than one jurisdiction.

[3] Section (b) of this Rule seeks to resolve such potential conflicts. Its premise is that minimizing conflicts between rules, as well as uncertainty about which rules are applicable, is in the best interest of both clients and the profession (as

well as the bodies having authority to regulate the profession). Accordingly, it takes the approach of (i) providing that any particular conduct of an attorney shall be subject to only one set of rules of professional conduct, (ii) making the determination of which set of rules applies to particular conduct as straightforward as possible, consistent with recognition of appropriate regulatory interests of relevant jurisdictions, and (iii) providing protection from discipline for attorneys who act reasonably in the face of uncertainty.

[4] Subsection (b) (1) of this Rule provides that as to an attorney's conduct relating to a proceeding pending before a tribunal, the attorney shall be subject only to the rules of professional conduct of that tribunal. As to all other conduct, including conduct in anticipation of a proceeding not yet pending before a tribunal, subsection (b) (2) of this Rule provides that an attorney shall be subject to the rules of the jurisdiction in which the attorney's conduct occurred, or, if the predominant effect of the conduct is in another jurisdiction, the rules of that jurisdiction shall be applied to the conduct. In the case of conduct in anticipation of a proceeding that is likely to be before a tribunal, the predominant effect of such conduct could be where the conduct occurred, where the tribunal sits or in another jurisdiction.

[5] When an attorney's conduct involves significant contacts with more than one jurisdiction, it may not be clear whether the predominant effect of the attorney's conduct will occur in a jurisdiction other than the one in which the conduct occurred. So long as the attorney's conduct conforms to the rules of a jurisdiction in which the attorney reasonably believes the predominant effect will occur, the attorney shall not be subject to discipline under this Rule.

[6] If two admitting jurisdictions were to proceed against attorney for the same conduct, they should, applying this Rule, identify the same governing ethics rules. They should take all appropriate steps to see that they do apply the same rule to the same conduct, and in all events should avoid proceeding against an attorney on the basis of two inconsistent rules.

[7] The choice of law provision applies to attorneys engaged in transnational practice, unless international law, treaties or other agreements between competent regulatory authorities in the affected jurisdiction provide otherwise.

Model Rules Comparison - Rule 19-308.5 (a) (8.5) combines the substance of former Rules 8.5 (a) and 8.5 (b). Rule 19-308.5 (b) (8.5) is substantially similar to ABA Model Rule 8.5 (b). The Comments are substantially similar to the ABA Comments with the exception of omitting the final sentence of ABA Comment [1].

REPORTER'S NOTE

Rule 19-308.5 is derived from current Rule 8.5 of the Maryland Lawyers' Rules of Professional Conduct.

MARYLAND RULES OF PROCEDURE

APPENDIX 19-B: IDEALS OF PROFESSIONALISM

Professionalism is the combination of the core values of personal integrity, competency, civility, independence, and public service that distinguish attorneys as the caretakers of the rule of law.

These Ideals of Professionalism emanate from and complement the Maryland Attorneys' Rules of Professional Conduct ("MARPC"), the overall thrust of which is well-summarized in this passage from the Preamble to those Rules:

"An attorney should use the law's procedures only for legitimate purposes and not to harass or intimidate others. An attorney should demonstrate respect for the legal system and for those who serve it, including judges, other attorneys, and public officials."

A failure to observe these Ideals is not of itself a basis for disciplinary sanctions, but the conduct that constitutes the failure may be a basis for disciplinary sanctions if it violates a provision of the MARPC or other relevant law.

Preamble

Attorneys are entrusted with the privilege of practicing law. They take a firm vow or oath to uphold the Constitution and laws of the United States and the State of Maryland. Attorneys enjoy a distinct position of trust and confidence that carries the significant responsibility and obligation to be caretakers

for the system of justice that is essential to the continuing existence of a civilized society. Each attorney, therefore, as a custodian of the system of justice, must be conscious of this responsibility and exhibit traits that reflect a personal responsibility to recognize, honor, and enhance the rule of law in this society. The Ideals and some characteristics set forth below are representative of a value system that attorneys must demand of themselves as professionals in order to maintain and enhance the role of legal professionals as the protectors of the rule of law.

Ideals of Professionalism

An attorney should aspire:

- (1) to put fidelity to clients before self-interest;
- (2) to be a model for others, and particularly for his or her clients, by showing respect due to those called upon to resolve disputes and the regard due to all participants in the dispute resolution processes;
- (3) to avoid all forms of wrongful discrimination in all of his or her activities, including discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, with equality and fairness as the goals;
- (4) to preserve and improve the law, the legal system, and other dispute resolution processes as instruments for the common good;

(5) to make the law, the legal system, and other dispute resolution processes available to all;

(6) to practice law with a personal commitment to the rules governing the profession and to encourage others to do the same;

(7) to preserve the dignity and the integrity of the profession by his or her conduct, because the dignity and the integrity of the profession are an inheritance that must be maintained by each successive generation of attorneys;

(8) to strive for excellence in the practice of law to promote the interests of his or her clients, the rule of law, and the welfare of society; and

(9) to recognize that the practice of law is a calling in the spirit of public service, not merely a business pursuit.

Accountability and Trustworthiness

An attorney should understand the principles set forth in this section.

(1) Punctuality promotes the credibility of an attorney. Tardiness and neglect denigrate the individual, as well as the legal profession.

(2) Personal integrity is essential to the honorable practice of law. Attorneys earn the respect of clients, opposing attorneys, and the courts when they keep their commitments and perform the tasks promised.

(3) Honesty and, subject to legitimate requirements of confidentiality, candid communications promote credibility with clients, opposing attorneys, and the courts.

(4) Monetary pressures that cloud professional judgment and should be resisted.

Education, Mentoring, and Excellence

An attorney should:

(1) make constant efforts to expand his or her legal knowledge and to ensure familiarity with changes in the law that affect a client's interests;

(2) willingly take on the responsibility of promoting the image of the legal profession by educating each client and the public regarding the principles underlying the justice system, and, as a practitioner of a learned art, by conveying to everyone the importance of professionalism;

(3) attend continuing legal education programs to demonstrate a commitment to keeping abreast of changes in the law;

(4) as a senior attorney, accept the role of mentor and teacher, whether through formal education programs or individual mentoring of less experienced attorneys; and

(5) understand that mentoring includes the responsibility for setting a good example for another attorney, as well as an obligation to ensure that each mentee learns the principles enunciated in these Ideals and adheres to them in practice.

A Calling to Service

An attorney should:

(1) serve the public interest by communicating clearly with clients, opposing attorneys, judges, and the general public;

(2) consider the impact on others when scheduling events.

Reasonable requests for schedule changes should be accommodated if, in the view of the attorney, such requests do not impact adversely the merits of the client's position;

(3) maintain an open and respectful dialogue with clients and opposing attorneys;

(4) respond to all communications promptly, even if more time is needed to formulate a complete answer, and understand that delays in returning telephone calls or answering mail may leave the impression that the communication was unimportant or that the message was lost, and such delays increase tension and frustration;

(5) keep a client apprised of the status of important matters affecting the client and inform the client of the frequency with which information will be provided, understanding that some matters will require regular contact, while others will require only occasional communication;

(6) always explain a client's options or choices in sufficient detail to help the client make an informed decision;

(7) reflect a spirit of respect in all interactions with opposing attorneys, parties, staff, and the court; and

(8) accept responsibility for ensuring that justice is available to every person and not just those with financial means.

Fairness, Civility, and Courtesy

An attorney should:

(1) act fairly in all dealings as a way of promoting the

system of justice;

(2) understand that an excess of zeal may undermine a client's cause and hamper the administration of justice and that an attorney can advocate zealously a client's cause in a manner that remains fair and civil;

(3) know that zeal requires only that the client's interests are paramount and therefore warrant use of negotiation and compromise, when appropriate, to achieve a beneficial outcome, understanding that yelling, intimidating, issuing ultimatums, and using an "all or nothing" approach may constitute bullying, not zealous advocacy;

(4) seek to remain objective when advising a client about the strengths and weaknesses of the client's case or work;

(5) not allow a client's improper motives, unethical directions, or ill-advised wishes to influence an attorney's actions or advice, such as when deciding whether to consent to an extension of time requested by an opponent, and make that choice based on the effect, if any, on the outcome of the client's case and not on the acrimony that may exist between the parties;

(6) when appropriate and consistent with duties to the client, negotiate in good faith in an effort to avoid litigation and, where indicated, suggest alternative dispute resolution;

(7) use litigation tools to strengthen the client's case, but avoid using litigation tactics in a manner solely to harass, intimidate, or overburden an opposing party; and

(8) note explicitly any changes made to documents submitted

for review by opposing attorneys, understanding that fairness is undermined by attempts to insert or delete language without notifying the other party or the party's attorney.

An attorney should understand that:

(1) professionalism requires civility in all dealings, showing respect for differing points of view, and demonstrating empathy for others;

(2) courtesy does not reflect weakness; rather, it promotes effective advocacy by ensuring that parties have the opportunity to participate in the process without personal attacks or intimidation;

(3) maintaining decorum in every venue, especially in the courtroom, is neither a relic of the past nor a sign of weakness; it is an essential component of the legal process;

(4) professionalism is enhanced by preparing scrupulously for meetings and court appearances and by showing respect for the court, opposing attorneys, and the parties through courteous behavior and respectful attire;

(5) courtesy and respect should be demonstrated in all contexts, not just with clients and colleagues, or in the courtroom, but also with support staff and court personnel;

(6) hostility between clients should not be a ground for an attorney to show hostility or disrespect to a party, an opposing attorney, or the court;

(7) patience enables an attorney to exercise restraint in volatile situations and to defuse anger, rather than elevate the

tension and animosity between parties or attorneys; and

(8) the Ideals of Professionalism are to be observed in every kind of communication, and an attorney should resist the impulse to respond uncivilly to electronic communications in the same manner as he or she would resist such impulses in other forms of communication.

MARYLAND RULES OF PROCEDURE

APPENDIX 19-C: GUIDELINES OF ADVOCACY FOR ATTORNEYS

REPRESENTING CHILDREN IN CINA AND RELATED TPR

AND ADOPTION PROCEEDINGS

STATEMENT OF THE ISSUE

The Maryland Foster Care Court Improvement Project has developed these Guidelines of Advocacy for Attorneys Representing Children in Child in Need of Assistance (CINA) and Related Termination of Parental Rights (TPR) and Adoption Proceedings. The court's ability to protect the interests of children rests in large part upon the skill and expertise of the advocate. An attorney should represent a child who is the subject of a CINA or a related TPR or adoption proceeding in accordance with these Guidelines. Nothing contained in the Guidelines is intended to modify, amend, or alter the fiduciary duties that an attorney owes to a client pursuant to the Maryland Attorneys' Rules of Professional Conduct. For purposes of these Guidelines, the word "child" refers to the client of the attorney.

A. ADVOCATE FOR THE CHILD

GUIDELINE A. ROLE OF THE CHILD'S COUNSEL

The attorney should determine whether the child has considered judgment as defined in Guideline B1. If the child has considered judgment, the attorney should so state in open court and should advocate a position consistent with the child's wishes

in the matter. If the attorney determines that the child lacks considered judgment, the attorney should so inform the court. The attorney should then advocate a position consistent with the best interests of the child as defined in Guideline B2.

B. CONSIDERED JUDGMENT

GUIDELINE B1. ASSESSING CONSIDERED JUDGMENT

The attorney should advocate the position of a child unless the attorney reasonably concludes that the child is unable to express a reasoned choice about issues that are relevant to the particular purpose for which the attorney is representing the child. If the child has the ability to express a reasoned choice, the child is regarded as having considered judgment.

a. To determine whether the child has considered judgment, the attorney should focus on the child's decision-making process, rather than the child's decision. The attorney should determine whether the child can understand the risks and benefits of the child's legal position and whether the child can reasonably communicate the child's wishes. The attorney should consider the following factors when determining whether the child has considered judgment:

- (1) the child's developmental stage:
 - (a) cognitive ability,
 - (b) socialization, and
 - (c) emotional and mental development;
- (2) the child's expression of a relevant position:
 - (a) ability to communicate with the attorney, and

(b) ability to articulate reasons for the legal position;
and

(3) relevant and available reports such as reports from social workers, psychiatrists, psychologists, and schools.

b. A child may be capable of considered judgment even though the child has a significant cognitive or emotional disability.

c. At every interview with the child, the attorney should assess whether the child has considered judgment regarding each relevant issue. In making a determination regarding considered judgment, the attorney may seek guidance from professionals, family members, school officials, and other concerned persons. The attorney should also determine if any evaluations are needed and advocate them when appropriate. At no time shall the attorney compromise the attorney-client privilege.

d. An attorney should be sensitive to cultural, racial, ethnic, or economic differences between the attorney and the child because such differences may inappropriately influence the attorney's assessment of whether the child has considered judgment.

GUIDELINE B2. BEST INTEREST STANDARD

When an attorney representing a child determines that the child does not have considered judgment, the attorney should advocate for services and safety measures that the attorney believes to be in the child's best interests, taking into consideration the placement that is the least restrictive alternative. The attorney may advocate a position different from

the child's wishes if the attorney finds that the child does not have considered judgment at that time. The attorney should make clear to the court that the attorney is adopting the best interest standard for that particular proceeding and state the reasons for adopting the best interest standard as well as the reasons for any change from a previously adopted standard of representation. Even if the attorney advocates a position different from the child's wishes, the attorney should ensure that the child's position is made a part of the record.

C. CLIENT CONTACT

GUIDELINE C1. GENERAL

The attorney should meet in the community with the child at each key stage of the representation to conduct a meaningful interview. The attorney should meet the child in preparation for a hearing, regardless of the child's age or disability, in an environment that will facilitate reasonable attorney-client communications. The attorney is encouraged to meet with the child in multiple environments, including the child's school, placement, each subsequent placement, or home.

When face-to-face contact with a child is not reasonably possible or not necessary, the attorney still should have meaningful contact with the child. These situations may include: (a) a child placed out-of-state; (b) a teenager with whom the attorney has established a sufficient attorney-client relationship; or (c) a child under the age of three at the shelter care proceeding. The attorney, however, should have

face-to-face contact with the child prior to the adjudication hearing.

When a communication with the child requires a sign or spoken language interpreter, the attorney should try to use the services of a court-related interpreter or other qualified interpreter other than the child's family, friends, or social workers.

GUIDELINE C2. DETERMINATIONS

After conducting one or more interviews with a child and giving reasonable consideration to the child's age and cognitive and emotional development, the attorney should determine, at a minimum:

- a. whether the child has considered judgment;
- b. whether the presence of the child at the proceedings will be waived, i.e., whether the child wants or needs to be present at the hearing or whether the child will be harmed by appearing in court;
- c. the child's position on the agency's petition, court report(s), and other relevant issues, including the permanency plan and placement;
- d. the child's position on evidence that may be offered at the hearing, including evidence that may be offered on behalf of the child;
- e. the child's legal position at the hearing;
- f. whether there is a conflict of interest that requires the attorney to move to withdraw from representing one or all of

the clients as, for example, when the attorney represents siblings;

g. whether the child should be called as a witness, after considering such factors as (1) the child's age, (2) the child's cognitive and emotional development, (3) the child's need or desire to testify, (4) the likelihood of emotional trauma or repercussions to the child, (5) the necessity ~~of~~ for the child's direct testimony, and (6) the availability of other evidence, hearsay exceptions, proffers, or stipulations that can substitute for direct testimony; and

h. if the child will be called as a witness, the setting of the child's testimony; for example, whether the child should testify in open court, open chambers, closed chambers, or another location.

GUIDELINE C3. ANCILLARY CONTACT WITH THE CHILD

The attorney should have meaningful contact with the child at least every six months, even if a court hearing is not scheduled. The attorney should seek to obtain notice of emergencies and significant events involving the child between court hearings. Upon receiving notice of such an event (for example, a change of placement), the attorney should interview or observe the child within a reasonable time. As necessary or appropriate to the representation, the attorney should attend treatment, placement, and administrative hearings, and other proceedings, as well as school case conferences or staffing conferences concerning the child.

GUIDELINE C4. CONTINUITY OF REPRESENTATION

The attorney should continue to represent the child after the initial court proceeding, including at disposition review hearings, permanency planning hearings, and related TPR and adoption proceedings.

D. ATTORNEY INVESTIGATION

GUIDELINE D1. INDEPENDENT INVESTIGATION

The child's attorney should conduct a thorough and independent investigation as necessary or appropriate to the representation. This investigation may include the following:

- a. obtaining and reviewing the child's social services, psychiatric, psychological, drug and alcohol, medical, law enforcement, school, and other records relevant to the case;
- b. interviewing or observing the child before all court hearings and when apprised of emergencies or significant events affecting the child;
- c. interviewing school personnel and other professionals and potential witnesses;
- d. interviewing the child's caretaker(s), with the permission of their attorney when necessary, concerning the type of services the child currently receives and the type of services the child needs; and
- e. reviewing all relevant evidence.

At each stage of the investigation, the attorney should be familiar with the child's position.

GUIDELINE D2. NON-VERBAL CHILD WITHOUT CONSIDERED JUDGMENT

For a non-verbal child who does not have considered judgment, the attorney should observe that child in the child's environment and conduct a thorough investigation. The investigation should include, at a minimum, contact with the child's caretaker, teacher, physician, and caseworker to obtain information about the status of the child.

E. INVOLVEMENT IN THE COURT PROCESS

GUIDELINE E1. PRE-TRIAL STAGES

a. If the child has considered judgment, the attorney should develop a position and strategy concerning every relevant aspect of the proceedings. When developing the child's legal position, the attorney should ensure that the child is given advice and guidance and all information necessary to make an informed decision.

b. The attorney should explain to the child in a manner appropriate to the child's level of development what is expected to happen before, during, and after each hearing.

c. Consistent with the child's wishes, or the best interests of a child without considered judgment, the attorney should seek to obtain appropriate services, including services for children with physical, mental, or developmental disabilities.

GUIDELINE E2. TRIAL STAGES

a. The attorney should attend all hearings involving the child and participate in all telephone or other conferences with the court unless a particular hearing involves only issues completely

unrelated to the child.

b. The attorney should present a case and make appropriate motions, including, when appropriate, introducing independent evidence and witnesses and cross-examining witnesses.

c. During all hearings, the attorney should preserve legal issues for appeal, as appropriate.

d. Consistent with the wishes of a child with considered judgment, the attorney should try to ensure timely hearings and oppose unwarranted continuances or postponements.

GUIDELINE E3. POST-TRIAL STAGES

a. Following the hearing, if consistent with the attorney's representation of the child's position, the attorney should seek a written court order to be given to the parties, containing at a minimum:

- (1) required findings of fact and conclusions of law;
- (2) the date and time of the next hearing;
- (3) required notices;
- (4) actions to be taken by each party, including the agency(ies), and custodians;
- (5) appropriate statutory timelines; and
- (6) the names of the parties who were present at the hearing.

b. The attorney should consider and discuss with the child the possibility and ramifications of an appeal and, when appropriate, take all steps necessary to note an appeal or participate in an appeal filed by another party.

F. ATTORNEY TRAINING

GUIDELINE F1. INITIAL TRAINING OR EXPERIENCE

Before accepting a case, an attorney who does not have sufficient experience in providing legal representation to children in CINA and related TPR and adoption cases should participate in formal training and education related to this area of practice. The attorney should satisfy the court and, if applicable, the entity responsible for payment of the attorney that the attorney has sufficient skill and experience in child advocacy. The attorney should participate in available training and education, including in-house training.

GUIDELINE F2. SUBSTANCE OF TRAINING

Attorneys who seek to represent children in these proceedings are encouraged to seek training and education in such subjects as:

- a. the role of child's attorney;
- b. assessing considered judgment;
- c. basic interviewing techniques;
- d. child development: cognitive, emotional, and mental stages;
- e. federal and state statutes, regulations, rules, and case law;
- f. overview of the court process and key personnel in child-related litigation;
- g. applicable guidelines and standards of representation;
- h. family dynamics and dysfunction, including substance abuse and mental illness;

i. related issues, such as domestic violence, special education, mental health, developmental disability systems, and adult guardianships;

j. social service agencies, child welfare programs, and medical, educational, and mental health resources for the child and family; and

k. written materials, including related motions, court orders, pleadings, and training manuals.

G. ROLE OF THE COURT

If the court becomes aware that an attorney is not following these Guidelines, the court may encourage compliance by taking one or more of the following steps, as appropriate:

(1) alert the individual attorney that the attorney is not in compliance with the Guidelines;

(2) alert relevant government agencies or firms that the attorney is not complying with the Guidelines;

(3) alert the entity(ies) responsible for administering the contracts for children's representation that the attorney appointed to represent children is not complying with the Guidelines; and

(4) appoint another attorney for the child.

MARYLAND RULES OF PROCEDURE

APPENDIX 19-D: MARYLAND GUIDELINES FOR PRACTICE FOR

COURT-APPOINTED ATTORNEYS REPRESENTING CHILDREN

IN CASES INVOLVING CHILD CUSTODY

OR CHILD ACCESS

Introduction and Scope

These Guidelines are intended to promote good practice and consistency in the appointment and performance of attorneys for children in cases involving child custody and child access decisions. 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 divorce, custody, visitation, domestic violence, and other civil cases where the court may be called upon to decide issues relating to child custody or access. Nothing contained in the Guidelines is intended to modify, amend, or alter the fiduciary duty that an attorney owes to a client pursuant to the Maryland Attorneys' Rules of Professional Conduct.

These Guidelines do not apply to Child In Need of Assistance ("CINA"), Termination of Parental Rights ("TPR"), or adoption cases. The appointment and performance of attorneys appointed to represent children in those cases is addressed by the Guidelines of Advocacy for Attorneys Representing Children in CINA and

Related TPR and Adoption Proceedings.

1. Definitions. - A court that appoints an attorney for a minor child in a case involving child custody or child access issues should clearly indicate in the appointment order, and in all communications with the attorney, the parties, and other attorneys, the role expected of child's attorney. The terminology and roles used should be in accordance with the definitions in Guidelines 1.1 - 1.3.

1.1. Child's Best Interest Attorney.- "Child's Best Interest Attorney" means an attorney appointed by a court for the purpose of protecting a child's best interest, without being bound by the child's directives or objectives. This term replaces the term "guardian ad litem." The Child's Best Interest Attorney makes an independent assessment of what is in the child's best interest and advocates for that before the court, even if it requires the disclosure of confidential information. The best interest attorney should ensure that the child's position is made a part of the record whether or not different from the position that the attorney advocates.

1.2. Child's Advocate Attorney.- "Child's Advocate Attorney" means an attorney appointed by a court to provide an independent attorney for a child. This term replaces the less specific phrase, "child's attorney." A Child's Advocate Attorney owes the child the same duties of undivided loyalty, confidentiality, and competent representation as are due an adult client. A Child's Advocate Attorney should be appointed when the child is need of a

voice in court, such as in relocation cases, when there are allegations of child abuse, or where the child is sufficiently mature and sees his or her interests as distinct from the interests of the child's parents.

1.3. Child's Privilege Attorney.- "Child's Privilege Attorney" means an attorney appointed by a court in a case involving child custody or child access to decide whether to assert or waive, on behalf of a minor child, any privilege that the child if an adult would be entitled to assert or waive. This term replaces the term "Nagle v. Hooks Attorney." (*Nagle v. Hooks*, 296 Md. 123 (1983)). The court may combine the roles of Child's Privilege Attorney with either of the other two roles.

2. Responsibilities.-

2.1. Determining considered judgment.- The attorney should determine whether the child has considered judgment. To determine whether the child has considered judgment, the attorney should focus on the child's decision-making process, rather than the child's decision. The attorney should determine whether the child can understand the risks and benefits of the child's legal position and whether the child can reasonably communicate the child's wishes. The attorney should consider the following factors when determining whether the child has considered judgment:

- (1) the child's developmental stage:
 - (a) cognitive ability,
 - (b) socialization, and

(c) emotional and mental development;

(2) the child's expression of a relevant position:

(a) ability to communicate with the attorney, and

(b) ability to articulate reasons for the legal position;

and

(3) relevant and available reports, such as reports from social workers, psychiatrists, psychologists, and schools.

A child may be capable of considered judgment even though the child has a significant cognitive or emotional disability. In determining whether a child has considered judgment, the attorney may seek guidance from professionals, family members, school officials, and other concerned persons. The attorney also should determine whether any evaluations are needed and request them when appropriate.

An attorney should be sensitive to cultural, racial, ethnic, or economic differences between the attorney and the child.

2.2. Child's Best Interest Attorney.- A Child's Best Interest Attorney advances a position that the attorney believes is in the child's best interest. Even if the attorney advocates a position different from the child's wishes, the attorney should ensure that the child's position is made a part of the record. A Child's Best Interest Attorney may perform the following duties in fulfilling the attorney's obligation to the client and the court, as appropriate:

(a) Meet with and interview the child, and advise the child of

the scope of the representation.

(b) Investigate the relative abilities of the parties in their roles as parents or custodians.

(c) Visit the child in each home.

(d) Conduct individual interviews with parents, and other parties, and witnesses.

(e) Observe the child's interactions with each parent and each other party, individually.

(f) Review educational, medical, dental, psychiatric, psychological, or other records.

(g) Interview school personnel, childcare providers, healthcare providers, and mental health professionals involved with the child or family.

(h) File and respond to pleadings and motions.

(i) Participate in discovery.

(j) Participate in settlement negotiations.

(k) Participate in the trial, including calling witnesses and presenting evidence and argument, as appropriate.

(l) If the child is to meet with the judge or testify, prepare the child, familiarizing the child with the places, people, procedures, and questioning that the child will be exposed to, and seek to minimize any harm to the child from the process.

(m) Inform the child in a developmentally appropriate manner when the representation is ending.

A Child's Best Interest Attorney shall not testify at trial or file a report with the court.

2.3. Child's Advocate Attorney.- If a Child's Advocate Attorney determines that the child has considered judgment, the attorney advances the child's wishes and desires in the pending matter. If a Child's Advocate Attorney determines that the child does not have considered judgment, the Child's Advocate Attorney should petition the court to (1) alter the attorney's role to permit the attorney to serve as a Child's Best Interest Attorney or (2) appoint a separate Child's Best Interest Attorney. A Child's Advocate Attorney may perform the following duties in fulfilling the attorney's obligation to the child and the court, as appropriate:

(a) Meet with and interview the child, and advise the child of the scope of the representation.

(b) Investigate the relative abilities of the parties in their role as parents or custodians.

(c) Visit the child in each home.

(d) Conduct individual interviews with parents, other parties, and collateral witnesses.

(e) Observe the child's interactions with each parent and each other party, individually.

(f) Review educational, medical, dental, psychiatric, psychological, or other records.

(g) Interview school personnel, childcare providers, healthcare providers, and mental health professionals involved with the child or family.

(h) File and respond to pleadings and motions.

(i) Participate in discovery.

(j) Participate in settlement negotiations.

(k) Participate in the trial, including calling witnesses and presenting evidence and argument, as appropriate.

(l) If the child is to meet with the judge or testify, prepare the child, familiarizing the child with the places, people, procedures, and questioning that the child will be exposed to, and seek to minimize any harm to the child from the process.

(m) Inform the child in a developmentally appropriate manner when the representation ends.

A Child's Advocate Attorney shall not testify at trial or file a report with the court.

2.4. Child's Privilege Attorney.- A Child's Privilege Attorney notifies the court and the parties of the attorney's decision to waive or assert the child's privilege by (1) filing a document with the court prior to the hearing or trial at which the privilege is to be asserted or waived or (2) placing the waiver or assertion of privilege on the record at a pretrial proceeding or the trial.

A Child's Privilege Attorney may perform the following duties in fulfilling the attorney's obligation to the child and the court, as appropriate:

(a) Meet with and interview the child, and advise the child of the scope of the representation.

(b) Interview any witnesses necessary to assist the attorney in determining whether to assert or waive the privilege.

(c) Review educational, medical, dental, psychiatric, psychological, or other records.

3. Conflicts of Interest.- An attorney who has been appointed to represent two or more children should remain alert to the possibility of a conflict that could require the attorney to decline representation or withdraw from representing all of the children.

If a conflict of interest develops, the attorney should bring the conflict to the attention of the court as soon as possible, in a manner that does not compromise either client's interests.

4. Training and Continuing Education.- Unless waived by the court, an attorney appointed as a Child's Best Interest Attorney, Child's Advocate Attorney, or Child's Privilege Attorney should have completed at least six hours of training that includes the following topics:

- (a) applicable representation guidelines and standards;
- (b) children's development, needs, and abilities at different stages;
- (c) effectively communicating with children;
- (d) preparing and presenting a child's viewpoint, including child testimony and alternatives to direct testimony;
- (e) recognizing, evaluating, and understanding evidence of child abuse and neglect;
- (f) family dynamics and dysfunction, domestic violence, and substance abuse;
- (g) recognizing the limitations of attorney expertise and the

need for other professional expertise, which may include professionals who can provide information on evaluation, consultation, and testimony on mental health, substance abuse, education, special needs, or other issues; and

(h) available resources for children and families in child custody and child access disputes.

Each court should require attorneys seeking appointments as a child's attorney to maintain their knowledge of current law and complete a specific amount of additional training over a defined interval.

5. Qualifications.- An attorney appointed to serve as a Child's Best Interest Attorney, Child's Advocate Attorney, or Child's Privilege Attorney should, as a minimum:

(a) be a member of the Maryland Bar in good standing, with experience in family law, or have been approved to represent children through a pro bono program approved by the bench; and

(b) unless waived by the court, have successfully completed the six hours of training specified in Guideline 4.

In addition, courts should seek to appoint attorneys who:

(a) are willing to take at least one pro bono appointment as a child's attorney per year, and

(b) have at least three years of family law experience or other relevant experience. In evaluating relevant experience, the court may consider the attorney's experience in social work, education, child development, mental health, healthcare, or other related fields.

6. Compensation.-

6.1. Compensation structure.- Each court should develop a compensation structure for the three roles of a child's attorney: Child's Best Interest Attorneys, Child's Advocate Attorneys, and Child's Privilege Attorneys.

6.2. Compensation mechanism.- Each court should take steps to ensure that a child's attorney is compensated adequately and in a timely fashion, unless the attorney has been asked to serve pro bono publico. Courts may use the following mechanisms to ensure attorney compensation:

(a) Require one or more of the parties to deposit a significant retainer amount or a fixed fee determined by the court into an attorney escrow account or the court's registry.

(b) If a party qualifies for a fee waiver, compensate a child's attorney out of available funds. See Guideline 6.3.

(c) Enter a judgment for any unpaid fees.

6.3. Fee waivers.- Each court should prepare its budget to ensure that it has sufficient funds to cover the expense of attorneys' fees for children when the parties are not able to pay the full fees, or the court should develop a pro bono publico component to its program to provide attorneys for children. Each court should apply the same fee waiver procedure, forms, and standard for the appointment of an attorney for a child that are set forth in the Guidelines for Grant Recipients for all family services funded by the Family Division/Family Services Program

Grants. If a fee waiver is granted, the court should apply a cap on compensation that is appropriate to the role for which a child's attorney is appointed.

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TITLE 19 - ATTORNEYS

CHAPTER 400 - ATTORNEY TRUST ACCOUNTS

Rule 19-401. APPLICABILITY

The Rules in this Chapter apply to all trust accounts required by law to be maintained by attorneys for the deposit of funds that belong to others, except that these Rules do not apply to a fiduciary account maintained by an attorney as personal representative, trustee, guardian, custodian, receiver, or committee, or as a fiduciary under a written instrument or order of court.

Cross reference: Code, Business Occupations and Professions Article, §10-301 et seq. and Rule 19-301.15 (1.15) of the Maryland Attorneys' Rules of Professional Conduct.

Source: This Rule is former Rule 16-601 (2016).

REPORTER'S NOTE

Rule 19-401 is derived from current Rule 16-601 with stylistic changes.

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Rule 19-402. DEFINITIONS

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

(a) Approved Financial Institution

"Approved financial institution" means a financial institution approved by the Commission in accordance with these Rules.

(b) Attorney

"Attorney" means any individual admitted by the Court of Appeals to practice law.

(c) Attorney Trust Account

"Attorney trust account" means an account, including an escrow account, maintained in a financial institution for the deposit of funds received or held by an attorney or law firm on behalf of a client or third person.

(d) Bar Counsel

"Bar Counsel" means the individual appointed by the Commission as the principal executive officer of the disciplinary system affecting attorneys. All duties of Bar Counsel prescribed by these Rules shall be subject to the supervision and procedural guidelines of the Commission.

(e) Client

"Client" includes any individual, firm, or entity for which an attorney performs any legal service, including acting as an escrow agent or as a legal representative of a fiduciary. The term does not include a public or private entity of which an attorney is a full-time employee.

(f) Commission

"Commission" means the Attorney Grievance Commission of Maryland, as authorized and created by Rule 19-702.

(g) Financial Institution

"Financial institution" means a bank, credit union, trust company, savings bank, or savings and loan association authorized by law to do business in this State, in the District of Columbia, or in a state contiguous to this State, the accounts of which are insured by an agency or instrumentality of the United States.

(h) IOLTA

"IOLTA" (Interest on Lawyer Trust Accounts) means interest on attorney trust accounts payable to the Maryland Legal Services Corporation Fund under Code, Business Occupations and Professions Article, §10-303.

(i) Law Firm

"Law firm" includes a partnership of attorneys, a professional or nonprofit corporation of attorneys, and a combination thereof engaged in the practice of law. In the case of a law firm with offices in this State and in other jurisdictions, the Rules in this Chapter apply only to the

offices in this State.

Source: This Rule is derived from former Rule 16-602 (2016).

REPORTER'S NOTE

Rule 19-402 is derived from current Rule 16-602 with stylistic changes.

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Rule 19-403. DUTY TO MAINTAIN ACCOUNT

An attorney or the attorney's law firm shall maintain one or more attorney trust accounts for the deposit of funds received from any source for the intended benefit of clients or third persons. The account or accounts shall be maintained in this State, in the District of Columbia, or in a state contiguous to this State, and shall be with an approved financial institution. Unless an attorney maintains such an account, or is a member of or employed by a law firm that maintains such an account, an attorney may not receive and accept funds as an attorney from any source intended in whole or in part for the benefit of a client or third person.

Source: This Rule is former Rule 16-603 (2016).

REPORTER'S NOTE

Rule 19-403 is derived from current Rule 16-603 with stylistic changes.

MARYLAND RULES OF PROCEDURE

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Rule 19-404. TRUST ACCOUNT - REQUIRED DEPOSITS

Except as otherwise permitted by rule or other law, all funds, including cash, received and accepted by an attorney or law firm in this State from a client or third person to be delivered in whole or in part to a client or third person, unless received as payment of fees owed the attorney by the client or in reimbursement for expenses properly advanced on behalf of the client, shall be deposited in an attorney trust account in an approved financial institution. This Rule does not apply to an instrument received by an attorney or law firm that is made payable solely to a client or third person and is transmitted directly to the client or third person.

Source: This Rule is former Rule 16-604 (2016).

REPORTER'S NOTE

Rule 19-404 is derived from current Rule 16-604 with stylistic changes.

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Rule 19-405. DUTY OF ATTORNEY TO NOTIFY INSTITUTION

An attorney may not exercise any authority to sign checks or disburse or withdraw funds from an attorney trust account until the attorney in writing:

(a) Requests the financial institution to designate the account on its records as an attorney trust account, and

(b) Authorizes the financial institution to report to Bar Counsel any dishonored instruments or overdrafts in the account as required by the agreement under Rule 19-411 between the institution and the Commission.

Source: This Rule is former Rule 16-605 (2016).

REPORTER'S NOTE

Rule 19-405 is derived from current Rule 16-605 with stylistic changes.

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Rule 19-406. NAME AND DESIGNATION OF ACCOUNT

An attorney or law firm shall maintain each attorney trust account with a title that includes the name of the attorney or law firm and that clearly designates the account as "Attorney Trust Account", "Attorney Escrow Account", or "Clients' Funds Account" on all checks and deposit slips. The title shall distinguish the account from any other fiduciary account that the attorney or law firm may maintain and from any personal or business account of the attorney or law firm.

Source: This Rule is former Rule 16-606 (2016).

REPORTER'S NOTE

Rule 19-406 is derived from current Rule 16-606 with stylistic changes.

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Rule 19-407. ATTORNEY TRUST ACCOUNT RECORD-KEEPING

(a) Creation of Records

The following records shall be created and maintained for the receipt and disbursement of funds of clients or of third persons:

(1) Attorney Trust Account Identification

An identification of all attorney trust accounts maintained, including the name of the financial institution, account number, account name, date the account was opened, date the account was closed, and an agreement with the financial institution establishing each account and its interest-bearing nature.

(2) Deposits and Disbursements

A record for each account that chronologically shows all deposits and disbursements, as follows:

(A) for each deposit, a record made at or near the time of the deposit that shows (i) the date of the deposit, (ii) the amount, (iii) the identity of the client or third person for whom the funds were deposited, and (iv) the purpose of the deposit;

(B) for each disbursement, including a disbursement made by electronic transfer, a record made at or near the time of disbursement that shows (i) the date of the disbursement, (ii)

the amount, (iii) the payee, (iv) the identity of the client or third person for whom the disbursement was made (if not the payee), and (v) the purpose of the disbursement;

(C) for each disbursement made by electronic transfer, a written memorandum authorizing the transaction and identifying the attorney responsible for the transaction.

Cross reference: See Rule 19-410 (c), which provides that a disbursement that would create a negative balance with respect to any individual client matter or with respect to all client matters in the aggregate is prohibited.

(3) Client Matter Records

A record for each client matter in which the attorney receives funds in trust, as follows:

(A) for each attorney trust account transaction, a record that shows (i) the date of the deposit or disbursement; (ii) the amount of the deposit or disbursement; (iii) the purpose for which the funds are intended; (iv) for a disbursement, the payee and the check number or other payment identification; and (v) the balance of funds remaining in the account in connection with the matter; and

(B) an identification of the person to whom the unused portion of a fee or expense deposit is to be returned whenever it is to be returned to a person other than the client.

(4) Record of Funds of the Attorney

A record that identifies the funds of the attorney held in each attorney trust account as permitted by Rule 19-408 (b).

(b) Monthly Reconciliation

An attorney shall cause to be created a monthly reconciliation of all attorney trust account records, client matter records, records of funds of the attorney held in an attorney trust account as permitted by Rule 19-408 (b), and the adjusted month-end financial institution statement balance. The adjusted month-end financial institution statement balance is computed by adding subsequent deposits to and subtracting subsequent disbursements from the financial institution's month-end statement balance.

(c) Electronic Records

Whenever the records required by this Rule are created or maintained using electronic means, there must be an ability to print a paper copy of the records upon a reasonable request to do so.

Committee note: Electronic records should be backed up regularly by an appropriate storage device.

(d) Records to be Maintained

Financial institution month-end statements, any canceled checks or copies of canceled checks provided with a financial institution month-end statement, duplicate deposit slips or deposit receipts generated by the financial institution, and records created in accordance with section (a) of this Rule shall be maintained for a period of at least five years after the date the record was created.

Committee note: An attorney or law firm may satisfy the requirements of section (d) of this Rule by maintaining any of the following items: original records, photocopies, microfilm, optical imaging, electronic records, or any other medium that

Rule 19-407

preserves the required data for the required period of time and from which a paper copy can be printed.

Cross reference: Rule 19-301.15 (1.15) (Safekeeping Property) of the Maryland Attorneys' Rules of Professional Conduct.

Source: This Rule is former Rule 16-606.1 (2016).

REPORTER'S NOTE

Rule 19-407 is derived from current Rule 16-606.1 with stylistic changes.

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Rule 19-408. COMMINGLING OF FUNDS

(a) General Prohibition

An attorney or law firm may deposit in an attorney trust account only those funds required to be deposited in that account by Rule 19-404 or permitted to be so deposited by section (b) of this Rule.

(b) Exceptions

(1) An attorney or law firm shall either (A) deposit into an attorney trust account funds to pay any fees, service charges, or minimum balance required by the financial institution to open or maintain the account, including those fees that cannot be charged against interest due to the Maryland Legal Services Corporation Fund pursuant to Rule 19-411 (b) (1) (D), or (B) enter into an agreement with the financial institution to have any fees or charges deducted from an operating account maintained by the attorney or law firm. The attorney or law firm may deposit into an attorney trust account any funds expected to be advanced on behalf of a client and expected to be reimbursed to the attorney by the client.

(2) An attorney or law firm may deposit into an attorney trust account funds belonging in part to a client and in part presently or potentially to the attorney or law firm. The

portion belonging to the attorney or law firm shall be withdrawn promptly when the attorney or law firm becomes entitled to the funds, but any portion disputed by the client shall remain in the account until the dispute is resolved.

(3) Funds of a client or beneficial owner may be pooled and commingled in an attorney trust account with the funds held for other clients or beneficial owners.

Cross reference: See Code, Business Occupations and Professions Article, §§10-301 et seq.

Source: This Rule is former Rule 16-607 (2016).

REPORTER'S NOTE

Rule 19-408 is derived from current Rule 16-607 with stylistic changes.

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Rule 19-409. INTEREST ON FUNDS

(a) Generally

Any interest paid on funds deposited in an attorney trust account, after deducting service charges and fees of the financial institution, shall be credited and belong to the client or third person whose funds are on deposit during the period the interest is earned, except to the extent that interest is paid to the Maryland Legal Services Corporation Fund as authorized by law. The attorney or law firm shall have no right or claim to the interest.

Cross reference: See Rule 19-411 (b) (1) (D) providing that certain fees may not be deducted from interest that otherwise would be payable to the Maryland Legal Services Corporation Fund.

(b) Duty to Report IOLTA Participation

(1) Required as a Condition of Practice

As a condition precedent to the practice of law, each attorney admitted to practice in Maryland shall report annually in accordance with this Rule information concerning all IOLTA accounts, including name, address, location, and account number, on a form approved by the Court of Appeals.

(2) Oversight of the Reporting Process

The Court of Appeals shall designate an employee of the

Administrative Office of the Courts to oversee the reporting process set forth in this Rule.

(3) Mailing by the Administrative Office of the Courts

On or before January 10 of each year, the Administrative Office of the Courts shall mail an IOLTA Compliance Report form to each attorney on the list maintained by the Client Protection Fund of the Bar of Maryland. The addresses on that list shall be used for all notices and correspondence pertaining to the reports.

(4) Due Date

IOLTA Compliance Reports for each year shall be filed with the Administrative Office of the Courts on or before February 15 of that year.

(5) Enforcement

(A) Notice of Default

As soon as practicable after May 1 of each year, the Administrative Office of the Courts shall notify each defaulting attorney of the attorney's failure to file a report. The notice shall (i) state that the attorney has not filed the IOLTA Compliance Report for that year, (ii) state that continued failure to file the Report may result in the entry of an order by the Court of Appeals prohibiting the attorney from practicing law in the State, and (iii) be sent by first-class mail. The mailing of the notice of default shall constitute service.

(B) Additional Discretionary Notice of Default

In addition to the mailed notice, the Administrative

Office of the Courts may give additional notice to defaulting attorneys by any of the means enumerated in Rule 19-606 (c).

(C) List of Defaulting Attorneys

As soon as practicable after July 1 of each year but no later than August 1, the Administrative Office of the Courts shall prepare, certify, and file with the Court of Appeals a list that includes the name and address of each attorney engaged in the practice of law who has failed to file the IOLTA Compliance Report for that year.

(D) Certification of Default; Order of Decertification

The Administrative Office of the Courts shall submit with the list a proposed Decertification Order stating the names and addresses of those attorneys who have failed to file their IOLTA Compliance Report. At the request of the Court of Appeals, the Administrative Office of the Courts also shall furnish additional information from its records or give further notice to the defaulting attorneys. If satisfied that the Administrative Office of the Courts has given the required notice to each attorney named on the proposed Decertification Order, the Court of Appeals shall enter a Decertification Order prohibiting each of them from practicing law in the State.

(E) Mailing of Decertification Order

The Administrative Office of the Courts shall mail by first-class mail a copy of the Decertification Order to each attorney named in the Order. The mailing of the copy of the Decertification Order shall constitute service.

(F) Recertification; Restoration to Good Standing

If an attorney thereafter files the outstanding IOLTA Compliance Report, the Administrative Office of the Courts shall request the Court of Appeals to enter an order that recertifies the attorney and restores the attorney to good standing. Upon entry of that order, the Administrative Office of the Courts promptly shall furnish confirmation to the attorney. After an attorney is recertified, the fact that the attorney had been decertified need not be disclosed by the attorney in response to a request for information as to whether the attorney has been the subject of a disciplinary or remedial proceeding.

(G) Duty of Clerk of Court of Appeals

Upon entry of each Decertification Order and each order that recertifies an attorney and restores the attorney to good standing entered pursuant to this Rule, the Clerk of the Court of Appeals shall comply with Rule 19-761.

(H) Certain Information Furnished to the Maryland Legal Services Corporation

The Administrative Office of the Courts promptly shall submit to the Maryland Legal Services Corporation the data from electronically submitted IOLTA Compliance Reports and, upon request, shall forward the paper Compliance Reports.

(I) Confidentiality

Except as provided in subsection (b) (5) (H) of this Rule, IOLTA Compliance Reports, whether in paper or electronic form, are confidential and are not subject to inspection or

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disclosure under Code, General Provisions Article, §4-301. The Administrative Office of the Courts shall not release the Reports to any person or agency, except as provided in this Rule or upon order of the Court of Appeals. Nonidentifying information and data contained in an attorney's IOLTA Compliance Report are not confidential.

Cross reference: See Code, Business Occupations and Professions Article, §10-303.

Source: This Rule is former Rule 16-608 (2016).

REPORTER'S NOTE

Rule 19-409 is derived from current Rule 16-608 with stylistic changes.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 400 - ATTORNEY TRUST ACCOUNTS

Rule 19-410. PROHIBITED TRANSACTIONS

(a) Generally

An attorney or law firm may not borrow or pledge any funds required by the Rules in this Chapter to be deposited in an attorney trust account, obtain any remuneration from the financial institution for depositing any funds in the account, or use any funds for any unauthorized purpose.

(b) No Cash Disbursements

An instrument drawn on an attorney trust account may not be drawn payable to cash or to bearer, and no cash withdrawal may be made from an automated teller machine or by any other method. All disbursements from an attorney trust account shall be made by check or electronic transfer.

(c) Negative Balance Prohibited

No funds from an attorney trust account shall be disbursed if the disbursement would create a negative balance with regard to an individual client matter or all client matters in the aggregate.

Source: This Rule is former Rule 16-609 (2016).

REPORTER'S NOTE

Rule 19-410 is derived from current Rule 16-609 with stylistic changes.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 400 - ATTORNEY TRUST ACCOUNTS

Rule 19-411. APPROVAL OF FINANCIAL INSTITUTIONS

(a) Written Agreement to be Filed with Commission

The Commission shall approve a financial institution upon the filing with the Commission of a written agreement with the Maryland Legal Services Corporation (MLSC), complying with this Rule and in a form provided by the Commission, applicable to all branches of the institution that are subject to this Rule. The Commission may extend its approval of a previously approved financial institution for a reasonable period to allow the financial institution and the MLSC the opportunity to enter into a revised agreement that complies with this Rule.

(b) Contents of Agreement

(1) Duties to be Performed

The agreement shall provide that the financial institution, as a condition of accepting the deposit of any funds into an attorney trust account, shall:

(A) Notify the attorney or law firm promptly of any overdraft in the account or the dishonor for insufficient funds of any instrument drawn on the account.

(B) Report the overdraft or dishonor to Bar Counsel as set forth in subsection (b) (1) (C) of this Rule.

(C) Use the following procedure for reports to Bar Counsel

required under subsection (b) (1) (B) of this Rule:

(i) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the institution's other regular account holders. The report shall be mailed to Bar Counsel within the time provided by law for notice of dishonor to the depositor and simultaneously with the sending of that notice.

(ii) If an instrument is honored but at the time of presentation the total funds in the account, both collected and uncollected, do not equal or exceed the amount of the instrument, the report shall identify the financial institution, the name and address of the attorney or law firm maintaining the account, the account name, the account number, the date of presentation for payment, and the payment date of the instrument, as well as the amount of the overdraft created. The report shall be mailed to Bar Counsel within five banking days after the date of presentation, notwithstanding any overdraft privileges that may attach to the account.

(D) Pay interest on its IOLTA accounts at a rate no less than the highest non-promotional interest rate generally available from the institution to its non-IOLTA customers at the same branch when the IOLTA account meets or exceeds the same minimum balance or other eligibility qualifications for its non-IOLTA accounts at that branch. In determining the highest interest rate generally available from the institution to its IOLTA customers at a particular branch, an approved institution

may consider, in addition to the balance in the IOLTA account, factors customarily considered by the institution at that branch when setting interest rates for its non-IOLTA customers; provided, however, that these factors shall not discriminate between IOLTA accounts and non-IOLTA accounts, nor shall the factors include or consider the fact that the account is an IOLTA account.

(i) An approved institution may satisfy the requirement described in subsection (b) (1) (D) of this Rule by establishing the IOLTA account in an account paying the highest rate for which the IOLTA account qualifies. The approved institution may deduct from interest earned on the IOLTA account Allowable Reasonable Fees as defined in subsection (b) (1) (D) (iii) of this Rule. This account may be any one of the following product option types, assuming the particular financial institution offers these account types to its non-IOLTA customers, and the particular IOLTA account qualifies to be established as this type of account at the particular branch:

(a) a business checking account with an automated investment feature, which is an overnight sweep and investment in repurchase agreements fully collateralized by U.S. Government securities, including securities of government-sponsored entities;

(b) checking accounts paying interest rates in excess of the lowest-paying interest-bearing checking account;

(c) any other suitable interest-bearing checking

account offered by the approved institution to its non-IOLTA customers.

(ii) In lieu of the options provided in subsection (b) (1) (D) (i) of this Rule, an approved financial institution may:

(a) retain the existing IOLTA account and pay the equivalent applicable rate that would be paid at that branch on the highest-yield product for which the IOLTA account qualifies and deduct from interest earned on the IOLTA account Allowable Reasonable Fees; (b) offer a "safe harbor" rate that is equal to 55% of the Federal Funds Target Rate as reported in the Wall Street Journal on the first calendar day of the month on high-balance IOLTA accounts to satisfy the requirements described in subsection (b) (1) (D) of this Rule, but no fees may be deducted from the interest on a "safe harbor" rate account; or (c) pay a rate specified by the MLSC, if it chooses to specify a rate, which is agreed to by the financial institution and would be in effect for and remain unchanged during a period of twelve months from the agreement between the financial institution and MLSC to pay the specified rate. Allowable Reasonable Fees may be deducted from the interest on this "specified rate" account as agreed between MLSC and the financial institution.

(iii) "Allowable Reasonable Fees" means fees and service charges in amounts customarily charged to non-IOLTA customers with the same type of account and balance at the same branch, including per-check charges, per-deposit charges, a fee in lieu of a minimum balance, federal deposit insurance fees, and sweep

fees, plus a reasonable IOLTA account administrative fee.

Allowable Reasonable Fees may be deducted from interest earned on an IOLTA account only in amounts and in accordance with the customary practices of the approved institution for non-IOLTA customers at the particular branch. Fees or service charges are not Allowable Reasonable Fees if they are charged for the convenience of or arise due to errors or omissions by the attorney or law firm maintaining the IOLTA account or that attorney's or law firm's clients, including fees for wire transfers, certified checks, account reconciliation services, presentations against insufficient funds, overdrafts, or deposits of dishonored items.

(iv) Nothing in this Rule shall preclude an approved institution from paying a higher interest rate than described herein or electing to waive any fees and service charges on an IOLTA account.

(v) Fees that are not Allowable Reasonable Fees are the responsibility of, and may be charged to, the attorney or law firm maintaining the IOLTA account.

Cross reference: Rule 19-408 (b) (1).

(E) Allow reasonable access to all records of an attorney trust account if an audit of the account is ordered pursuant to Rule 19-731 (Audit of Attorney Accounts and Records).

(2) Service Charges for Performing Duties Under Agreement

Nothing in the agreement shall preclude an approved financial institution from charging the attorney or law firm

maintaining an attorney trust account (A) a reasonable fee for providing any notice or record pursuant to the agreement or (B) fees and service charges other than the "Allowable Reasonable Fees" listed in subsection (b)(1)(D)(iii) of this Rule.

(c) Termination of Agreement

The agreement shall terminate only if:

(1) the financial institution files a petition under any applicable insolvency law or makes an assignment for the benefit of creditors; or

(2) the financial institution gives thirty days' notice in writing to the MLSC and to Bar Counsel that the institution intends to terminate the agreement and its status as an approved financial institution on a stated date and that copies of the termination notice have been mailed to all attorneys and law firms that maintain trust accounts with any branch of that institution; or

(3) after a complaint is filed by the MLSC or on its own initiative, the Commission finds, after prior written notice to the institution and adequate opportunity to be heard, that the institution has failed or refused without justification to perform a duty required by the agreement. The Commission shall notify the institution that the agreement and the Commission's approval of the institution are terminated.

(d) Exceptions

Within 15 days after service of the notice of termination pursuant to subsection (c)(3) of this Rule, the institution may

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file with the Court of Appeals exceptions to the decision of the Commission. The institution shall file eight copies of the exceptions, which shall conform to the requirements of Rule 8-112. The Court shall set a date for oral argument, unless oral argument is waived by the parties. Oral argument shall be conducted in accordance with Rule 8-522. The decision of the Court of Appeals is final and shall be evidenced by an order of the Court.

Source: This Rule is former Rule 16-610 (2016).

REPORTER'S NOTE

Rule 19-411 is derived from current Rule 16-610 with stylistic changes.

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TITLE 19 - ATTORNEYS

CHAPTER 400 - ATTORNEY TRUST ACCOUNTS

Rule 19-412. NOTICE OF APPROVED INSTITUTIONS

The Commission shall cause to be posted on the Judiciary's website, at six-month intervals, a list that identifies:

(a) all currently approved financial institutions; and

(b) any financial institution whose agreement has terminated.

Source: This Rule is former Rule 16-611 (2016).

REPORTER'S NOTE

Rule 19-412 is derived from current Rule 16-611 with stylistic changes and substitution of a requirement of posting on the Judiciary's website for the current requirement of publication in the *Maryland Register*.

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TITLE 19 - ATTORNEYS

CHAPTER 400 - ATTORNEY TRUST ACCOUNTS

Rule 19-413. ENFORCEMENT

Upon receipt of a report of overdraft on or dishonored instrument drawn on an attorney trust account, Bar Counsel shall contact the attorney or law firm maintaining the account and request an informal explanation for the overdraft or dishonored instrument. The attorney or law firm shall provide any records of the account necessary to support the explanation. If Bar Counsel has requested but has failed to receive a satisfactory explanation for any overdraft or dishonored check, or if good cause exists to believe that an attorney or law firm has failed to perform any duty under these Rules, Bar Counsel may secure compliance with these Rules by appropriate means approved by the Commission, including application for an audit pursuant to Rule 19-731 (Audit of Attorney Accounts and Records).

Source: This Rule is former Rule 16-612 (2016).

REPORTER'S NOTE

Rule 19-413 is derived from current Rule 16-612 with stylistic changes.

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CHAPTER 500 - PRO BONO LEGAL SERVICES

Rule 19-501. STATE PRO BONO COMMITTEE AND PLAN

(a) Standing Committee on Pro Bono Legal Service

(1) Creation

There is a Standing Committee of the Court of Appeals on Pro Bono Legal Service.

(2) Members

The Standing Committee consists of the following members appointed by the Court of Appeals:

(A) eight members of the Maryland Bar, including one from each appellate judicial circuit and one selected from the State at large;

(B) a maximum of three Circuit Court judges selected from nominees submitted by the Conference of Circuit Judges;

(C) a maximum of three District Court judges selected from nominees submitted by the Chief Judge of the District Court;

(D) the Public Defender or a designee of the Public Defender;

(E) a representative from the Legal Aid Bureau, Maryland Volunteer Lawyers Service, Pro Bono Resource Center of Maryland, and one other pro bono referral organization; and

(F) a member of the general public.

(3) Terms; Chair

The term of each member is three years. A member may be reappointed to serve one or more additional terms. The Court of Appeals shall designate one of the members as chair.

(4) Consultants

The Standing Committee may designate a reasonable number of consultants from among court personnel or representatives of other organizations or agencies concerned with the provision of legal services to persons of limited means.

(b) Functions of the Standing Committee

(1) Required

The Standing Committee shall:

(A) develop standard forms for use by the Local Pro Bono Committees in developing and articulating the Local Pro Bono Action Plans and making their annual reports;

(B) recommend uniform standards for use by the Local Pro Bono Committees to assess the need for pro bono legal services in their communities;

(C) review and evaluate the Local Pro Bono Action Plans and the annual reports of the Local Pro Bono Committees;

(D) collect and make available to Local Pro Bono Committees information about pro bono projects;

(E) at the request of a Local Pro Bono Committee, provide guidance about the Rules in this Chapter and Rule 19-306.1 (6.1) of the Maryland Attorneys' Rules of Professional Conduct;

(F) file with the Court of Appeals an annual report and recommendations about the implementation and effectiveness of the

Local Pro Bono Action Plans, the Rules in this Chapter, and Rule 19-306.1 (6.1) of the Maryland Attorneys' Rules of Professional Conduct; and

(G) prepare a State Pro Bono Action Plan as provided in section (c) of this Rule.

(2) Permitted

The Standing Committee may make recommendations to the Court of Appeals concerning the appointment and reappointment of its members.

(c) State Pro Bono Action Plan

(1) Generally

Within three years after the effective date of this Rule, the Standing Committee shall submit to the Court of Appeals a State Pro Bono Action Plan to promote increased efforts on the part of attorneys to provide legal assistance to persons of limited means. In developing the Plan, the Standing Committee shall:

(A) review and assess the results of the Local Pro Bono Action Plans;

(B) assess the data generated by the reports required by Rule 19-503;

(C) gather and consider information pertinent to the existence, nature, and extent of the need for pro bono legal services in Maryland; and

(D) provide the opportunity for one or more public hearings.

(2) Contents

The State Pro Bono Action Plan may include a recommendation for increasing or decreasing the aspirational goals for pro bono publico legal service set forth in Rule 19-306.1 (6.1) of the Maryland Attorneys' Rules of Professional Conduct. The Plan should include suggestions for the kinds of pro bono activities that will be most helpful in meeting the need for pro bono legal service throughout the State and should address long-range pro bono service issues.

Committee note: Examples of long-range issues that may be addressed include opportunities for transactional attorneys, government attorneys, business attorneys, and in-house attorneys to render pro bono legal service; opportunities for pro bono legal service by attorneys who are unable to provide direct client representation; "collective responsibility" for pro bono legal service when a law firm designates certain attorneys to handle only pro bono matters; and encouraging pro bono legal service among law students and in the legal academic setting.

(d) Posting

The Clerk of the Court of Appeals shall cause the State Action Plan submitted by the Standing Committee to be posted on the Judiciary website and shall establish a reasonable period for public comment.

(e) Consideration by the Court of Appeals

After the comment period, the Court of Appeals shall hold a public hearing and take appropriate action on the Plan.

Source: This Rule is former Rule 16-901 (2016).

REPORTER'S NOTE

Rule 19-501 is derived from current Rule 16-901 with stylistic changes.

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In addition, the requirements that the State Action Plan be published in the Maryland Register is replaced by a requirement that the Plan be posted on the Judiciary website. This conforms to similar changes throughout the Rules.

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Rule 19-502. LOCAL PRO BONO COMMITTEES AND PLANS

(a) Local Pro Bono Committees

(1) Creation

There is a Local Pro Bono Committee for each county.

(2) Members

The Local Pro Bono Committee consists of at least two representatives nominated by legal services organizations and pro bono referral organizations that provide services in the county and selected by the County Administrative Judge and the District Administrative Judge, and no more than nine additional members, as follows:

(A) the District Public Defender for the county or an assistant public defender selected by the District Public Defender;

(B) at least three but no more than five attorneys, appointed by the president of the county bar association, who practice in the county and at least one of whom is an officer of the county bar association;

(C) at least one but no more than two individuals from the general public, appointed jointly by the County Administrative Judge and the District Administrative Judge; and

(D) at least one but no more than two trial court judges,

with the selection of any circuit court judge made by the County Administrative Judge and the selection of any District Court judge made by the County Administrative Judge with the concurrence of the Chief Judge of the District Court.

(3) Term

Each Committee shall establish a procedure for new membership, including articulating length of terms, to ensure member rotation and involvement.

(4) Chair

The County Administrative Judge shall appoint a member of the Committee to serve as temporary chair. The temporary chair shall convene a meeting at which the Committee shall elect a member to serve as chair. Each Committee shall establish a procedure by which its chair will be replaced.

(5) Full Membership

On at least an annual basis, the County Administrative Judge shall assess the composition of the Committee and take steps to ensure full membership of the Committee.

(6) Consultants

The Committee may designate a reasonable number of consultants from among court personnel or representatives of other organizations or agencies concerned with the provision of legal services to persons of limited means. Each consultant should be encouraged to attend meetings and participate as a member, providing input and assisting in the development and implementation of the plan, where appropriate, without being a

voting member of the Committee.

(b) Duties of the Committee

The local pro bono committee shall:

(1) assess the needs in the county for pro bono legal service, including the needs of non-English speaking, minority, and isolated populations;

(2) determine the nature and extent of existing and proposed free or low-cost legal services, both staff and volunteer, for persons of limited means in the county;

(3) establish goals and priorities for pro bono legal service in the county;

(4) prepare a Local Pro Bono Action Plan as provided in section (c) of this Rule;

(5) in accordance with the policies and directives established by the Standing Committee or the Court of Appeals, implement or monitor the implementation of the Plan; and

(6) submit an annual report about the Plan to the Standing Committee by May 1.

(c) Local Pro Bono Action Plans

(1) Generally

The Local Pro Bono Committee shall develop, in coordination with existing legal services organizations and pro bono referral organizations that provide services in the county, a detailed Local Pro Bono Action Plan to promote pro bono legal service to meet the needs of persons of limited means in the county. The Plan shall be submitted to the Standing Committee

within one year after creation of the Local Committee. The Local Pro Bono Committees of two or more adjoining counties may collaborate and form a Regional Pro Bono Committee with approval of the Administrative Judges of the counties that wish to collaborate. With the approval of the Standing Committee, a single joint Pro Bono Action Plan may be developed for two or more adjoining counties, by collaboration of the Local Pro Bono Committees.

(2) Contents

The Local Pro Bono Action Plan shall address the following matters:

(A) screening applicants for pro bono representation and referring them to appropriate referral sources or panels of participating attorneys;

(B) establishing or expanding attorney referral panels;

(C) continuing and supporting current services provided by existing pro bono and legal services organizations;

(D) a procedure for matching cases with individual attorney expertise, including specialized panels;

(E) support for participating attorneys, including:

(i) providing litigation resources and out-of-pocket expenses for pro bono cases;

(ii) providing or supplementing legal malpractice insurance for participating attorneys;

(iii) providing legal education and training for participating attorneys in specialized areas of the law relevant

to pro bono legal service, including consultation services with attorneys who have expertise in areas of law in which participating attorneys seek to provide pro bono service; and

(iv) recommending court scheduling and docketing preferences for pro bono cases;

(F) methods of informing attorneys about the ways in which they may provide pro bono legal service;

Committee note: Ways in which attorneys may provide pro bono legal service include assisting in the screening and intake process; interviewing prospective clients and providing basic consultation; participating in self-represented clinics or other programs in which attorneys provide advice and counsel, assist persons in drafting letters or documents, or assist persons in planning transactions or resolving disputes without the need for litigation; representing clients through case referral; acting as co-counsel with legal service providers or other participating attorneys; providing consultation to legal service providers for case reviews and evaluations; training or consulting with other participating attorneys or staff attorneys affiliated with a legal service provider; engaging in legal research and writing; and, if qualified through training and experience, serving as a mediator, arbitrator, or neutral evaluator.

(G) coordinating implementation of the Plan with the courts, county bar associations, and other agencies and organizations;

(H) the number of hours of pro bono legal services needed annually to meet the needs of persons of limited means in the county; and

(I) programs to recognize attorneys who provide pro bono legal services.

Source: This Rule is former Rule 16-902 (2016).

REPORTER'S NOTE

Rule 19-502 is derived from current Rule 16-902 with stylistic changes.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 500 - PRO BONO LEGAL SERVICES

Rule 19-503. REPORTING PRO BONO LEGAL SERVICE

(a) Required as a Condition of Practice

As a condition precedent to the practice of law, each attorney admitted to practice in Maryland shall file annually with the Administrative Office of the Courts, in accordance with this Rule, a Pro Bono Legal Service Report on a form approved by the Court of Appeals. The form shall not require the identification of pro bono clients.

Committee note: The purpose of pro bono legal service reporting is to document the pro bono legal service performed by attorneys in Maryland and determine the effectiveness of the Local Pro Bono Action Plans, the State Pro Bono Action Plan, the Rules in this Chapter, and Rule 19-306.1 (6.1) of the Maryland Attorneys' Rules of Professional Conduct.

(b) Oversight of the Reporting Process

The Court of Appeals shall designate an employee of the Administrative Office of the Courts to oversee the reporting process set forth in this Rule.

(c) Mailing by the Administrative Office of the Courts

On or before January 10 of each year, the Administrative Office of the Courts shall mail a Pro Bono Legal Service Report form to each attorney on the list maintained by the Client Protection Fund of the Bar of Maryland. The addresses on that list shall be used for all notices and correspondence pertaining

to the reports.

(d) Due Date

Pro Bono Legal Service Reports for a given calendar year shall be filed with the Administrative Office of the Courts on or before February 15 of the following calendar year.

(e) Enforcement

(1) Notice of Default

As soon as practicable after May 1 of each year, the Administrative Office of the Courts shall notify each defaulting attorney of the attorney's failure to file a report. The notice shall (A) state that the attorney has not filed the Pro Bono Legal Service Report for the previous calendar year, (B) state that continued failure to file the Report may result in the entry of an order by the Court of Appeals prohibiting the attorney from practicing law in the State, and (C) be sent by first class mail. The mailing of the notice of default shall constitute service.

(2) Additional Discretionary Notice of Default

In addition to the mailed notice, the Administrative Office of the Courts may give additional notice to defaulting attorneys by any of the means enumerated in Rule 19-606 (c).

(3) List of Defaulting Attorneys

As soon as practicable after July 1 of each year but no later than August 1, the Administrative Office of the Courts shall prepare, certify, and file with the Court of Appeals a list that includes the name and address of each attorney engaged in the practice of law who has failed to file the Pro Bono Legal

Service Report for the previous year.

(4) Certification of Default; Order of Decertification

The Administrative Office of the Courts shall submit with the list a proposed Decertification Order stating the names and addresses of those attorneys who have failed to file their Pro Bono Legal Service Reports for the specified calendar year. At the request of the Court of Appeals, the Administrative Office of the Courts also shall furnish additional information from its records or give further notice to the defaulting attorneys. If satisfied that the Administrative Office of the Courts has given the required notice to each attorney named on the proposed Decertification Order, the Court of Appeals shall enter a Decertification Order prohibiting each of them from practicing law in the State.

(5) Mailing of Decertification Order

The Administrative Office of the Courts shall mail by first class mail a copy of the Decertification Order to each attorney named in the Order. The mailing of the copy of the Decertification Order shall constitute service.

(6) Recertification; Restoration to Good Standing

If a decertified attorney thereafter files the outstanding Pro Bono Legal Service Report, the Administrative Office of the Courts shall request the Court of Appeals to enter an order that recertifies the attorney and restores the attorney to good standing. Upon entry of that order, the Administrative Office of the Courts promptly shall furnish confirmation to the

attorney. After an attorney is recertified, the fact that the attorney had been decertified need not be disclosed by the attorney in response to a request for information as to whether the attorney has been the subject of a disciplinary or remedial proceeding.

(7) Duty of Clerk of Court of Appeals

Upon the entry of each Decertification Order and each order that recertifies an attorney and restores the decertified attorney to good standing entered pursuant to this Rule, the Clerk of the Court of Appeals shall comply with Rule 19-761.

(f) Certain Information Furnished to the Standing Committee on Pro Bono Legal Service

The Administrative Office of the Courts shall submit promptly to the Standing Committee on Pro Bono Legal Service a compilation of non-identifying information and data from the Pro Bono Legal Service Reports.

(g) Confidentiality

Pro Bono Legal Service Reports are confidential and are not subject to inspection or disclosure under Code, General Provisions Article, §4-301. The Administrative Office of the Courts shall not release the Reports to any person or agency, except upon order of the Court of Appeals. Nonidentifying information and data contained in an attorney's Pro Bono Legal Service Report are not confidential.

Source: This Rule is derived from former Rule 16-903 (2016).

REPORTER'S NOTE

Rule 19-503 is derived from current Rule 16-903 with stylistic changes.

In subsection (e)(7), a reference to Rule 19-761 replaces the current list of persons notified of decertification orders and orders restoring a decertified attorney to good standing.

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CHAPTER 500 - PRO BONO LEGAL SERVICES

Rule 19-504. PRO BONO ATTORNEY

(a) Definition

As used in this Rule, "pro bono attorney" means an attorney who is authorized by Rule 19-215 or Rule 19-605 (a) (2) to represent clients, without compensation other than reimbursement of reasonable and necessary expenses, and whose practice is limited to providing such representation. "Pro bono attorney" does not include (1) an active member of the Maryland Bar in good standing or (2) an attorney whose certificate of authorization to practice under Rule 19-215 permits the attorney to receive compensation for the practice of law under that Rule.

Cross reference: For the professional responsibility of an active member of the Maryland Bar to render pro bono publico legal service, see Rule 19-306.1 (6.1) (Pro Bono Publico Service) of the Maryland Attorneys' Rules of Professional Conduct.

(b) Authorization to Practice as a Pro Bono Attorney

To practice as a pro bono attorney, an out-of-state attorney shall comply with Rule 19-215 and a retired/inactive member of the Maryland Bar shall comply with Rule 19-605 (a) (2).

(c) Recovery of Attorneys' Fees

If the substantive law governing a matter in which a pro bono attorney is providing representation permits the recovery of attorneys' fees, the pro bono attorney may seek attorneys' fees

in accordance with the Rules in Title 2, Chapter 700 or Rule 3-741 but shall remit to the legal services or pro bono publico program that referred the matter to the attorney all attorneys' fees that are recovered.

(d) Reports

Upon request by the Administrative Office of the Courts, a pro bono attorney shall timely file an IOLTA Compliance Report in accordance with Rule 19-409 and a Pro Bono Legal Service Report in accordance with Rule 19-503.

Source: This Rule is derived from former Rule 16-904 (2016).

REPORTER'S NOTE

Rule 19-504 carries forward the provisions of current Rule 16-904.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 500 - PRO BONO LEGAL SERVICES

Rule 19-505. LIST OF PRO BONO AND LEGAL SERVICES PROGRAMS

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

Cross reference: See Rules 1-325, 1-325.1, and 19-215 and 19-605.

Source: This Rule is derived from former Rule 16-905 (2016).

REPORTER'S NOTE

Rule 19-505 carries forward the provisions of current Rule 16-905.

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MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 600 - CLIENT PROTECTION FUND

Rule 19-601. DEFINITIONS

In Rules 19-601 through 19-611, the following definitions apply:

(a) Client Protection Fund; Fund

"Client Protection Fund" and "Fund" mean the Client Protection Fund of the Bar of Maryland created by Code, Business Occupations and Professions Article, §10-311.

(b) Local Bar Association

"Local Bar Association" means (1) in Baltimore City, the Bar Association of Baltimore City, or (2) in each county, the bar association with the greatest number of members who are residents of the county and who maintain their principal offices for the practice of law in that county.

(c) These Rules

"These Rules" means Rules 19-601 through 19-611.

Source: This Rule is derived from former Rule 16-811.1 (2016).

REPORTER'S NOTE

Rule 19-601 is derived verbatim from Rule 16-811.1 contained in the 180th Report of the Rules Committee, except for renumbering of the Rule and internal references as necessary.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 600 - CLIENT PROTECTION FUND

Rule 19-602. PURPOSE

(a) Purpose

The purpose of the Client Protection Fund is to maintain the integrity and protect the good name of the legal profession by reimbursing, to the extent authorized by these Rules and deemed proper and reasonable by the trustees of the Fund, losses caused by defalcations by members of the Bar of Maryland or out-of-state attorneys authorized to practice in this State under Rule 19-215 or 19-216, acting either as attorneys or, except to the extent they are bonded, as fiduciaries.

(b) Fiduciary; Definition

For purposes of this Rule, "fiduciary" means an attorney acting in a fiduciary capacity that is traditional and customary in the practice of law in Maryland, such as a personal representative of a probate estate, a trustee of an express trust, a guardian, a custodian acting pursuant to statute, or an attorney-in-fact by written appointment.

Cross reference: Regulations of the Client Protection Fund of the Bar of Maryland, subsection (a) (1).

(c) Fiduciary Relationship Not Formed

A fiduciary relationship is not formed between an attorney and a third party who has been assigned an interest in the

proceeds of a civil award or settlement, including attorneys' fees, in consideration for the advancement of funds by the third party to the attorney or client.

Committee note: For purposes of this Rule, a fiduciary relationship is not formed between an attorney and a lawsuit cash advance lending company. Section (c) is not intended to apply to medical, healthcare, or other service providers that may be owed money for services rendered.

Source: This Rule is derived from former Rule 16-811.2 (2016).

REPORTER'S NOTE

Rule 19-602 is derived verbatim from Rule 16-811.2 contained in the 180th Report of the Rules Committee, except for renumbering of the Rule and internal references as necessary.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 600 - CLIENT PROTECTION FUND

Rule 19-603. APPOINTMENT, COMPENSATION, MEETINGS OF TRUSTEES

(a) Number of Trustees

The Court of Appeals shall appoint nine individuals to be the trustees of the Client Protection Fund. Eight of the trustees shall be members of the Maryland Bar. One individual shall not be an attorney.

(b) Geographic Appointment

One trustee who is a member of the Maryland Bar shall be appointed from each of the seven appellate judicial circuits. The other two trustees shall be appointed at large.

(c) Term

The term of each trustee is seven years. A trustee may be removed by the Court at any time. In the event of a vacancy, the Court shall appoint a successor trustee for the unexpired term.

(d) Compensation; Expenses

The trustees shall serve without compensation, but unless no other source of funds is available, shall be entitled to reimbursement from the Fund for their expenses reasonably incurred in the performance of their duties as trustees, including transportation costs.

(e) Meetings

Meetings of the trustees shall be held at the call of the

chair or a majority of the trustees on reasonable notice. The trustees shall meet at least once each year.

(f) Quorum

(1) Five trustees shall constitute a quorum. Except as otherwise provided by these Rules, a majority of the trustees present at a duly constituted meeting may exercise any powers held by the trustees.

(2) The trustees' powers under Rule 19-604 (a) may be exercised only by the affirmative vote of at least five trustees.

Source: This Rule is derived from former Rule 16-811.3 (2016).

REPORTER'S NOTE

Rule 19-603 is derived verbatim from Rule 16-811.3 contained in the 180th Report of the Rules Committee, except for renumbering of the Rule and internal references as necessary.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 600 - CLIENT PROTECTION FUND

Rule 19-604. POWERS AND DUTIES OF TRUSTEES; TREASURER

(a) Trustees

The trustees have the following powers and duties:

(1) To elect, from among their membership, a chair, a treasurer, and such other officers as they deem necessary or appropriate.

(2) To receive, hold, manage, and distribute, pursuant to this Rule, the funds raised hereunder, and any other monies that may be received by the Fund through voluntary contributions or otherwise.

(3) To authorize payment of claims in accordance with this Rule.

(4) To adopt regulations for the administration of the Fund and the procedures for the presentation, consideration, recognition, rejection and payment of claims, and to adopt procedures for conducting business. A copy of the regulations shall be filed with the Clerk of the Court of Appeals, who shall mail a copy of them to the clerk of the circuit court for each county and to all Registers of Wills. The regulations shall be posted on the Judiciary website.

(5) To enforce claims for restitution arising by subrogation, assignment, or otherwise.

(6) To deposit funds in any bank or other savings institution (A) that is chartered and whose financial activities are regulated under federal or Maryland law, and (B) whose deposits are insured by an instrumentality of the federal government.

(7) To invest funds not needed for current use in such investments as they deem appropriate, consistent with an investment policy specified in regulations adopted by the trustees and approved by the Court of Appeals.

(8) To employ and compensate consultants, agents, attorneys, and employees.

(9) To delegate the power to perform routine acts which may be necessary or desirable for the operation of the Fund, including the power to authorize disbursements for routine operating expenses of the Fund, but authorization for payments of claims shall be made only as provided in Rule 19-609.

(10) To sue or be sued in the name of the Fund without joining any or all individual trustees.

(11) To comply with the requirements of Rules 19-704 (e), 19-705 (c), 19-708 (a), and 19-723 and all other applicable laws.

(12) To designate an employee to perform the duties set forth in Rules 19-708 (a) and 19-723 and notify Bar Counsel of that designation.

(13) To file with the Court of Appeals an annual report of the management and operation of the Fund and to arrange for an annual audit of the accounts of the Fund by state or private auditors. The cost of the audit shall be paid by the Fund if no

other source of funds is available.

(14) To file additional reports and arrange for additional audits as the Court of Appeals may order.

(15) To perform all other acts authorized by these Rules or necessary or proper for the fulfillment of the purposes of the Fund and its efficient administration.

(b) Treasurer

The treasurer shall:

(1) maintain the Fund in a separate account;

(2) disburse monies from the Fund only upon the action of the trustees pursuant to these Rules;

(3) file annually with the trustees a bond for the proper execution of the duties of the office of treasurer of the Fund in an amount established by the trustees and with one or more sureties approved by the trustees; and

(4) comply with the requirements of Rule 19-705 (b).

Source: This Rule is derived from former Rule 16-811.4 (2016).

REPORTER'S NOTE

Rule 19-604 is derived verbatim from Rule 16-811.4 contained in the 180th Report of the Rules Committee, except for renumbering of the Rule and internal references as necessary.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 600 - CLIENT PROTECTION FUND

Rule 19-605. OBLIGATIONS OF ATTORNEYS

(a) Conditions Precedent to Practice

(1) Generally

Except as otherwise provided in subsection (a)(2) of this Rule or 19-215 (h), each attorney admitted to practice before the Court of Appeals or issued a certificate of special authorization under Rule 19-215 or 19-216, as a condition precedent to the practice of law in this State, shall (A) provide to the treasurer of the Fund the attorney's Social Security number, (B) provide to the treasurer of the Fund the attorney's federal tax identification number or a statement that the attorney has no such number, and (C) pay annually to the treasurer of the Fund the sum, and all applicable late charges, set by the Court of Appeals.

(2) Exception

Unless the attorney is on permanent retired status pursuant to Rule 19-740, upon timely application by an attorney, the trustees of the Fund may approve the attorney for inactive/retired status. By regulation, the trustees may provide a uniform deadline date for seeking approval of inactive/retired status. An attorney on inactive/retired status may engage in the practice of law without payment to the Fund or to the

Disciplinary Fund if (A) the attorney is on inactive/ retired status solely as a result of having been approved for that status by the trustees of the Fund and not as a result of any action against the attorney pursuant to the Rules in Chapter 700 of this Title, and (B) the attorney's practice is limited to representing clients without compensation, other than reimbursement of reasonable and necessary expenses, as part of the attorney's participation in a legal services or pro bono publico program sponsored or supported by a local bar association, the Maryland State Bar Association, Inc., an affiliated bar foundation, or the Maryland Legal Services Corporation.

(3) Bill; Request for Information; Compliance

For each fiscal year, the trustees by regulation shall set dates by which (A) the Fund shall send to an attorney a bill, together with a request for the information required by subsection (a) (1) of this Rule, and (B) the attorney shall comply with subsection (a) (1) of this Rule by paying the sum due and providing the required information. The date set for compliance shall be not earlier than 60 days after the Fund sends the bill and requests the information.

(4) Method of Payment

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

(b) Change of Address

Each attorney shall give written notice to the trustees of

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

Source: This Rule is derived from former Rule 16-811.5 (2016).

REPORTER'S NOTE

Rule 19-605 carries forward the provisions of current Rule 16-811.5, with the addition of a reference to Rule 19-215 (h). Also, the phrase, "or to the Disciplinary Fund," is added to subsection (a) (2) to make the provisions excusing Fund payments by a retired/inactive Maryland attorney who serves as a "pro bono attorney" (as defined in Rule 19-504) consistent with provisions in Rule 19-215 (h) that apply to an out-of-state attorney who serves as a "pro bono attorney."

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 600 - CLIENT PROTECTION FUND

Rule 19-606. ENFORCEMENT OF OBLIGATIONS

(a) List of Delinquencies

As soon as practicable after January 1, but no later than February 15 of each calendar year, the trustees shall prepare, certify, and file with the Court of Appeals a list showing:

(1) the name and account number, as it appears on their records, of each attorney who, to the best of their information, is engaged in the practice of law and, without justification, has (A) failed to provide to the treasurer of the Fund the attorney's Social Security number, (B) failed to provide to the treasurer of the Fund the attorney's federal tax identification number or a statement that the attorney has no such number, or (C) failed to pay (i) one or more annual assessments, (ii) a penalty for late payment, (iii) any charge for a dishonored check, or (iv) reimbursement for publication charges; and

(2) the amount due from that attorney to the Fund.

(b) Required Notice of Delinquency

(1) The trustees shall give notice of delinquency promptly to each attorney on the list by first class mail addressed to the attorney at the attorney's last address appearing on the records of the trustees. The notice shall state whether the delinquency is based upon (A) a failure to provide the attorney's Social

Security number, (B) a failure to provide the attorney's federal tax identification number or a statement that the attorney has no such number, (C) a failure to pay the attorney's monetary obligation to the Fund, or (D) a combination of any of these failures. Notice of a failure to pay a monetary obligation to the Fund shall include a statement of the amount overdue. A notice of delinquency shall include a statement that failure to provide the required information and pay the amount owed to the Fund within 30 days following the date of the notice will result in the entry of an order by the Court of Appeals prohibiting the attorney from practicing law in the State.

(2) The mailing by the trustees of the notice of delinquency constitutes service of the notice on the attorney.

(c) Additional Discretionary Notice

(1) In addition to the mailed notice, the trustees may give any additional notice to the attorneys on the delinquency list as the trustees deem desirable. Additional notice may be in the form of:

(A) publication in one or more newspapers selected by the trustees;

(B) telephone, facsimile, e-mail, or other transmission to the named attorneys;

(C) dissemination to local bar associations or other professional associations;

(D) posting in one or more courthouses of the State; or

(E) any other means the trustees deem appropriate.

(2) The additional notice may be statewide, regional, local, or personal to a named attorney as the trustees direct.

(d) Temporary Suspension

(1) Proposed Order

Promptly after expiration of the deadline date stated in the mailed notice, the trustees shall submit to the Court of Appeals a proposed Temporary Suspension Order stating the names and account numbers of (A) those attorneys who have failed to provide their Social Security number, (B) those attorneys who have failed to provide their federal tax identification number or a statement that they have no such number, and (C) those attorneys whose accounts remain unpaid. The trustees shall furnish additional information from their records or give further notice as the Court of Appeals may direct.

(2) Entry of Order

If satisfied that the trustees have given the required notice to the attorneys remaining delinquent, the Court of Appeals shall enter a Temporary Suspension Order prohibiting each of them from practicing law in the State. The trustees shall mail by first class mail a copy of the Temporary Suspension Order to each attorney named in the order at the attorney's last address as it appears on the records of the trustees. The mailing by the trustees of the copy constitutes service of the order on the attorney.

(3) Effect of Order

(A) An attorney who has been served with a copy of a

Temporary Suspension Order and has not been restored to good standing may not practice law and shall comply with the requirements of Rule 19-742 (c) and (d). In addition to any other remedy or sanction allowed by law, an action for contempt may be brought against a attorney who practices law in violation of a Temporary Suspension Order.

(B) Upon written request from any judge, attorney, or member of the public, the trustees, by informal means and, if requested, in writing, promptly shall confirm whether a Maryland attorney named in the request has been temporarily suspended and has not been restored to good standing.

(e) Termination of Temporary Suspension Order

(1) Duty of Trustees

Upon receipt of the attorney's Social Security number, federal tax identification number or statement that the attorney has no such number, and all amounts due by the attorney, including all related costs prescribed by the Court of Appeals or the trustees, the trustees shall:

(A) remove the attorney's name from the list of delinquent attorneys;

(B) if a Temporary Suspension Order has been entered, inform the Court of Appeals that the Social Security number, federal tax identification number or statement that the attorney has no such number, and full payment have been received and request the Court to enter an order terminating the attorney's suspension; and

(C) if requested by the attorney, confirm that the trustees have complied with the requirements of subsection (e) (1) (A) and (B) of this Rule.

(2) Duty of Court

Upon receipt of the notice and request provided for in subsection (e) (1) (B) of this Rule, the Court of Appeals shall enter an order terminating the temporary suspension of the attorney.

Committee note: Subsection (e) (2) does not affect any other suspension of the attorney.

Source: This Rule is derived from former Rule 16-811.6 (2016).

REPORTER'S NOTE

Rule 19-606 is derived verbatim from Rule 16-811.6 contained in the 180th Report of the Rules Committee, except for renumbering of the Rule and internal references as necessary.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 600 - CLIENT PROTECTION FUND

Rule 19-607. DISHONORED CHECKS

(a) Notice by Treasurer

If a check to the Fund is dishonored, the treasurer of the Fund shall notify the attorney immediately by the quickest available means.

(b) Duty of Attorney

Within seven business days following the date of the notice, the attorney shall pay to the treasurer of the Fund the full amount of the dishonored check plus any additional charge that the trustees shall prescribe. Payment shall be by certified check or money order.

(c) Temporary Suspension Order

(1) Notice by Treasurer

The treasurer of the Fund promptly (but not more often than once each calendar quarter) shall submit to the Court of Appeals a proposed interim Temporary Suspension Order stating the name and account number of each attorney who remains in default of payment for a dishonored check and related charges.

(2) Entry and Service of Order

The Court of Appeals shall enter an Interim Temporary Suspension Order prohibiting the practice of law in the State by each attorney as to whom the Court is satisfied that the

treasurer has made reasonable efforts to give notice concerning the dishonored check. The treasurer shall mail by first class mail a copy of the interim Temporary Suspension Order to each attorney named in the order at the attorney's last address as it appears on the records of the trustees. The mailing by the treasurer of the copy constitutes service of the order on the attorney.

(d) Payment; Termination or Replacement of Interim Order

(1) Procedure Upon Payment

Upon payment of the full amount due by the attorney, the trustees and the Court shall follow the procedure set forth in Rule 19-605 (a) (4).

(2) If No Payment

If the full amount due is not paid by the time the Court enters its next Temporary Suspension Order under Rule 19-606 and, as a result, the attorney is included in that order, the interim order shall terminate and be replaced by the Temporary Suspension Order.

Source: This Rule is derived from former Rule 16-811.7 (2016).

REPORTER'S NOTE

Rule 19-607 is derived verbatim from Rule 16-811.7 contained in the 180th Report of the Rules Committee, except for renumbering of the Rule and internal references as necessary.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 600 - CLIENT PROTECTION FUND

Rule 19-608. NOTICES CONCERNING TEMPORARY SUSPENSIONS

Upon entry of each Temporary Suspension Order and each order that terminates a temporary suspension and restores the attorney to good standing entered pursuant to the Rules in this Chapter, the Clerk of the Court of Appeals shall comply with Rule 19-761.

Source: This Rule is derived from former Rule 16-811.8 (2016).

REPORTER'S NOTE

Rule 19-608 is derived verbatim from Rule 16-811.8, with a reference to Rule 19-761 replacing the details of the current Rule.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 600 - CLIENT PROTECTION FUND

Rule 19-609. CLAIMS

(a) Method of Making Claim

A claim against the Fund shall be made in conformance with regulations adopted by the trustees.

(b) Review by Trustees

(1) Generally

The trustees shall determine whether a claim merits reimbursement from the Fund and, if so:

- (A) the amount of such reimbursement;
- (B) the time, place, and manner of payment;
- (C) any conditions upon which payment will be made; and
- (D) the order in which payments will be made.

(2) No Rights in Fund

No claimant or other person has any right in the Fund, as beneficiary or otherwise.

(3) Assistance in Investigation

The trustees may request bar associations, Bar Counsel, other organizations of attorneys, individual attorneys, and other individuals selected by the trustees to assist the trustees in the investigation of claims.

(c) Factors to be Considered

In exercising their discretion, the trustees may consider:

(1) The amounts available and likely to become available to the Fund for the payment of claims;

(2) The amount and number of claims likely to be presented in the future;

(3) The total amount of losses caused by defalcations of any one attorney or associated groups of attorneys;

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(5) The amount of the claimant's loss as compared with the amount of the losses sustained by other claimants who may merit reimbursement from the Fund;

(6) The degree of hardship the claimant has suffered by the loss; and

(7) Any other factor the trustees deem appropriate.

(d) Conditions to Payment

In addition to other conditions and requirements, the trustees may require claimants, as a condition of payment, to take such action and to enter into such agreements and execute such instruments as the trustees find appropriate, including assignments, subrogation agreements, trust agreements, and promises to cooperate with the trustees in making and prosecuting claims or charges against any person.

Source: This Rule is derived from former Rule 16-811.9 (2016).

REPORTER'S NOTE

Rule 19-609 is derived verbatim from Rule 16-811.9 contained in the 180th Report of the Rules Committee, except for renumbering of the Rule and internal references as necessary.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 600 - CLIENT PROTECTION FUND

Rule 19-610. JUDICIAL REVIEW

(a) Generally

A person aggrieved by a final determination of the trustees may seek judicial review of the determination pursuant to Title 7, Chapter 200 of the Maryland Rules.

(b) Standard of Review

In the action for judicial review, the decision of the trustees shall be deemed prima facie correct and shall be affirmed unless the decision was arbitrary, capricious, unsupported by substantial evidence on the record considered as a whole, beyond the authority vested in the trustees, made upon unlawful procedure, or unconstitutional or otherwise illegal. Any party, including the Fund, aggrieved by the judgment of the circuit court may appeal the judgment to the Court of Special Appeals.

Source: This Rule is derived from former Rule 16-811.10 (2016).

REPORTER'S NOTE

Rule 19-610 is derived verbatim from Rule 16-811.10 contained in the 180th Report of the Rules Committee, except for renumbering of the Rule and internal references as necessary.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 600 - CLIENT PROTECTION FUND

Rule 19-611. SUPERVISORY AUTHORITY OF COURT OF APPEALS

(a) Audit

In addition to the authority of the trustees under Rule 19-604, the Court of Appeals may at any time arrange for an audit of the accounts of the Fund to be made by State or private auditors. The cost of any such audit shall be paid by the Fund if no other source of funds is available.

(b) Administrative Advice

The trustees may apply to the Court of Appeals, in its non-adjudicatory, supervisory capacity, for interpretation of these Rules and for advice as to their powers and as to the proper administration of the Fund. Any final order issued by the Court in response to any such application shall determine all rights with respect to the matters covered and shall be binding.

(c) Dissolution

The Court of Appeals may provide for the dissolution and winding up of the affairs of the Fund.

Source: This Rule is derived from former Rule 16-811.11 (2016).

REPORTER'S NOTE

Rule 19-611 is derived verbatim from Rule 16-811.11 contained in the 180th Report of the Rules Committee, except for renumbering of the Rule and internal references as necessary.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

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- (a) General Requirement
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 - (2) Affidavit Required
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- (b) Duty of Attorney
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 - (1) Generally
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 - (1) Generally
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- (f) Statement of Charges
- (g) Further Proceedings
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- (a) Purpose
- (b) Criteria
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 - (A) If No Exceptions are Filed
 - (B) If Exceptions are Filed
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- (a) Duties of Clerk
- (b) Effect of Order
- (c) Affirmative Duties of Attorney
 - (1) Requirements to be Completed Within 15 Days
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- (d) Duties of Bar Counsel
- (e) Conditions on Reinstatement
 - (1) Time for Application
 - (2) Other Conditions to or Upon Reinstatement
- (f) Responsibility of Affiliated Attorneys
- (g) Non-admitted Attorney
 - (1) Duties of Clerk
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- (a) Effect of Order
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 - (2) If Attorney Unable to Comply With Rule 19-742 (c)
- (b) Duties of Clerk
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- (a) Scope of Rule
- (b) Reinstatement Not Automatic
- (c) Petition for Reinstatement
 - (1) Requirement
 - (2) Timing
 - (3) Content
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- (e) Action by Court of Appeals
 - (1) If No Timely Objection Filed
 - (2) If Timely Objection Filed
- (f) Effective Date of Reinstatement Order
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 - (1) Attorney Admitted to Practice
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- (h) Motion to Vacate Reinstatement

Rule 19-752. REINSTATEMENT - OTHER SUSPENSION; DISBARMENT;
INACTIVE STATUS; RESIGNATION

- (a) Scope of Rule
- (b) Reinstatement Not Automatic
- (c) Petition for Reinstatement
 - (1) Requirement
 - (2) Timing Following Order of Suspension or Disbarment

- (3) Content
- (d) Information for Bar Counsel
 - (1) Generally
 - (2) If Disbarred or Suspended
 - (3) If Placed on Inactive Status
- (e) Response to Petition
 - (1) Generally
 - (2) Consent
- (f) Disposition
 - (1) Consent by Bar Counsel
 - (2) Other Cases
- (g) Further Proceedings
 - (1) Order Designating Judge
 - (2) Discovery
 - (3) Hearing
 - (4) Proceedings in Court of Appeals
- (h) Criteria for Reinstatement
 - (1) Generally
 - (2) Specific Criteria
- (i) Conditions to Reinstatement
- (j) Effective Date of Reinstatement Order
- (k) Duties of Clerk
 - (1) Attorney Admitted to Practice
 - (2) Attorney Not Admitted to Practice
- (l) Motion to Vacate Reinstatement

REGISTER OF ATTORNEYS; NOTICES

Rule 19-761. DUTIES OF CLERK OF COURT OF APPEALS UPON ATTORNEY'S
SUSPENSION, TERMINATION, OR REINSTATEMENT

- (a) Register of Attorneys
- (b) Notice
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- (d) Form of Notice

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

GENERAL PROVISIONS

Rule 19-701. DEFINITIONS

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

(a) Attorney

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

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

(b) Circuit

"Circuit" means Appellate Judicial Circuit.

(c) Client Protection Fund

"Client Protection Fund" means the Client Protection Fund of

the Bar of Maryland created by Code, Business and Occupations Article, §10-311 and administered pursuant to Rule 19-604.

(d) Commission

"Commission" means the Attorney Grievance Commission of Maryland.

(e) Conditional Diversion Agreement

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

(f) Disbarment

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

(g) Incapacity

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

(h) Office for the Practice of Law

"Office for the practice of law" means an office in which an attorney usually devotes a substantial part of the attorney's time to the practice of law during ordinary business hours in the traditional work week.

(i) Petition for Disciplinary or Remedial Action

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

(j) Professional Misconduct

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

(k) Reinstatement

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

(l) Serious Crime

"Serious crime means (1) a felony under Maryland law; (2) a crime committed in another state or under federal law that would have been a felony under Maryland law had the crime been committed in Maryland or in violation of Maryland law, and (3) a crime under federal law or the law of any state that is punishable by imprisonment for three years or more.

(m) State

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

(n) Statement of Charges

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

(o) Suspension

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

(p) Warning

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

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

REPORTER'S NOTE

Proposed Rule 19-701 contains definitions.

In section (a), the definition of attorney is expanded to include an individual who is seeking reinstatement pursuant to the Rules.

Section (c), which defines Client Protection Fund, is new.

Current Rule 16-701 (f) defines incapacity, in part, as an inability to render effective legal service due to dependence upon "an intoxicant or drug." Proposed section (g) includes an express reference to dependence upon "alcohol, or one or more drugs or other intoxicants."

The remaining definitions are carried forward, with stylistic changes, from current Rule 16-701.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-702. ATTORNEY GRIEVANCE COMMISSION

(a) Creation and Composition

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

(b) Term

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

(c) Compensation

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

(d) Chair and Vice Chair

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

(e) Executive Secretary

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

(f) Removal of Commission Members

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

(g) Quorum

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

(h) Powers and Duties

The Commission has the powers and duties to:

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

with these Rules;

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

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

(4) supervise the activities of Bar Counsel;

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

(6) appoint special counsel as the need arises;

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

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

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

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

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

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

(13) administer the Disciplinary Fund;

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

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

(i) Effect of Chair's Decisions

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

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

REPORTER'S NOTE

Proposed Rule 19-702, Attorney Grievance Commission, is current Rule 16-711. The Rules in Title 16, Chapter 600 have been renumbered. The reference to those Rules in subsection (h) (12) has been changed to reflect the renumbering.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-703. BAR COUNSEL

(a) Appointment

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

(b) Powers and Duties

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

(1) investigate professional misconduct or incapacity on the part of an attorney;

(2) issue subpoenas as provided by Rule 19-712;

(3) enter into and implement Conditional Diversion Agreements, issue notices, and administer warnings and reprimands;

(4) file statements of charges, participate in proceedings before Peer Review Panels, and prosecute all disciplinary and remedial proceedings;

(5) file and prosecute petitions for disciplinary and

remedial actions in the name of the Commission;

(6) monitor and enforce compliance with all disciplinary and remedial orders of the Court of Appeals;

(7) investigate petitions for reinstatement and applications for resignation from the practice of law and represent the Commission in those proceedings;

(8) initiate, intervene in, and prosecute actions to enjoin the unauthorized practice of law;

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

(10) discharge any employee;

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

(12) make reports to the Commission; and

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

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

REPORTER'S NOTE

Proposed Rule 19-703, Bar Counsel, is current Rule 16-712. As a matter of style, the words "on the part of an attorney" are added to subsection (b)(1). The Rules in Title 16 have been renumbered. The reference in subsection (b)(2) is changed to reflect the renumbering.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-704. PEER REVIEW COMMITTEE

(a) Creation

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

(b) Composition

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

(c) Individuals Ineligible for Appointment as an Attorney Member

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

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

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

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

(4) is the subject of a pending statement of charges or

petition for disciplinary or remedial action; or

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

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

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

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

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

(e) Procedure for Appointment

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

(f) Term

The term of each member is two years. The Commission may extend the term of any member assigned to a Peer Review Panel

until the completion of a pending matter. A member may be reappointed.

(g) Chair and Vice Chair

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

(h) Compensation

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

(i) Removal

The Commission may remove a member of the Peer Review Committee for cause.

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

REPORTER'S NOTE

Proposed Rule 19-704, Peer Review Committee, is carried forward from current Rule 16-713. In section (a), the reference to the Rule regarding Peer Review Panels is changed to reflect the renumbering of the Rules in current Title 16.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-705. DISCIPLINARY FUND

(a) Establishment; Nature

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

(b) Payment by Attorneys

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

(c) Collection and Disbursement

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

(d) Audit

Rule 19-705

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

(e) Enforcement

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

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

REPORTER'S NOTE

Proposed Rule 19-705, Disciplinary Fund, is derived from current Rule 16-714. Stylistic changes are made.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-706. SANCTIONS AND REMEDIES

(a) For Professional Misconduct

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

- (1) disbarment by the Court of Appeals;
- (2) suspension, for a fixed period or indefinitely, by the Court of Appeals;
- (3) reprimand by the Court of Appeals or, with the attorney's consent, by the Commission;
- (4) conditional diversion in accordance with a Conditional Diversion Agreement; and
- (5) termination of a disciplinary proceeding with or without a warning.

(b) For Incapacity

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

- (1) placement on inactive status, subject to further order of the Court of Appeals;
- (2) conditional diversion in accordance with a Conditional Diversion Agreement; or
- (3) termination of a remedial proceeding.

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

REPORTER'S NOTE

Proposed Rule 19-706, Sanctions and Remedies, is derived from current Rule 16-721. The changes in section (a) are mostly stylistic. Language is added to subsection (a)(5) to permit the termination of a disciplinary proceeding with or without a warning. Subsection (b)(3) is new and expressly authorizes termination of a remedial proceeding. Section (c) of current Rule 16-721 is not carried forward because it is redundant.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-707. CONFIDENTIALITY

(a) Peer Review Meetings

(1) Confidentiality Generally

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

(2) Privilege

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

(b) Other Confidential Material

Except as otherwise provided in this Rule, the records and proceedings listed in this section and the contents of those records and proceedings are (1) confidential and not open to public inspection and (2) may not be disclosed by Bar Counsel,

the staff and investigators of the Office of Bar Counsel, any member of the Commission, the staff of the Commission, the Peer Review Committee, any attorney involved in the proceeding, or, in any civil action or proceeding, by the complainant or an attorney for the complainant:

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

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

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

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

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

(E) the contents of a warning issued by the Commission as provided in Rule 19-715 (d);

(F) the contents of a Conditional Diversion Agreement as provided in Rule 19-716 (j)(2);

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

(H) a Petition for Disciplinary or Remedial Action based

solely on the alleged incapacity of an attorney and records and proceedings, other than proceedings in the Court of Appeals, on that petition; and

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

(c) Public Proceedings and Records

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

(1) except as otherwise provided in subsection (b) (2) (H) of this Rule, a Petition for Disciplinary or Remedial Action, all proceedings on that petition, and all documents or other items admitted into evidence at any hearing on the petition;

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

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

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

(d) Required Disclosures by Bar Counsel

(1) Reprimand by Commission

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

(2) Conviction of a Serious Crime

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

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

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

(f) Permitted Disclosures

(1) Written Waiver of Attorney

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

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

The parties to a disciplinary or remedial action may use confidential information other than the records and proceedings of a Peer Review Panel to the extent reasonably necessary to investigate a complaint, prepare a defense to a complaint, or

prepare for a public hearing in the action but shall preserve the confidentiality of the information in all other respects.

(3) Communications with Complainant

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

(4) Requests by Authorities

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

(5) Request by Client Protection Fund

Upon written request by the Client Protection Fund, Bar Counsel or the Commission may permit an authorized officer of the

Fund to review and copy specific records relating to an attorney that are relevant to a claim pending before the Fund. Unless the Court orders otherwise, the Fund shall maintain the confidentiality of any records it has reviewed or copied.

(6) Explanatory Statements

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

(7) Court Order or Grand Jury Subpoena

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

(8) Law Enforcement Officials

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

(9) Other Disciplinary Authorities

With the approval of the Chair of the Commission, Bar Counsel may provide to the disciplinary authority of any other jurisdiction in which an attorney is admitted to practice records and other confidential information concerning the attorney.

(10) Summarized Information

In order to improve the administration of justice, the Commission and Bar Counsel may publish reports and summaries of confidential investigations, charges, and disciplinary or

remedial proceedings, provided that the identity of attorneys, complainants, and witnesses is not revealed.

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

REPORTER'S NOTE

Proposed Rule 19-707, Confidentiality, is derived from current Rule 16-723.

The rewriting of section (a) is principally a matter of style, with no change in substance intended. However, subsection (a)(1) is rewritten to more directly declare that conduct at a meeting of the peer review panel is confidential and not open to public inspection. Language is added to subsection (a)(1) in order to provide an exception to confidentiality for criminal conduct that occurs at a peer review meeting, such as an assault on a member of the panel.

Language is added to subsection (b)(2)(A) to clarify that the records of an investigation of Bar Counsel are confidential unless and until a petition for discipline or remedial action is filed in the Court of Appeals.

Subsections (b)(2)(E) and (b)(2)(F) do not include the language in current Rule 16-723 (b)(4) and (b)(6) that provides more detail about the confidentiality of warnings and Confidential Diversion Agreements. That language has been transferred to proposed Rules 19-714 (d) and 19-715 (j).

A reference to new Rule 19-761 is added to section (e).

Subsection (f)(5) is new. It permits the Client Protection Fund ("Fund") to review and copy records relating to an attorney that are relevant to claims pending before the Fund. Any use by the Fund shall remain confidential, subject to court order.

The changes to subsections (f)(7) and (f)(8) are intended to require Bar Counsel to comply with grand jury subpoenas, but to retain discretion and require the approval of the Chair of the Commission with respect to disclosures to the police and prosecutors.

The remaining changes are stylistic.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-708. SERVICE OF PAPERS ON ATTORNEY

(a) Statement of Charges

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

(b) Service of Other Papers

Except as otherwise provided in this Chapter, other notices and papers may be served on an attorney in the manner provided by Rule 1-321 for service of papers after an original pleading.

Committee note: The attorney's address contained in the records of the Client Protection Fund of the Bar of Maryland may be the attorney's last known address.

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

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

REPORTER'S NOTE

Proposed Rule 19-708, Service of Papers on Attorney, is current Rule 16-724. References to Rules which have been renumbered are changed.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-709. COSTS

(a) Generally

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

(b) Costs Defined

Costs include:

- (1) court costs;
- (2) reasonable and necessary fees and expenses paid to an expert witness who testified in the proceeding before the circuit court judge;
- (3) reasonable and necessary travel expenses of a witness who is not an expert witness;
- (4) reasonable and necessary costs of a transcript of proceedings before the circuit court judge;
- (5) reasonable and necessary fees and expenses paid to a court reporter or reporting service for attendance at a deposition and for preparing a transcript, audio recording, or audio-video recording of the deposition; and
- (6) other reasonable and necessary expenses, excluding

attorneys' fees, incurred in investigating the claims and in prosecuting or defending against the petition for disciplinary or remedial action before the circuit court judge and in the Court of Appeals.

(c) Reinstatement Proceedings

In proceedings for reinstatement under Rules 19-751 or 19-752, the attorney shall pay all court costs and costs of investigation and other proceedings on the petition, including the costs of physical and mental examinations, transcripts, and other reasonable expenditures necessary to evaluate the petition.

(d) Judgment

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

(e) Enforcement

Rule 8-611 applies to proceedings under this Chapter.

Source: This Rule is in part derived from former 16-761 (2016) and is in part new.

REPORTER'S NOTE

Proposed Rule 19-709, Costs, is derived from current Rule 16-761. Stylistic changes are made. New section (c), Reinstatement Proceedings, is added because the Committee recommends addressing costs in one Rule.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

ADMINISTRATIVE PROCEDURES

Rule 19-711. COMPLAINT; INVESTIGATION BY BAR COUNSEL

(a) Who May Initiate

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

(b) Review of Complaint

(1) Bar Counsel shall make an appropriate investigation of every complaint that is not facially frivolous or unfounded.

(2) If Bar Counsel concludes that the complaint is either without merit or does not allege facts which, if true, would demonstrate either professional misconduct or incapacity, Bar Counsel shall dismiss the complaint and notify the complainant of the dismissal. Otherwise, subject to subsection (b)(3) of this Rule, Bar Counsel shall (A) open a file on the complaint, (B)

acknowledge receipt of the complaint and explain in writing to the complainant the procedures for investigating and processing the complaint, (C) comply with the notice requirement of section (c) of this Rule, and (D) conduct an investigation to determine whether reasonable grounds exist to believe the allegations of the complaint.

Committee note: Before determining whether a complaint is frivolous or unfounded, Bar Counsel may contact the attorney and obtain an informal response to the allegations.

(3) If Bar Counsel concludes that a civil or criminal action involving material allegations against the attorney substantially similar to those alleged in the complaint is pending in any court of record in the United States, Bar Counsel, with the approval of the Commission, may defer action on the complaint pending a determination of those allegations in that action. Bar Counsel shall notify the complainant of that decision and, during the period of the deferral, shall report to the Commission, at least every six months, the status of the other action. The Commission, at any time, may direct Bar Counsel to proceed in accordance with subsection (b) (2) of this Rule.

(c) Notice to Attorney

(1) Except as otherwise provided in this section, Bar Counsel shall notify the attorney who is the subject of the complaint that Bar Counsel is undertaking an investigation to determine whether the attorney has engaged in professional misconduct or is incapacitated. The notice shall be given before the conclusion of the investigation and shall include the name and address of

the complainant and the general nature of the professional misconduct or incapacity under investigation. As part of the notice, Bar Counsel may demand that the attorney provide information and records that Bar Counsel deems appropriate and relevant to the investigation. The notice shall state the time within which the attorney shall provide the information and any other information that the attorney may wish to present. The notice shall be served on the attorney in accordance with Rule 19-708 (b).

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

(d) Time for Completing Investigation

(1) Generally

Subject to subsection (b)(3) of this Rule or unless the time is extended pursuant to subsection (d)(2) of this Rule, Bar Counsel shall complete an investigation within 90 days after opening the file on the complaint.

(2) Extension

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

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

cause for a longer extension.

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

(3) Sanction

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

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

REPORTER'S NOTE

Proposed Rule 19-711, Complaint; Investigation by Bar Counsel, is derived from current Rule 16-731.

In addition to stylistic changes, a new subsection (b) (3) permits Bar Counsel, with the approval of the Commission, to defer action on a complaint if there is a pending civil or criminal action against the attorney involving material allegations substantially similar to the allegations contained in the complaint. Upon determination of the allegations in the other action, or sooner if so directed by the Commission, Bar Counsel would then proceed in accordance with subsection (b) (2) of the Rule.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-712. INVESTIGATIVE SUBPOENA

(a) Approval and Issuance

(1) The Chair of the Commission may authorize Bar Counsel to issue a subpoena to compel the attendance of witnesses and the production of designated documents or other tangible things at a time and place specified in the subpoena if the Chair finds that (A) the subpoena is necessary to and in furtherance of an investigation being conducted by Bar Counsel pursuant to Rule 19-711 or (B) the subpoena has been requested by a disciplinary authority of another jurisdiction pursuant to the law of that jurisdiction for use in a disciplinary or remedial proceeding in that jurisdiction to determine alleged professional misconduct or incapacity of an attorney subject to the jurisdiction of that disciplinary authority.

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

(b) Contents

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

other matter pertaining to the subpoena and (2) may file a motion for judicial relief under Rule 2-510.

(c) Service

Except for service upon an attorney in accordance with Rule 19-708 (b), a subpoena shall be served in accordance with Rule 2-510. Promptly after service of a subpoena on a person other than the attorney under investigation and in addition to giving any other notice required by law, Bar Counsel shall serve a copy of the subpoena on the attorney under investigation.

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

(d) Objection

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

(e) Enforcement

On the motion of Bar Counsel, the court may enforce compliance with the subpoena.

(f) Confidentiality

Any paper filed in court with respect to a subpoena shall be sealed upon filing and shall be open to inspection only by

order of the court. A hearing before the court on any motion shall be on the record and shall be conducted out of the presence of all individuals other than Bar Counsel, the attorney, and those individuals whose presence the court deems necessary.

(g) Recording of Statements

All statements by the subpoenaed witness shall be under oath and shall be contemporaneously recorded stenographically or electronically.

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

REPORTER'S NOTE

Proposed Rule 19-712, Investigative Subpoena, is derived from current Rule 16-732. Stylistic changes are made.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-713. PERPETUATION OF EVIDENCE BEFORE PETITION FOR
DISCIPLINARY OR REMEDIAL ACTION

Before a Petition for Disciplinary or Remedial Action is filed, Bar Counsel or an attorney who is or may be the subject of an investigation by Bar Counsel may perpetuate testimony or other evidence relevant to a claim or defense that may be asserted in the expected action. The perpetuation of evidence shall be governed by Rule 2-404 and the issuance of subpoenas and protective orders shall be governed by Rules 2-510 and 2-403. The Commission shall perform the functions that the court performs under those Rules.

Source: This Rule is derived from former Rule 16-733 (2016).

REPORTER'S NOTE

Proposed Rule 19-713, Perpetuation of Evidence Before Petition for Disciplinary or Remedial Action, is derived from current Rule 16-733.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

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

Upon completion of an investigation, Bar Counsel shall:

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

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

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

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

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

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

REPORTER'S NOTE

Proposed Rule 19-714, Action by Bar Counsel Upon Completion of Investigation, is derived from current Rule 16-734. The changes are essentially stylistic. The change to section (a) is

Rule 19-714

to add a reference to remedial action. The language deleted in sections (b) and (d) is deleted as unnecessary as it is covered in the Rules referenced therein.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

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

(a) Recommendation by Bar Counsel or Peer Review Panel

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

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

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

(b) Action by Commission

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

(c) Termination Accompanied by Warning

(1) Recommendation by Bar Counsel or Peer Review Panel

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

(2) Action by Commission

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

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

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

(3) Nature and Effect of Warning

A warning does not constitute discipline.

(d) Disclosure of Termination or Warning

(1) Disclosure of Dismissal or Termination

(A) Except as provided in subsection (d) (2) of this Rule, a dismissal or a termination under this Rule, with or without a warning, shall not be disclosed by the Commission or Bar Counsel in response to any request for information as to whether an attorney has been the subject of a disciplinary or remedial proceeding.

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

(2) Disclosure of Warning

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

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

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

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

REPORTER'S NOTE

Proposed Rule 19-715, Dismissal of Complaint; Termination of Disciplinary or Remedial Proceeding, is derived from current Rule 16-735.

Current Rule 16-735 (a)(1)(B) states that a disciplinary or remedial proceeding may be terminated if the professional misconduct is not serious enough to warrant discipline and is not likely to be repeated. A provision that addresses termination of a remedial action that is based on an attorney's incapacity is added to Rule 19-715 (a)(2). A termination under subsection (a)(2) may not be accompanied by a warning.

The language from current Rule 16-735 (b)(2) is not carried forward because it is considered unnecessary.

The remaining changes are stylistic.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-716. CONDITIONAL DIVERSION AGREEMENT

(a) When Appropriate

Upon completing an investigation, Bar Counsel may agree to a Conditional Diversion Agreement if Bar Counsel concludes that:

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

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

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

(4) the public interest and the welfare of the attorney's clients and prospective clients will not be harmed if, instead of the matter proceeding immediately with a disciplinary or remedial proceeding, the attorney agrees to and complies with specific

measures that, if pursued, will remedy the immediate problem and likely prevent any recurrence of it.

Committee note: Examples of conduct that may be susceptible to conditional diversion include conduct arising from (A) unfamiliarity with proper methods of law office management, record-keeping, or accounting, (B) unfamiliarity with particular areas of law or legal procedure, (C) negligent management of attorney trust accounts or other financial matters, (D) negligent failure to maintain proper communication with clients, (E) negligent failure to provide proper supervision of employees, or (F) emotional stress or crisis or abuse of alcohol or other drugs.

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

(1) Voluntary Nature

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

(2) Effect of Rejection or Disapproval

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

(c) Terms of Agreement

(1) In Writing and Signed

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

(2) Required Provisions

The agreement shall:

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

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

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

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

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

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

(3) Permissive Provisions

The agreement may:

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

(i) mediation or binding arbitration of a fee dispute;
(ii) restitution of unearned or excessive fees in a stipulated amount;

(iii) a public apology to designated persons;

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

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

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

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

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

(ix) a reprimand to be issued upon the successful termination of a Conditional Diversion Agreement. The text of the reprimand shall be agreed upon and attached to the Agreement

as a separate document; and

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

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

(4) If Monitor Designated

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

(B) If a private monitor is designated, the agreement shall specify the fees of the monitor and the method and frequency of payment of the fees and shall direct the monitor promptly to report any violation or noncompliance to Bar Counsel.

(d) Submission to Commission

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

(e) Action by Commission

(1) Generally

After consideration, the Commission may:

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

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

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

(2) Upon Commission Recommendations

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

(f) Effect of Agreement

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

(g) Amendment of Agreement

A Conditional Diversion Agreement may be amended from time to time. An amendment shall be in a writing signed by Bar Counsel and the attorney and approved by the Commission.

(h) Revocation of Agreement

(1) Declaration of Proposed Default

Bar Counsel may declare a proposed default on a Conditional Diversion Agreement if Bar Counsel determines that the attorney (A) engaged in further professional misconduct while subject to the agreement, (B) wilfully misrepresented or

concealed material facts during the negotiation of the Agreement that induced Bar Counsel to recommend approval of the Agreement, or (C) has failed in a material way to comply with the Agreement. Bar Counsel shall give written notice to the attorney of the proposed default and afford the attorney a reasonable opportunity to refute the determination.

(2) Petition

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

(3) Action by Commission

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

(4) Default

An attorney who is in default of a Conditional Diversion Agreement is not entitled to an additional peer review process under Rule 19-720.

(i) Satisfaction of Agreement

If Bar Counsel determines that the attorney has complied in full with the requirements of the Agreement and that the disciplinary or remedial proceeding should be terminated, Bar Counsel shall inform the Commission and request that the disciplinary or remedial proceeding be terminated. If satisfied with Bar Counsel's recommendation, the Commission shall terminate the disciplinary or remedial proceeding.

(j) Confidentiality

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

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

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

(2) Contents of Agreement

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

(B) If the Agreement requires payment or the transfer of property to the complainant by the attorney or requires other

communication with the complainant by the attorney, Bar Counsel shall inform the complainant of those requirements, but not of any other terms of the Agreement.

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

(D) The contents of a Conditional Diversion Agreement may be disclosed in a subsequent proceeding against the attorney if relevant to a subsequent complaint based on similar misconduct or incapacity.

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

REPORTER'S NOTE

Proposed Rule 19-716, Conditional Diversion Agreement, is derived from current Rule 16-736.

Subsection (c) (3) (A) (vii) is amended to include an express reference to dependence upon "other intoxicants" in addition to alcohol and drugs.

Language is added to subsection (c) (3) (A) (vii) to make clear that the Agreement may require the attorney to undergo "one or more" courses of treatment for emotional or mental disorders or disabilities, or dependence on alcohol, drugs, or "other intoxicants."

Subsection (c) (3) (A) (ix) and the accompanying Committee note are new. Subsection (c) (3) (A) (ix) allows a Conditional Diversion Agreement ("Agreement") to provide for the issuance of a reprimand upon the successful termination of the Agreement. The text of the reprimand must be agreed upon and attached as a separate document because, as the Committee note explains, the contents of the Agreement are confidential, but the contents of a reprimand are public.

In order to make clear that the Commission must revoke any reprimand if the attorney is in material default of the Agreement, the language "and any reprimand" is added to subsection (h) (3).

Subsection (h) (4) is new. It provides that an attorney who is in default of an Agreement is not entitled to have an additional peer review process.

Subsections (j) (1) and (j) (2) make clear that, although the contents of the Agreement are confidential, the fact that an Agreement was signed is public.

Specifically, subsection (j) (1) (B) (iv) is added to require Bar Counsel, after the Agreement has been approved by the Commission, to inform the complainant of the potential for and consequences to the attorney for noncompliance with the Agreement. Subsection (j) (2) (B) is added to provide a limited exception to the confidentiality of the contents of the Agreement. If the Agreement requires the attorney to pay or transfer property to the complainant, or to communicate with the complainant, Bar Counsel shall inform the complainant of those requirements. Subsection (j) (2) (C) is amended to make clear that if an Agreement is revoked, its contents may be disclosed in any ensuing disciplinary or remedial proceeding, but do not lose their confidentiality generally. Language is added to subsection (j) (2) (D) to permit disclosure of the contents of an Agreement in a subsequent proceeding if relevant to a subsequent complaint that involves the same incapacity.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-717. REPRIMAND BY COMMISSION

(a) Scope

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

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

(b) Offer

(1) Service on Attorney

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

(2) Content

The offer shall include the text of the proposed reprimand, the date when the offer will expire, a contingent waiver of further disciplinary or remedial proceedings, and advice that the offer, if accepted, is subject to approval by the

Commission. The text of the proposed reprimand shall summarize the misconduct for which the reprimand is to be imposed and include a reference to any rule, statute, or other law allegedly violated by the attorney.

(c) Response

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

(d) Submission to Commission

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

(e) Action by Commission

(1) Generally

After consideration, the Commission may:

(A) approve the reprimand, if satisfied that it is appropriate under the circumstances, in which event Bar Counsel shall promptly administer the reprimand to the attorney and terminate the disciplinary or remedial proceeding;

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

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

(2) Upon Commission Recommendations

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

(f) Effect of Rejection or Disapproval

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

(g) Effect of Reprimand

A reprimand constitutes discipline.

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

REPORTER'S NOTE

Proposed Rule 19-717, Reprimand by Commission, is derived from current Rule 16-737. Section (a) is new. It provides that the Rule does not apply to a reprimand to be issued upon the completion of a Conditional Diversion Agreement. A cross

reference is added to Rule 19-716 (c) (3) (A) (ix), which addresses such reprimands.

The remaining changes are stylistic.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-718. STATEMENT OF CHARGES

(a) Filing

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

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

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

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

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

(b) Content

The Statement of Charges shall be in writing and:

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

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

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

(c) Service; Peer Review

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

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

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

REPORTER'S NOTE

Proposed Rule 19-718, Statement of Charges, is derived from current Rule 16-741. Section (b), which outlines the required content of the Statement of Charges, is new. It incorporates into the Rule requirements articulated in case law. See *Bar Ass'n of Balt. v. Cockrell*, 270 Md. 686, 692-93 (1974).

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-719. PEER REVIEW PANEL

(a) Appointment

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

(b) Composition of Panel

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

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

(3) If practicable, the Chair shall appoint to the Panel members from the circuit in which the attorney who is the subject of the charges has an office for the practice of law or, if there is no such office, the circuit in which the last known address of the attorney, as reflected on the records of the Client Protection Fund, is located.

(c) Panel Chair

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

(d) Removal and Recusal of Members

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

(e) Quorum

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

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

REPORTER'S NOTE

Proposed Rule 19-719, Peer Review Panel, is derived from current Rule 16-742. Stylistic changes are made.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-720. PEER REVIEW PROCESS

(a) Purpose

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

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

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

(b) Scheduling of Meeting; Notice to Attorney

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

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

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

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

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

(c) Meeting

(1) The Peer Review Panel shall conduct the meeting in an informal manner. It shall allow Bar Counsel, the attorney, and each complainant to explain their positions and offer such supporting information as the Panel finds relevant. Upon request of Bar Counsel or the attorney, the Panel may, but need not, hear from any other individual. The Panel is not bound by any rules of evidence, but shall respect lawful privileges. The Panel may exclude a complainant after listening to the complainant's statement and, as a mediative technique, may consult separately with Bar Counsel or the attorney. The Panel may meet in private to deliberate.

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

(3) The Panel may schedule one or more further meetings, but, unless the time is extended by the Commission, it shall make a recommendation to the Commission within 90 days after appointment of the Panel. If a recommendation is not made within that time or any extension granted by the Commission, the peer review process shall be terminated and the Commission may take any

action that could be recommended by the Peer Review Panel under section (e) of this Rule.

(d) Ex Parte Communications

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

(e) Recommendation of Panel

(1) Agreed Upon Recommendation

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

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

(2) If No Agreement

If there is no agreed-upon recommendation under subsection (e)(1) of this Rule, the Panel shall transmit to the

Commission an independent recommendation, not subject to the approval of Bar Counsel, and shall accompany its recommendation with a brief explanatory statement. The Panel's recommendation shall be one of the following:

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

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

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

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

(f) Action by Commission

The Commission may:

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

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

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

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

REPORTER'S NOTE

Proposed Rule 19-720, Peer Review Process, is derived from current Rule 16-743. Stylistic changes are made.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

PROCEEDINGS ON PETITION FOR DISCIPLINARY
OR REMEDIAL ACTION

Rule 19-721. PETITION FOR DISCIPLINARY OR REMEDIAL ACTION

(a) Commencement of Action

(1) Upon Approval or Direction of the Commission

Upon approval or direction of the Commission, Bar Counsel, on behalf of the Commission, shall file a Petition for Disciplinary or Remedial Action in the Court of Appeals.

(2) Conviction of Crime; Reciprocal Action

If authorized by Rule 19-737 or 19-738, Bar Counsel, on behalf of the Commission, may file a Petition for Disciplinary or Remedial Action in the Court of Appeals without prior approval of the Commission. On review, the Commission may direct the withdrawal of a petition filed pursuant to this subsection, in which event, Bar Counsel shall withdraw the petition.

Cross reference: See Rule 19-707 (b) (2) (H) concerning confidentiality of a petition to place an incapacitated attorney on inactive status.

(b) Form of Petition

The Commission shall be the petitioner. The attorney shall be the respondent. The petition shall be sufficiently clear and specific to inform the attorney of any professional misconduct charged and the basis of any allegation that the

attorney is incapacitated and should be placed on inactive status.

Source: This Rule is derived from former Rule 16-751 (2016).

REPORTER'S NOTE

Proposed Rule 19-721, Petition for Disciplinary or Remedial Action, is derived from current Rule 16-751. Language is deleted that requires the Commission to be called the petitioner and the attorney to be called the respondent. Stylistic changes are made.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-722. ORDER DESIGNATING JUDGE AND CLERK

(a) Order

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

(b) Service

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

(c) Motion to Amend Order Designating Judge

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

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

REPORTER'S NOTE

Proposed Rule 19-722, Order Designating Judge and Clerk, is derived from current Rule 16-752.

Current Rule 16-752 requires the entry of a scheduling order setting time limits for the completion of discovery, the filing of motions, and a hearing. There are no Rules that specifically authorize an amendment to the scheduling order. Presumably, if another judge is designated pursuant to current Rule 16-752 (c) (proposed Rule 19-722 (c)), the new judge could enter a superceding scheduling order. Current Rule 16-757 (a) puts a limit on any scheduling order by requiring completion of the hearing within 120 days after service of the petition unless extended by the Court of Appeals. Language is added to proposed Rule 19-722 (a) in order to permit amendments to the scheduling order, subject to the 120-day requirement.

The remaining changes are stylistic.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-723. SERVICE OF PETITION AND ORDER

(a) Generally

A copy of a Petition for Disciplinary or Remedial Action filed pursuant to Rule 19-721 and the order of the Court of Appeals entered pursuant to Rule 19-722 shall be served on the attorney in the manner prescribed in Rule 2-121, or in any other manner directed by the Court of Appeals.

(b) Alternative Service

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

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

REPORTER'S NOTE

Proposed Rule 19-723, Service of Petition and Order, is derived from current Rule 16-753. Language is added to section

(b) to require the employee of the Client Protection Fund responsible for receiving service for the attorney to "promptly" send the papers to the attorney, to file a certificate of mailing with the clerk, and to send a copy of the certificate to Bar Counsel.

Stylistic changes are made.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-724. ANSWER

(a) Timing

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

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

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

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

(b) Content and Scope

(1) Generally

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

(2) Limited Scope

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

(c) Failure to Answer

If the time for filing an answer has expired and the

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

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

REPORTER'S NOTE

Proposed Rule 19-724, Answer, is derived from current Rule 16-754. Subsection (a)(2) is designed to start the 15 days from the time the Client Protection Fund employee mails the papers to the attorney. Subsection (a)(3) clarifies that an alternative time must be set by the Court of Appeals. The current Rule is silent regarding who may specify such an alternative time.

The remaining changes are stylistic.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-725. PLEADINGS; MOTIONS; AMENDMENTS

(a) Pleadings

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

(b) Amendments

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

(c) Motions

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

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

petition.

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

REPORTER'S NOTE

Section (b) of proposed Rule 19-725, Pleadings; Motions; Amendments, is carried forward from current Rule 16-755. Stylistic changes are made.

Section (a), Pleadings, section (c), Motions, and the Committee note following section (c) are new. Sections (a) and (c) are added to make clear that, although certain motions are permissible in proceedings for disciplinary or remedial action (such as motions dealing with discovery), motions to dismiss, collateral actions, and counterclaims are not permissible in the proceedings. The Committee note explains that motions to dismiss and collateral actions are not permitted because proceedings for disciplinary or remedial action are conducted pursuant to the power of the Court of Appeals to regulate the practice of law, and because a circuit court does not have the authority to dismiss the proceeding.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-726. DISCOVERY

After a Petition for Disciplinary or Remedial Action has been filed, discovery is governed by Title 2, Chapter 400, subject to any scheduling order entered pursuant to Rule 19-722.

Source: This Rule is derived from former Rule 16-756 (2016).

REPORTER'S NOTE

Proposed Rule 19-726, Discovery, is derived from current Rule 16-756. The references to the current Rules reflect the proposed renumbering of those Rules.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-727. JUDICIAL HEARING

(a) Evidence and Procedure Generally

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

(b) Certain Evidence Allowed

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

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

(c) Burdens of Proof

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

(d) Findings and Conclusions

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

(e) Time for Completion

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

(f) Transcript

Bar Counsel shall cause a transcript of the hearing to be prepared and included in the record.

(g) Transmittal of Record

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

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

REPORTER'S NOTE

Proposed Rule 19-727, Judicial Hearing, is derived from current Rule 16-757. Because clear and detailed findings of fact and conclusions of law are required with respect to each charge in the petition, the amendment to section (d) requires a written

statement and deletes the alternative of an extemporaneous reading of those findings of fact and conclusions of law into the record. Stylistic changes are made.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-728. POST-HEARING PROCEEDINGS

(a) Notice of the Filing of the Record

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

(b) Exceptions; Recommendations; Statement of Costs

Within 15 days after service of the notice required by section (a) of this Rule, each party may file (1) exceptions to the findings and conclusions of the hearing judge, (2) recommendations concerning the appropriate disposition under Rule 19-729 (c), and (3) a statement of costs to which the party may be entitled under Rule 19-709.

(c) Response

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

(d) Form

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

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

REPORTER'S NOTE

Proposed Rule 19-728, Post-Hearing Proceedings, carries forward the provisions of current Rule 16-758.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-729. PROCEEDINGS IN COURT OF APPEALS

(a) Oral Argument

The Court shall set a date for oral argument, unless oral argument is waived by the parties. Oral argument shall be conducted in accordance with Rule 8-522.

(b) Review by Court of Appeals

(1) Conclusions of Law

The Court of Appeals shall review de novo the circuit court judge's conclusions of law.

(2) Findings of Fact

(A) If No Exceptions are Filed

If no exceptions are filed, the Court may treat the findings of fact as established.

(B) If Exceptions are Filed

If exceptions are filed, the Court of Appeals shall determine whether the findings of fact have been proved by the requisite standard of proof set out in Rule 19-727 (c). The Court may confine its review to the findings of fact challenged by the exceptions. The Court shall give due regard to the opportunity of the hearing judge to assess the credibility of witnesses.

(c) Disposition

The Court of Appeals may order (1) disbarment, (2) suspension, (3) reprimand, (4) inactive status, (5) dismissal of the disciplinary or remedial action, or (6) a remand for further proceedings.

(d) Decision

The decision of the Court of Appeals is final. The decision shall be evidenced by an order which the clerk shall certify under the seal of the Court. The order may be accompanied by an opinion.

Source: This Rule is derived from former Rule 16-759 (2016).

REPORTER'S NOTE

Proposed Rule 19-729, Proceedings in Court of Appeals, is derived from current Rule 16-759. Section (b) of current Rule 16-759, Review by Court of Appeals, authorizes the Court to treat findings of fact as established "for the purpose of determining appropriate sanctions, if any." The quoted language is deleted because findings of fact also may be relevant to determine whether the attorney committed the misconduct. Stylistic changes are made.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

SPECIAL PROCEEDINGS

Rule 19-731. AUDIT OF ATTORNEY ACCOUNTS AND RECORDS

(a) Action for Audit

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

(b) Petition

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

(c) Caption

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

(d) Show Cause Order; Service

The court shall enter an order giving the attorney notice

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

(e) Response to Petition

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

(f) Order Directing Audit

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

(g) Finality of Order

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

(h) Duty of Clerk to Preserve Confidentiality

The clerk shall maintain a separate docket with an index for proceedings under this Rule. The docket entries shall not identify the attorney against whom the petition is filed.

Pleadings and other papers filed in the proceedings shall be stamped "confidential" and sealed in accordance with Rule 19-707 (b) (2) (I) at the time they are filed. The docket, index, and papers in the proceedings shall not be open to inspection by any person, including the parties, except upon order of court after reasonable notice and for good cause shown.

(i) Cost of Audit

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

(j) Remedy Not Exclusive

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

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

REPORTER'S NOTE

Proposed Rule 19-731, Audit of Attorney Accounts and Records, is derived from current Rule 16-722. Language in section (b) regarding confidentiality has been deleted because confidentiality with respect to audits is addressed in proposed Rule 19-707 (b) (2) (I). Stylistic changes are made.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-732. INJUNCTION; EXPEDITED ACTION

(a) Authority to Seek Injunction

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

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

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

(b) Parties

The action for injunction shall be brought in the name of

the Commission against the attorney whose conduct is alleged to be causing or threatening the harm and against any other person alleged to be assisting or acting in concert with the attorney.

(c) Effect of Investigation or Disciplinary or Remedial Proceeding

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

(d) Order Granting Injunction

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

(e) Service on Financial Institution

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

(f) Expedited Disciplinary or Remedial Action

(1) Filing of Petition

When an injunction is issued pursuant to this Rule,

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

(2) Action on Petition

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

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

REPORTER'S NOTE

Proposed Rule 19-732, Injunction; Expedited Action, is derived from current Rule 16-776. Section (a), Authority to Seek Injunction, and (d), Order Granting Injunction, have been amended to include attorneys who have incapacities along with those who have engaged in professional misconduct. Stylistic changes are made.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-733. REFERRAL FROM CHILD SUPPORT ENFORCEMENT
ADMINISTRATION

(a) Referral

The Commission promptly shall transmit to Bar Counsel a referral from the Child Support Enforcement Administration pursuant to Code, Family Law Article, §10-119.3 (e) (3) and direct Bar Counsel to file a Petition for Disciplinary or Remedial Action in the Court of Appeals pursuant to Rule 19-721 (a) (1). A copy of the Administration's referral shall be attached to the Petition, and a copy of the Petition and notice shall be served on the attorney in accordance with Rule 19-723.

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

(b) Show Cause Order

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

(c) Action by the Court of Appeals

Upon consideration of the petition and any answer to the order to show cause, the Court of Appeals may enter an order: (1)

immediately and indefinitely suspending the attorney from the practice of law, (2) designating a judge pursuant to Rule 19-722 to hold a hearing in accordance with Rule 19-727, or (3) containing any other appropriate provisions. The provisions of Rules 19-741 through 19-744, as applicable, apply to an order under this section that suspends an attorney.

(d) Presumptive Effect of Referral

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

(e) Termination of Suspension

(1) On Notification by the Child Support Enforcement Administration

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

(2) On Verified Petition by Attorney

In the absence of a notification by the Child Support Enforcement Administration pursuant to subsection (e) (1) of this

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

(f) Other Disciplinary Proceedings

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

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

REPORTER'S NOTE

Proposed Rule 19-733, Referral from Child Support Enforcement Administration, is derived from current Rule 16-778. References to Rules that are proposed to be renumbered are changed.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-734. CONSERVATOR OF CLIENT MATTERS

(a) Appointment; When Authorized; Service

If (1) an attorney dies, disappears, has been disbarred, suspended, or placed on inactive status, or is incapacitated or has abandoned the practice of law, (2) there are open client matters, and (3) and there is not known to exist any personal representative, partner, or other individual who is willing to conduct and capable of conducting the attorney's client affairs, Bar Counsel may file a petition requesting the appointment of a conservator to inventory the attorney's files and to take other appropriate action to protect the attorney's clients. The petition shall be served in accordance with Rule 2-121.

(b) Petition and Order

The petition to appoint a conservator may be filed in the circuit court in any county in which the attorney maintained an office for the practice of law. Upon such proof of the facts as the court may require, the court may enter an order appointing an attorney approved by Bar Counsel to serve as conservator subject to further order of the court.

(c) Inventory

Promptly upon accepting the appointment, the conservator shall take possession and prepare an inventory of the attorney's

files, take control of the attorney's trust and business accounts, review the files and accounts, identify open matters, and note the matters requiring action.

(d) Disposition of Files

With the consent of the client or the approval of the court, the conservator may assist the client in finding new counsel, assume responsibility for specific matters, or refer the client's open matters to attorneys willing to handle them.

(e) Sale of Law Practice

With the approval of the court, the conservator may sell the attorney's law practice in accordance with Rule 19-301.17 (1.17) of the Maryland Attorneys' Rules of Professional Conduct.

(f) Compensation

(1) Entitlement

The conservator is entitled to periodic payment from the attorney's assets or estate for reasonable hourly attorney's fees and reimbursement for expenditures reasonably incurred in carrying out the order of appointment.

(2) Motion for Judgment

Upon verified motion served on the attorney at the attorney's last known address or, if the attorney is deceased, on the personal representative of the attorney, the court may order payment to the conservator and enter judgment against the attorney or personal representative for the reasonable fees and expenses of the conservator.

(3) Payment from Disciplinary Fund

If the conservator is unable to obtain full payment within one year after entry of judgment, the Commission may authorize payment from the Disciplinary Fund in an amount not exceeding the amount of the judgment that remains unsatisfied. If payment is made from the Disciplinary Fund, the conservator shall assign the judgment to the Commission for the benefit of the Disciplinary Fund.

(g) Confidentiality

A conservator shall not disclose any information contained in a client's file without the consent of the client, except as necessary to carry out the order of appointment.

Source: This Rule is derived from former Rule 16-777 (2016).

REPORTER'S NOTE

Proposed Rule 19-734, Conservator of Client Matters, is derived from current Rule 16-777. A provision is added to section (a) regarding service of a petition requesting the appointment of a conservator. Stylistic changes are made.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-735. RESIGNATION OF ATTORNEY

(a) Application

An application to resign from the practice of law in this State shall be submitted in writing under oath to the Court of Appeals, with a copy to Bar Counsel. The application shall state that the resignation is not being offered to avoid disciplinary action and that the attorney has no knowledge of any pending investigation, action, or proceedings in any jurisdiction involving allegations of professional misconduct by the attorney.

(b) When Attorney May Not Resign

An attorney may not resign while the attorney is the subject of a disciplinary investigation, action, or proceeding involving allegations of professional misconduct. An application to resign does not prevent or stay any disciplinary action or proceeding against the attorney.

(c) Procedure

Upon receiving a copy of the application submitted in accordance with section (a) of this Rule, Bar Counsel shall investigate the application and file a response with the Clerk of the Court.

(d) Order of the Court of Appeals

The Court of Appeals shall enter an order accepting or

denying the resignation. A resignation is effective only upon entry of an order accepting it.

(e) Duty of Clerk

When the Court enters an order accepting an attorney's resignation, the Clerk of the Court of Appeals shall strike the name of the attorney from the register of attorneys in that Court and shall certify that fact to the Trustees of the Client Protection Fund of the Bar of Maryland and the clerks of all courts in this State. The Clerk shall give any notice required by Rule 19-707 (e).

(f) Effect of Resignation

An attorney may not practice law in this State after entry of an order accepting the attorney's resignation.

(g) Motion to Vacate

On motion of Bar Counsel, the Court may vacate or modify the order if there has been intrinsic or extrinsic fraud.

Source: This Rule is derived from former Rule 16-775 (2016).

REPORTER'S NOTE

Proposed Rule 19-735, Resignation of Attorney, is derived from current Rule 16-775. Stylistic changes are made.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-736. CONSENT TO DISCIPLINE OR INACTIVE STATUS

(a) General Requirement

An attorney may consent to discipline or placement on inactive status in accordance with this Rule.

(b) Consent to Discipline for Misconduct

(1) Joint Petition

An attorney may consent to disbarment or other discipline by joining with Bar Counsel in a petition for an order disbarring the attorney, suspending the attorney from the practice of law, or reprimanding the attorney. The petition shall be signed by the attorney and Bar Counsel and filed in the Court of Appeals. If a suspension is requested, the petition shall state whether the suspension should be indefinite or for a stated period and shall set forth any conditions that the parties agree should be imposed. If a reprimand is requested, the petition shall state the proposed text of the reprimand and any conditions.

(2) Affidavit Required

A joint petition filed under subsection (b) (1) of this Rule shall be accompanied by an affidavit by the attorney that certifies that the attorney:

(A) is aware that an investigation or proceeding is currently pending involving allegations of professional

misconduct, the nature of which shall be specifically set forth;

(B) knows that if a hearing were to be held, sufficient evidence could be produced to sustain the allegations of misconduct;

(C) consents to the disbarment or other discipline stated in the petition;

(D) gives the consent freely and voluntarily without coercion or duress;

(E) is aware of the effects of the disbarment or other discipline to which the attorney is consenting; and

(F) agrees to comply with Rule 19-742 and any conditions stated in the petition that the Court of Appeals may impose.

(3) Order of the Court of Appeals

Upon the filing of the joint petition and the affidavit, the Court of Appeals may enter an order, signed by the Chief Judge or a judge designated by the Chief Judge, disbarring the attorney by consent from the practice of law in the State, suspending the attorney by consent from the practice of law, or reprimanding the attorney by consent and imposing any conditions stated in the petition. The provisions of Rule 19-742 apply to an order entered under ~~this~~ subsection (b) (3) of this Rule.

(c) Consent to Placement on Inactive Status

(1) Joint Petition

If competent to do so, an attorney may consent to placement on inactive status by joining with Bar Counsel in a petition for an order placing the attorney on inactive status.

The petition shall be signed by the attorney and Bar Counsel and filed in the Court of Appeals. The petition shall state whether the inactive status should be indefinite or until the occurrence of a specified event and shall set forth any conditions that the parties agree should be imposed.

(2) Affidavit Required

A joint petition filed under subsection (c)(1) of this Rule shall be accompanied by an affidavit by the attorney that certifies that the attorney:

(A) understands and is competent to make the other certifications in subsection (c)(2) of this Rule;

(B) consents to the placement on inactive status;

(C) gives the consent freely and voluntarily without coercion or duress;

(D) is currently incapacitated and unable to render adequate legal service;

(E) knows that if a hearing were to be held, Bar Counsel would have the burden of proving by clear and convincing evidence that the attorney is so incapacitated as to require the attorney to be placed on inactive status;

(F) understands that being placed on inactive status, if ordered by the Court of Appeals, terminates the attorney's privilege to practice law in this State until otherwise ordered by the Court;

(G) agrees to comply with Rule 19-744 and any conditions stated in the petition that the Court of Appeals may impose;

(H) understands that the attorney may not be reinstated to practice law unless the attorney is able to prove by a preponderance of the evidence that the attorney has regained the ability to render adequate legal services, that inactive status should be terminated, and that the attorney should be reinstated to active practice;

(I) has disclosed to Bar Counsel the name of every physician, other health care provider, and health care facility by whom or at which the attorney has been examined, evaluated, or treated; and

(J) has furnished Bar Counsel with written consent to the release of such health care information and records as Bar Counsel has requested and waived any privilege as to such information and records.

(3) Order of the Court of Appeals

Upon the filing of the joint petition and affidavit, the Court of Appeals may enter an order, signed by the Chief Judge or a judge designated by the Chief Judge, placing the attorney on inactive status by consent pending further order of the Court and imposing any conditions stated in the petition. The provisions of Rule 19-744 apply to an order entered under subsection (c)(3) of this Rule.

(d) Duty of Clerk

When an attorney has been disbarred, suspended, or placed on inactive status under this Rule, the Clerk of the Court of Appeals shall comply with Rule 19-761.

(e) Effect of Denial

If the Court of Appeals denies a joint petition for discipline or inactive status, the investigation or disciplinary or remedial proceeding shall resume as if no consent had been given. Neither the joint petition nor the affidavit may be admitted in evidence.

Source: This Rule is derived from former Rule 16-772 (2016).

REPORTER'S NOTE

Proposed Rule 19-736, Consent to Discipline or Inactive Status, is derived from current Rule 16-772.

Language is added to subsection (c)(1) to ensure that an attorney may consent to placement on inactive status only if competent to do so. Language is added to subsection (c)(2) to require that an attorney who consents to be placed on inactive status certify that he or she understands and is competent to make the other certifications required in subsection (c)(2).

In section (d), a reference to new Rule 19-761 replaces the details contained in the current Rule.

Stylistic changes are made.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-737. RECIPROCAL DISCIPLINE OR INACTIVE STATUS

(a) Duty of Attorney

An attorney who in another jurisdiction (1) is disbarred, suspended, or otherwise disciplined, (2) resigns from the bar while disciplinary or remedial action is threatened or pending in that jurisdiction, or (3) is placed on inactive status based on incapacity shall inform Bar Counsel promptly of the discipline, resignation, or inactive status.

(b) Petition in Court of Appeals

Upon receiving and verifying information from any source that in another jurisdiction an attorney has been disciplined or placed on inactive status based on incapacity, Bar Counsel may file a Petition for Disciplinary or Remedial Action in the Court of Appeals pursuant to Rule 19-721 (a) (2). A certified copy of the disciplinary or remedial order shall be attached to the Petition, and a copy of the Petition and order shall be served on the attorney in accordance with Rule 19-723.

(c) Show Cause Order

When a petition and certified copy of a disciplinary or remedial order have been filed, the Court of Appeals shall order that Bar Counsel and the attorney, within the time specified in the order, show cause in writing based upon any of the grounds

set forth in section (e) of this Rule why corresponding discipline or inactive status should not be imposed. A copy of the show cause order shall be served in accordance with Rule 19-723.

(d) Temporary Suspension of Attorney

When the petition and disciplinary or remedial order demonstrate that an attorney has been disbarred or is currently suspended from practice by final order of a court in another jurisdiction, the Court of Appeals may enter an order, effective immediately, suspending the attorney from the practice of law, pending further order of Court. The provisions of Rules 19-742 or 19-744, as applicable, apply to an order suspending an attorney under this section.

(e) Exceptional Circumstances

Reciprocal discipline shall not be ordered if Bar Counsel or the attorney demonstrates by clear and convincing evidence that:

(1) the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(2) there was such infirmity of proof establishing the misconduct as to give rise to a clear conviction that the Court, consistent with its duty, cannot accept as final the determination of misconduct;

(3) the imposition of corresponding discipline would result in grave injustice;

(4) the conduct established does not constitute misconduct in

this State or it warrants substantially different discipline in this State; or

(5) the reason for inactive status no longer exists.

(f) Action by Court of Appeals

Upon consideration of the petition and any answer to the order to show cause, the Court of Appeals may: (1) immediately impose corresponding discipline or inactive status; (2) enter an order designating a judge pursuant to Rule 19-722 to hold a hearing in accordance with Rule 19-727; or (3) enter any other appropriate order. The provisions of Rules 19-742 or 19-744, as applicable, apply to an order under this section that disbars or suspends an attorney or that places the attorney on inactive status.

(g) Conclusive Effect of Adjudication

Except as provided in subsections (e) (1) and (e) (2) of this Rule, a final adjudication in a disciplinary or remedial proceeding by another court, agency, or tribunal that an attorney has been guilty of professional misconduct or is incapacitated is conclusive evidence of that misconduct or incapacity in any proceeding under this Chapter. The introduction of such evidence does not preclude the Commission or Bar Counsel from introducing additional evidence or preclude the attorney from introducing evidence or otherwise showing cause why no discipline or lesser discipline should be imposed.

(h) Effect of Stay in Other Jurisdiction

If the other jurisdiction has stayed the discipline or

inactive status, any proceedings under this Rule shall be deferred until the stay is no longer operative and the discipline or inactive status becomes effective.

(i) Duties of Clerk of Court of Appeals

The applicable provisions of Rule 19-761 apply when an order is entered under this Rule.

Source: This Rule is derived from former Rule 16-773 (2016).

REPORTER'S NOTE

Proposed Rule 19-737, Reciprocal Discipline or Inactive Status, is derived from current Rule 16-773. Section (c), Show Cause Order, is to require that, within the time specified in the order, Bar Counsel and the attorney show cause why corresponding discipline or inactive status should not be imposed. A provision is added to section (c) requiring the show cause order be served in accordance with proposed Rule 19-723, Service of Petition and Order.

Section (i) is new.

Stylistic changes are made.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-738. DISCIPLINE ON CONVICTION OF CRIME

(a) Definition

In this Rule, "conviction" includes a judgment of conviction entered upon acceptance by the court of a plea of nolo contendere.

(b) Duty of Attorney

An attorney charged with a serious crime in this State or any other jurisdiction shall promptly inform Bar Counsel in writing of (1) the filing of the charge, (2) any finding or verdict of guilty on such charge, and (3) the entry of a judgment of conviction on such charge.

Cross reference: Rule 19-701 (1).

(c) Petition Upon Conviction

(1) Generally

Upon receiving and verifying information from any source that an attorney has been convicted of a serious crime, Bar Counsel may file a Petition for Disciplinary or Remedial Action pursuant to Rule 19-721 (a) (2). The petition may be filed whether an appeal or any other post-conviction proceeding is pending.

(2) Contents

The petition shall allege the fact of the conviction and

include a request that the attorney be suspended immediately from the practice of law. A certified copy of the judgment of conviction shall be attached to the petition and shall be prima facie evidence of the fact that the attorney was convicted of the crime charged.

(d) Temporary Suspension

Upon filing of the petition pursuant to section (c) of this Rule, the Court of Appeals shall issue an order requiring the attorney to show cause within 15 days from the date of the order why the attorney should not be suspended immediately from the practice of law until the further order of the Court of Appeals. If, after consideration of the petition and the answer to the order to show cause, the Court of Appeals determines that the attorney has been convicted of a serious crime, the Court may enter an order suspending the attorney from the practice of law until final disposition of the disciplinary or remedial action. The Court of Appeals shall vacate the order and terminate the suspension if the conviction is reversed or vacated.

Cross reference: Rule 19-742.

(e) Petition When Imposition of Sentence is Delayed

(1) Generally

Upon receiving and verifying information from any source that an attorney has been found guilty of a serious crime but that sentencing has been delayed for a period of more than 30 days, Bar Counsel may file a Petition for Interim Disciplinary or Remedial Action. The petition may be filed whether or not a

motion for new trial or other relief is pending.

(2) Contents

The petition shall allege the finding of guilt and the delay in sentencing and request that the attorney be suspended immediately from the practice of law pending the imposition of sentence and entry of a judgment of conviction. Bar Counsel shall attach to the petition a certified copy of the docket reflecting the finding of guilt, which shall be prima facie evidence that the attorney was found guilty of the crime charged.

(3) Interim Temporary Suspension

Upon the filing of the petition, the Court of Appeals shall issue an order requiring the attorney to show cause within the time specified in the order why the attorney should not be suspended immediately from the practice of law, on an interim basis, until further order of the Court of Appeals. If, after consideration of the petition and any answer to the order to show cause, the Court of Appeals determines that the attorney was found guilty of a serious crime but that sentencing has been delayed for a period of more than 30 days, the Court may enter an order suspending the attorney from the practice of law on an interim basis pending further action by the trial court and further order of the Court of Appeals.

(4) Entry of Judgment of Conviction or Order for New Trial

Upon the imposition of sentence and entry of a judgment of conviction or upon the granting of a new trial by the trial court, Bar Counsel shall inform the Court of Appeals and attach a

certified copy of the judgment of conviction or order granting a new trial. If a judgment of conviction was entered, Bar Counsel may file a petition under section (c) of this Rule. The Court shall then proceed in accordance with section (d) of this Rule but may order that any interim suspension remain in effect pending disposition of the new petition. If the trial court has vacated the finding of guilt and granted a new trial, or if the attorney received probation before judgment, the Court of Appeals shall dismiss the petition for interim suspension and terminate any interim suspension that has been ordered.

(f) Statement of Charges

If the Court of Appeals denies a petition filed under section (c) of this Rule, Bar Counsel may file a Statement of Charges under Rule 19-718.

(g) Further Proceedings

When a petition filed pursuant to section (c) of this Rule alleges the conviction of a serious crime and the attorney denies the conviction, the Court of Appeals may enter an order designating a judge pursuant to Rule 19-722 to hold a hearing in accordance with Rule 19-727.

(1) No Appeal of Conviction

If the attorney does not appeal the conviction, the hearing shall be held within a reasonable time after the time for appeal has expired.

(2) Appeal of Conviction

If the attorney appeals the conviction, the hearing shall

be delayed, except as provided in section (h) of this Rule, until the completion of appellate review.

(A) If, after completion of appellate review, the conviction is reversed or vacated, the judge to whom the action is assigned shall either dismiss the petition or hear the action on the basis of evidence other than the conviction.

(B) If, after the completion of appellate review, the conviction is not reversed or vacated, the hearing shall be held within a reasonable time after the mandate is issued.

(3) Effect of Incarceration

If the attorney is incarcerated as a result of the conviction, the hearing shall be delayed until the termination of incarceration unless the attorney requests an earlier hearing and makes all arrangements (including financial arrangements) to attend the hearing or waives the right to attend.

(h) Right to Earlier Hearing

If the hearing on the petition has been delayed under subsection (g) (2) of this Rule and the attorney has been suspended from the practice of law under section (d) of this Rule, the attorney may request that the judge to whom the action is assigned hold an earlier hearing, at which the conviction shall be considered a final judgment.

(i) Conclusive Effect of Final Conviction

In any proceeding under this Chapter, a final judgment of any court of record convicting an attorney of a crime, whether the conviction resulted from acceptance by the court of a plea of

guilty, or nolo contendere, or a verdict after trial, is conclusive evidence of the attorney's guilt of that crime. As used in this Rule, "final judgment" means a judgment as to which all rights to direct appellate review have been exhausted. The introduction of the judgment does not preclude the Commission or Bar Counsel from introducing additional evidence or the attorney from introducing evidence or otherwise showing cause why no discipline should be imposed.

(j) Duties of Clerk of Court of Appeals

The applicable provisions of Rule 19-761 apply when an order is entered under this Rule.

Source: This Rule is derived from former Rule 16-771 (2016).

REPORTER'S NOTE

Proposed Rule 19-738, Discipline on Conviction of Crime, is derived from current Rule 16-771.

Section (a) is new. It defines "conviction" to include a judgment of conviction entered upon acceptance by the court court's acceptance of a plea of nolo contendere. Language is added to section (b) that requires the attorney to notify Bar Counsel of the filing of the charge, any finding or verdict of guilty on the charge, and the entry of judgment on the charge. Current Rule 16-771 requires only that the attorney inform Bar Counsel of the charge and the final disposition of the charge.

Section (e) is new. If sentencing is delayed for more than 30 days Bar Counsel may file a petition for interim disciplinary or remedial action upon receiving information that an attorney has been found guilty of a serious crime. Under the current Rule, Bar Counsel cannot file a petition for disciplinary or remedial action until there is a judgment of conviction. The amendment is beneficial because it provides greater protection to the public by enjoining, on an interim basis, an attorney from practicing until a sentence is imposed.

Subsection (e) (2) outlines the contents of the petition. The petition must allege the finding of guilt, the delay in

sentencing, and request that the attorney be suspended immediately, pending the imposition of a sentence and entry of a judgment of conviction. A certified copy of the docket reflecting the finding of guilt must be attached to the petition and shall serve as prima facie evidence that the attorney was found guilty of the crime charge.

Subsection (e) (3) states that the Court of Appeals shall issue a show cause order upon the filing of a petition for interim disciplinary or remedial action. If, after considering the petition and any response to the show cause order, the Court determines that the attorney has been found guilty of a serious crime and sentencing has been delayed for more than 30 days, the Court may enter an order suspending the attorney on an interim basis.

Subsection (e) (4) directs that, upon the imposition of sentence and entry of a judgment of conviction, or upon an order for a new trial, Bar Counsel shall inform the Court of Appeals and attach a certified copy of the judgment of conviction or order granting a new trial. If a judgment of conviction was entered, Bar Counsel shall file a petition upon conviction in accordance with section (c), and the Court shall proceed in accordance with section (d), Temporary Suspension, but may order that any interim suspension remain in effect pending disposition on the new petition. If a new trial is granted, or the attorney received probation before judgment, the Court shall dismiss the petition and terminate any suspension that has been ordered.

Section (j) is new.

Stylistic changes are made.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-739. SUMMARY PLACEMENT ON INACTIVE STATUS

(a) Grounds

An attorney may be placed summarily on inactive status for an indefinite period if the attorney has been judicially determined to be mentally incompetent or to require a guardian of the person for any of the reasons stated in Code, Estates and Trusts Article, §13-705 (b), or, in accordance with law, has been involuntarily admitted to a facility for inpatient care treatment of a mental disorder.

(b) Procedure

(1) Petition for Summary Placement; Confidentiality

With the approval of the Commission, Bar Counsel may file a petition to summarily place an attorney on inactive status in accordance with Rule 19-721. The petition shall be supported by a certified copy of the judicial determination or involuntary admission. The petition and all other papers filed in the Court of Appeals shall be sealed and stamped "confidential" in accordance with Rule 19-707 (b) (2) (H).

(2) Service

The petition and all papers filed with the petition shall be served upon the attorney in accordance with Rule 19-723 and, in addition, upon any guardian of the person of the attorney and

the director of any facility to which the attorney has been admitted. Proof of service shall be made in accordance with Rule 2-126.

(c) Order of the Court of Appeals

Upon consideration of the petition and any answer, the Court of Appeals may: (1) immediately place the attorney on inactive status for an indefinite period pending further order of the Court; (2) enter an order designating a judge in accordance with Rule 19-722 to hold a hearing in accordance with Rule 19-727; or (3) enter any other appropriate order. The provisions of Rule 19-744 apply to an order that places an attorney on inactive status. Copies of the order shall be served upon Bar Counsel and each person named in the proof of service of the petition.

(d) Effect on Disciplinary or Remedial Proceeding

If a disciplinary or remedial proceeding for alleged misconduct is pending against the attorney, the entry of an order under this section shall stay the proceeding until the further order of the Court.

(e) Termination of Inactive Status

When an attorney who has been placed on inactive status under section (c) of this Rule is judicially determined to be competent or is judicially released after involuntary admission, the Court of Appeals shall terminate the inactive status and either dismiss the petition or enter an order designating a judge in accordance with Rule 19-722 to hold a hearing in accordance with Rule 19-727.

(f) Duties of Clerk of Court of Appeals

The applicable provisions of Rule 19-761 apply when an order is entered under this Rule.

Source: This Rule is derived from former Rule 16-774 (2016).

REPORTER'S NOTE

Proposed Rule 19-739, Summary Placement on Inactive Status, is derived from current Rule 16-774. Section (f) is new. Stylistic changes are made.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-740. PERMANENT RETIRED STATUS

(a) Purpose

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

(b) Criteria

Upon completing an investigation and upon agreement of the attorney, Bar Counsel may recommend to the Commission that the attorney be placed on permanent retired status if Bar Counsel concludes that:

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

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

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

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

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

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

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

(c) Action by Commission

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

(1) the Commission may approve permanent retired status for the attorney, if satisfied that it is appropriate under the circumstances, in which event the attorney, upon notice of the Commission's written approval and upon the date specified by the Commission, shall take the actions set forth in section (f) of this Rule, and Bar Counsel shall terminate the disciplinary or remedial proceeding; or

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

(d) Effect of Disapproval

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

(e) Effect of Permanent Retired Status

An attorney who has been placed on permanent retired status:

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

(2) shall, by such date, notify the Client Protection Fund,

in writing, of the Commission's approval of permanent retired status, and shall include with such notice a copy of the Commission's approval;

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

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

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

(f) Extension

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

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

REPORTER'S NOTE

Rule 19-740 carries forward the provisions of current Rule 16-738.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

DISPOSITIONS BY COURT OF APPEALS

Rule 19-741. DISPOSITION - GENERALLY

(a) Oral Argument

Unless oral argument is waived by the parties, the Court shall set a date for oral argument. Oral argument shall be conducted in accordance with Rule 8-522.

(b) Review by Court of Appeals

(1) Conclusions of Law

The Court of Appeals shall review de novo the circuit court judge's conclusions of law.

(2) Findings of Fact

(A) If No Exceptions are Filed

If no exceptions are filed, the Court may treat the findings of fact as established.

(B) If Exceptions are Filed

If exceptions are filed, the Court of Appeals shall determine whether the findings of fact have been proved by the requisite standard of proof set out in Rule 19-727 (c). The Court may confine its review to the findings of fact challenged by the exceptions. The Court shall give due regard to the opportunity of the hearing judge to assess the credibility of

witnesses.

(c) Disposition

(1) Generally

The Court of Appeals may order (A) disbarment, (B) suspension, (C) a reprimand, (D) placement on inactive status, (E) dismissal of the disciplinary or remedial action, or (F) a remand for further proceedings.

(2) If Suspension Ordered

The court may order a suspension for a fixed period of time or indefinitely. An order for indefinite suspension may provide that the attorney may not seek reinstatement until the expiration of a specified period.

Cross reference: For reinstatement, including reinstatement following a suspension for a fixed period, see Rules 19-751 and 19-752.

(d) Decision

The decision of the Court of Appeals is final. The decision shall be evidenced by an order which the clerk shall certify under the seal of the Court. The order may be accompanied by an opinion.

(e) Effective Date of Order

Unless otherwise stated in the order, an order providing for the disbarment, suspension, or reprimand of an attorney or the placement of an attorney on inactive status shall take effect upon its filing with the Clerk of the Court.

Cross reference: For duties of the Clerk of Court of Appeals upon entry of certain orders, see Rule 19-761.

Source: This Rule is derived from former Rule 16-759 (2016).

REPORTER'S NOTE

Proposed Rule 19-741, Disposition - Generally, is derived from current Rule 16-759. Section (b) of current Rule 16-759, Review by Court of Appeals, authorizes the Court to treat findings of fact as established "for the purpose of determining appropriate sanctions, if any." The quoted language is proposed to be deleted because findings of fact also may be relevant to determine whether the attorney committed the misconduct.

Subsection (c)(2) is new and deals exclusively with suspension. It states that the Court may order a suspension for a fixed period or indefinitely. The order may provide that the attorney must wait until the expiration of a specified period before seeking reinstatement. A cross reference to the Rules regarding reinstatement is added.

Section (e) is new. It states that an order for disbarment, suspension, or reprimand is effective upon filing with the Clerk of the Court, unless otherwise provided in the order.

Stylistic changes are made.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-742. ORDER OF DISBARMENT OR SUSPENSION

(a) Duties of Clerk

Upon the filing of an order of disbarment or suspension, the Clerk of the Court of Appeals shall (1) notify the attorney in writing by first-class mail, and, if practicable, by electronic mail, and (2) comply with Rule 19-761.

(b) Effect of Order

Except as provided in section (c) of this Rule, after the effective date of an order of disbarment or suspension, an attorney may not:

(1) practice law or offer to practice law in this State, either directly or through any other person;

(2) undertake any new representation of existing clients or any representation of new clients;

(3) solicit or procure any legal business or retainer for an attorney, whether or not for personal gain;

(4) share in any fees for legal services performed by another attorney, but may be compensated for the reasonable value of services rendered prior to the effective date of the order;

(5) use any business card, sign, advertisement, social networking media, website, or other form of communication suggesting that the attorney is entitled to practice law or

maintain, alone or with another, an office for the practice of law; or

Committee note: Examples of social networking media include Facebook, LinkedIn, Myspace, and Twitter.

(6) except for the limited purpose of complying with the requirements of section (c) of this Rule:

(A) occupy, share, or use office space in which an attorney practices law unless under circumstances clearly indicating to clients, prospective clients, and individuals who may visit the office that the attorney is not an attorney and is not permitted to practice law; or

(B) use any stationery, bank account, checks, or labels on which the attorney's name appears as an attorney or in connection with any office for the practice of law.

Cross reference: For the applicability of the provisions of section (b) of this Rule to an attorney who is placed on permanent retired status, see Rule 19-740 (e) (4).

(c) Affirmative Duties of Attorney

Unless the Court orders otherwise, an attorney who has been disbarred or suspended shall take the following actions:

(1) Requirements to be Completed within 15 Days

Within 15 days after the effective date of the order, the attorney shall:

(A) conclude all client matters that can be concluded within that period;

(B) supply to Bar Counsel or an attorney designated by Bar Counsel pursuant to section (e) of this Rule (i) the names,

addresses, and telephone numbers of all of the attorney's current clients and (ii) identify, by client name, tribunal, and docket reference, all client matters pending in any court or other tribunal or agency; and

(C) mail a letter giving notice of the order and of the effective date of the attorney's disbarment or suspension to (i) all of the attorney's current clients, (ii) counsel for each party and any self-represented party in all pending actions, proceedings, negotiations, or transactions, and (iii) each attorney with whom the attorney is associated in the practice of law.

Committee note: An attorney's current clients include persons who have hired the attorney on retainer. A person may be a current client even if the attorney was not actively performing any legal work for that person on the date of disbarment or suspension.

(2) Requirements to be Completed Promptly and Within 30 Days

As soon as practicable but within 30 days after the effective date of the order, the attorney shall:

(A) take or cause to be taken, without charging any additional fee, any action immediately necessary to protect the interests of current clients which, as a practical matter, cannot otherwise be protected;

Committee note: The intent of subsection (c) (2) (A) of this Rule is to assure that existing clients are not unduly harmed by the attorney's immediate disbarment or suspension by requiring the attorney, during a brief grace period and without any additional fee, to deal with urgent matters necessary to protect the clients' interests, such things as requesting a postponement of closely impending hearings or trials or filing a paper in a pending case which, if not done prior to the client's practical ability to obtain another attorney, would result in significant

harm to the client. See *Attorney Grievance v. Maignan*, 402 Md. 39 (2007). This is intended as a very narrow and time-limited exception to the prohibition against practicing law. Because the need for such action arises solely from the attorney's disbarment or suspension, the Rule prohibits the charging of a fee for those services.

(B) inform current clients, in writing, that the client may obtain another attorney, and that it may be necessary for the client to obtain another attorney depending upon the status of the client's case or legal matter.

(C) deliver to clients with pending matters all papers and other property to which the clients are entitled or notify the clients and any co-counsel of a suitable time and place to obtain the papers and property and call attention to any urgent need to obtain them;

(D) notify the disciplinary authority in each jurisdiction in which the attorney is admitted to practice of the disciplinary sanction imposed by the Court of Appeals; and

(E) unless the attorney is suspended for a fixed period of time not exceeding one year, request the publisher of each telephone directory or law listing to remove each listing or reference that suggests that the attorney is eligible to practice law; request the attorney's name be removed from the law firm's website and letterhead; and remove any reference that the attorney is eligible to practice law from any website or social networking profile, regardless of whether the website or profile is that of the attorney individually or of a law firm or other group or entity.

(3) Requirements to be Completed within 30 Days

Within 30 days after the effective date of the order, the attorney shall:

(A) withdraw from all client matters; and

(B) file with Bar Counsel an affidavit that states or is accompanied by:

(i) the manner and extent to which the attorney has complied with the order and this Rule;

(ii) all actions taken by the attorney pursuant to subsection (b) (2) (A) and (B) of this Rule;

(iii) the names of all State and Federal jurisdictions in which and administrative agencies before which the attorney has been admitted to practice;

(iv) the residence and other addresses of the attorney to which future communications may be directed;

(v) the name and address of each insurer that provided malpractice insurance coverage to the attorney during the past five years, the policy number of each policy, and the inclusive dates of coverage; and

(vi) a copy of each letter sent pursuant to subsection (b) (1) (C) of this Rule.

(d) Duties of Bar Counsel

Bar Counsel shall enforce the order and the provisions of this Rule. Bar Counsel may designate an attorney to monitor compliance by the disbarred or suspended attorney and to receive the lists and copies of letters required by subsections (c) (1) (B)

and (c) (2) (B) of this Rule.

(e) Conditions on Reinstatement

(1) Time for Application

In an order that disbars an attorney or suspends an attorney for an indefinite period, the Court may permit the attorney to apply for reinstatement after a minimum period of time specified in the Order.

(2) Other Conditions to or Upon Reinstatement

In an order of disbarment or suspension for an indefinite period entered under this Rule, the Court may require, as a condition precedent to reinstatement or as a condition of probation after reinstatement, one or more of the requirements set forth in Rule 19-752.

(f) Responsibility of Affiliated Attorneys

After the effective date of an order that disbars or suspends an attorney or places an attorney on inactive status, no attorney may assist the disbarred or suspended attorney in any activity that constitutes the practice of law or in any activity prohibited under section (a) of this Rule. Upon notice of the order, an attorney associated with the disbarred or suspended attorney as a partner, or member or shareholder of a law firm, shall take reasonable action to ensure compliance with this Rule. The law firm may give written notice to any client of the disbarred or suspended attorney of that attorney's inability to practice law and of its willingness to represent the client with the client's consent.

(g) Non-admitted Attorney

(1) Duties of Clerk

On the effective date of an order by the Court of Appeals that disbars or suspends a non-admitted attorney, the Clerk of the Court of Appeals shall place the name of that attorney on a list maintained in that Court of non-admitted attorneys who are excluded from exercising in any manner the privilege of practicing law in the State. The Clerk also shall forward a copy of the order to the clerks of all courts in this State, including the U.S. District Court for the District of Maryland, the U.S. Court of Appeals for the 4th Circuit, and the U.S. Supreme Court, and to the State Court Administrator and the Board of Law Examiners to be maintained with the docket of out-of-state attorneys who are denied special admission to practice under the Rules Governing Admission to the Bar of Maryland. The Clerk shall give the notice required by Rule 19-707 (e).

(2) Effect of Order

After the effective date of an order entered under this section, the attorney may not practice law in this State and is disqualified from admission to the practice of law in this State.

(h) Modification of Order

Upon joint stipulation or verified motion filed by the attorney, the Court of Appeals may reduce a period of suspension, waive a requirement or condition imposed by this Rule or by order, or otherwise modify an order entered under this Rule. Relief may be denied without a hearing unless it appears from the

stipulation or from clear and convincing evidence submitted with the motion that the respondent is attempting in good faith to comply with the order but that full and exact compliance has become impossible or will result in unreasonable hardship. If necessary to resolve a genuine issue of material fact, the Court may enter an order designating a judge in accordance with Rule 19-722 to hold a hearing in accordance with Rule 19-727.

(i) Sanctions for Violations

(1) Disciplinary or Remedial Action

Upon receiving information from any source that the attorney has violated section (b) or (c) of this Rule or the order of the Court of Appeals, Bar Counsel shall investigate the matter. In addition to any other remedy, Bar Counsel may file a Petition for Disciplinary or Remedial Action pursuant to Rule 19-721 based on the violation.

(2) Injunction

Upon receiving information from any source that the attorney is violating sections (b) or (c) of this Rule, Bar Counsel may institute or intervene in an action in any court with jurisdiction to enjoin the respondent from further violations.

(3) Contempt

If the attorney violates an order of the Court of Appeals, Bar Counsel may request the initiation of a proceeding for constructive criminal contempt pursuant to Rule 15-205 and may institute a proceeding for constructive civil contempt pursuant to Rule 15-206.

Source: This Rule is derived, in part, from former Rule 16-760 (2016).

REPORTER'S NOTE

Proposed Rule 19-742, Order of Disbarment or Suspension, is derived from current Rule 16-760.

Current Rule 16-760 covers disbarments, suspensions, reprimands, and placements on inactive status.

Within current Rule 16-760, reprimands are covered by section (b) and treated separately from disbarment or suspension. A new Rule 19-743 has been set aside for reprimands.

Because placement on inactive status, even if triggered by conduct that may constitute a violation of the Maryland Attorneys' Rules of Professional Conduct, is based solely on an "incapacity" rather than a willful ethical violation, the implementation and consequences of such an order may differ from those of a disbarment or suspension. The incapacitated attorney may not be competent to perform the tasks required of a disbarred or suspended attorney to effect a wind-up of pending client matters, and the conditions for readmission may also be different. For clarity, it is proposed to deal with an order placing an attorney on inactive status in a separate Rule (proposed Rule 19-744).

In order to eliminate some perceived ambiguities and redundancies, the provisions of the current Rule are reorganized and some language changes are proposed. Proposed Rule 19-742 and proposed Rule 19-744, which deals with inactive status, are drafted as total replacements of current Rule 16-760. A major part of the reorganization consists of combining current Rule 16-760 (c) (1) and (c) (2), Duties of Respondent, and (d), Effect of Order; Prohibited Acts.

Section (a) of proposed Rule 19-742 is derived from current Rule 16-760 (e). It adds the requirement that, upon the filing of an order of disbarment or suspension, the Clerk of the Court of Appeals notify the attorney in writing by mail, and if practicable, by electronic mail. The Clerk also must comply with the requirements of new Rule 19-761.

Language is added to subsection (b) (5) that prohibits an attorney from using any social networking media to suggest that he or she is eligible to practice law. A Committee note following subsection (b) (5) is added which lists examples of social networking media.

Subsection (b) (6), which is not articulated in the current Rule, is added to recognize that, in order to protect the interests of existing clients and to conclude client matters that must be concluded, a disbarred or suspended attorney may need to access files and other records maintained at the attorney's former law office and may need to use trust fund account checks in order to distribute client funds and close out the trust account.

The provisions of section (c) are taken from current Rule 16-760 (c), Duties of Respondent. Those duties and requirements have different effective dates and time deadlines. Some require completion "promptly," others require completion within 15 days or 30 days. Proposed section (c) reorganizes the requirements and duties based on when they take effect or must be completed. Because some of these requirements and duties may be unnecessary or impracticable when the attorney is suspended for a fixed, short period, the Rule provides the Court with flexibility in drafting its order.

A Committee note following subsection (c) (1) is added to make clear that a person may be considered a "current client" even if the attorney was not performing legal services for that person at the time of the disbarment or suspension. For example, a company that has hired an attorney on retainer to perform legal work as-needed may be considered a "current client" for purposes of section (c).

The language in subsection (c) (2) (A) and the accompanying Committee note state that the attorney must take any action immediately necessary to protect the interests of current clients, which could not otherwise be protected. This provision is important to ensure that urgent matters will not be ignored and that the attorney's clients will not be unfairly harmed by the disbarment or suspension.

Subsection (c) (2) (B) requires the attorney to inform current clients that they may wish to obtain another attorney, and in fact, it may be necessary to obtain another attorney depending upon the status of the client's legal matter.

Section (e) provides for the conditions on reinstatement. Current Rule 16-760 (h) specifies a number of conditions to reinstatement that the Court may include in an order. Current Rule 16-781 (g) also lists certain criteria for reinstatement. The Committee decided that it may be more appropriate to list the conditions to reinstatement in the reinstatement Rules rather than in the disciplinary order. The Court may not know at the time it imposes discipline which conditions may be appropriate months or years later, and also may be guided by Bar Counsel's recommendations in the response to the attorney's petition for

reinstatement. Therefore, the specific conditions and the section on monitors in current Rule 16-760 are moved to proposed Rule 19-752, Reinstatement - Other Suspension; Disbarment, Inactive Status; Resignation. However, section (e) preserves the right of the Court to include conditions in the disciplinary order should it choose to do so.

Stylistic changes are made.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-743. ORDER OF REPRIMAND

(a) Accompanying Requirements

As part of a reprimand, the Court may require the attorney:

(1) to reimburse a client for any part of fees paid in advance for legal services that were not completed;

(2) to make restitution to a client for any other sum found to be due to the client;

(3) to pay all costs assessed by the order of reprimand;

(4) to issue a public apology to designated persons; and

(5) to take any other corrective action that the Court finds reasonable and appropriate.

(b) Content of Order

Unless accompanied by a reported opinion, an order that reprimands an attorney shall (1) summarize the misconduct for which the reprimand is imposed, (2) include specific reference to any rule or statute violated by the attorney, and (3) state any requirements imposed on the attorney pursuant to section (a) of this Rule. Upon the entry of an order that reprimands an attorney, the Clerk of the Court of Appeals shall give the notice required by Rule 19-707 (e).

Source: This Rule is derived from former Rule 16-760 (b) (2016).

REPORTER'S NOTE

Proposed Rule 19-743, Order of Reprimand, is derived from current Rule 16-760 (b).

Current Rule 16-760 (b) permits the Court, in an order of reprimand, to impose any conditions stated in section (h) of that Rule. Section (h) characterizes those conditions as conditions precedent to reinstatement or conditions of probation after reinstatement, and it is proposed to move them to the reinstatement Rule because, generally, they do not seem to apply to a reprimand. Nonetheless, some of the conditions may be appropriate to be attached as part of the reprimand itself. Section (a) of proposed Rule 19-743 provides for that.

Stylistic changes are made.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-744. PLACEMENT ON INACTIVE STATUS

(a) Effect of Order

(1) Generally

After the effective date of an order placing an attorney on inactive status, the attorney (A) may not engage in any conduct prohibited to a disbarred or suspended attorney under Rule 19-742 (a), and (B) except as provided in subsection (a) (2) of this Rule, must perform the duties required by Rule 19-742 (c).

(2) If Attorney Unable to Comply with Rule 19-742 (c)

If, due to the nature or severity of the attorney's incapacity, the attorney is unable to perform the duties required by Rule 19-742 (c) and satisfactory arrangements have not been made for the performance of those duties, the Court of Appeals may (A) direct Bar Counsel to seek the appointment of a conservator pursuant to Rule 19-734, and (B) direct that the incapacitated attorney cooperate to the best of the attorney's ability with the conservator or other attorney.

Committee note: Because placement of an attorney on inactive status arises only from a finding of incapacity, as defined in Rule 19-701 (g), there may be a legitimate question of whether the attorney is competent to fulfill the winding up obligations set forth in Rule 19-742 (c). Unless another attorney capable of performing those duties has agreed to do so, Bar Counsel and the Court should give consideration to whether a conservator may need

to be appointed to perform those duties.

(b) Duties of Clerk

Upon the filing of the order, the Clerk of the Court of Appeals shall take the actions specified in Rule 19-742 (a).

(c) Duties of Bar Counsel

Bar Counsel shall perform the duties specified in Rule 19-742 (d).

(d) Conditions on Reinstatement

In an order that places an attorney on inactive status, the Court may permit the attorney to apply for reinstatement after a minimum period of time and upon conditions specified in Rule 19-753.

(e) Other Provisions of Rule 19-742

The provisions of Rule 19-742 (f), (g), (h), and (i) shall apply with respect to an order entered under this Rule.

Source: This Rule is derived in part from former Rule 16-760 (2016).

REPORTER'S NOTE

Proposed Rule 19-744, Placement on Inactive Status, is derived in part from current Rule 16-760. However, that Rule addresses discipline and inactive status, whereas the proposed Rule addresses inactive status only.

Subsection (a)(2) and the accompanying Committee note address potential situations in which an attorney who has an incapacity may be unable to fulfill the winding up obligations set forth in proposed Rule 19-742 (c).

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

REINSTATEMENT

Rule 19-751. REINSTATEMENT - SUSPENSION SIX MONTHS OR LESS

(a) Scope of Rule

This Rule applies to an attorney who has been suspended for a fixed period of time not exceeding six months.

(b) Reinstatement Not Automatic

An attorney subject to this Rule is not automatically reinstated upon expiration of the period of suspension. An attorney is not reinstated until the Court of Appeals enters an Order of Reinstatement.

(c) Petition for Reinstatement

(1) Requirement

An attorney who seeks reinstatement shall file a verified petition for reinstatement with the Clerk of the Court of Appeals and serve a copy on Bar Counsel. The attorney shall be the petitioner. Bar Counsel shall be the respondent.

(2) Timing

The petition may not be filed earlier than ten days prior to the end of the period of suspension.

(3) Content

The petition shall state the effective date of the

suspension and the asserted date of its completion, certify that (A) the attorney has complied with Rule 19-742 and all requirements and conditions specified in the suspension order and (B) to the best of the attorney's knowledge, information, and belief, no complaints or disciplinary proceedings are currently pending against the attorney. The petition shall be accompanied by (i) a copy of the Court's order imposing the suspension, (ii) any opinion that accompanied that order, and (iii) any filing fee prescribed by law.

(d) Review by Bar Counsel

Bar Counsel shall promptly review the petition and, within five days after service, shall file with the Clerk of the Court of Appeals and serve on the attorney any objection to the reinstatement. The basis of the objection shall be stated with particularity.

(e) Action by Court of Appeals

(1) If No Timely Objection Filed

If Bar Counsel has not filed a timely objection, the Clerk shall promptly forward to the Chief Judge or a judge of the Court designated by the Chief Judge the petition, a certificate that no objection had been filed, and a proposed Order of Reinstatement. The Chief Judge or the designee may sign and file the order on behalf of the Court.

(2) If Timely Objection Filed

If Bar Counsel files a timely objection, the Clerk shall refer the matter to the full Court for its consideration. The

Court may overrule Bar Counsel's objections and enter an Order of Reinstatement or set the matter for hearing.

(f) Effective Date of Reinstatement Order

An order that reinstates the petitioner may provide that it shall become effective immediately or on a date stated in the order.

(g) Duties of Clerk

(1) Attorney Admitted to Practice

Promptly after the effective date of an order that reinstates a petitioner, the Clerk of the Court of Appeals shall comply with Rule 19-761.

(2) Attorney not Admitted to Practice

Upon receiving a reinstatement notice authorized by section (e) of this Rule, or on the effective date of an order or notice that reinstates a petitioner not admitted by the Court of Appeals to practice law, the Clerk of the Court of Appeals shall remove the petitioner's name from the list maintained in that Court of non-admitted attorneys who are ineligible to practice law in this State, and shall certify that fact to the Board of Law Examiners and the clerks of all courts in the State.

(h) Motion to Vacate Reinstatement

Bar Counsel may file a motion to vacate an order that reinstates the petitioner if (1) the petitioner has failed to demonstrate substantial compliance with the order, including any condition of reinstatement imposed under Rule 19-752 (h) or (2) the petition filed under section (a) of this Rule contains a

false statement or omits a material fact, the petitioner knew the statement was false or the fact was omitted, and the true facts were not disclosed to Bar Counsel prior to entry of the order. The petitioner may file a verified response within 15 days after service of the motion, unless a different time is ordered. If there is a factual dispute to be resolved, the court may enter an order designating a judge in accordance with Rule 19-722 to hold a hearing. The judge shall allow reasonable time for the parties to prepare for the hearing and may authorize discovery pursuant to Rule 19-726. The applicable provisions of Rule 19-727 shall govern the hearing. The applicable provisions of Rules 19-728 and 19-729, except section (c) of Rule 19-729, shall govern any subsequent proceedings in the Court of Appeals. The Court may reimpose the discipline that was in effect when the order was entered or may impose additional or different discipline.

Source: This Rule is new.

REPORTER'S NOTE

Proposed Rule 19-751, Reinstatement - Suspension Six Months or Less, is new.

Per section (a), the Rule applies only to attorneys who have been suspended for a fixed period not exceeding six months.

Section (b) makes clear that an attorney is not automatically reinstated upon the expiration of the fixed period. Instead, pursuant to section (c), the attorney must file a verified petition for reinstatement. The attorney is not reinstated until the Court of Appeals enters an order of reinstatement.

Section (d) addresses Bar Counsel's review of the petition and the process for objecting to the reinstatement.

Rule 19-751

Section (e) outlines the action by the Court of Appeals. If Bar Counsel does not object, the Clerk forwards to the Chief Judge or the designee, the petition, a certificate that no objection was filed, and a proposed order of reinstatement. If an objection is filed, the Clerk must refer the matter to the full Court for its consideration. The Court may overrule Bar Counsel's objections and enter an order for reinstatement, or set the matter for a hearing.

Section (f) carries forward the provision of current Rule 16-781 (k), except that the second sentence of that section is deleted. The provision is not used and, if used, could create a potential ambiguity as to the effective date of the Court's order. Any failure to comply with a condition contained in an order of reinstatement can be addressed by a motion to vacate reinstatement filed in accordance with section (h).

Sections (g) and (h) carry forward the provisions of current Rule 16-781 (l) and (m), with style changes.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-752. REINSTATEMENT - OTHER SUSPENSION; DISBARMENT;
INACTIVE STATUS; RESIGNATION

(a) Scope of Rule

This Rule applies to an attorney who has been disbarred, suspended indefinitely, suspended for a fixed period longer than six months, or placed on inactive status or who has resigned from the practice of law.

(b) Reinstatement Not Automatic

An attorney subject to this Rule is not automatically reinstated upon expiration of the period of suspension. An attorney is not reinstated until the Court of Appeals enters an Order of Reinstatement.

(c) Petition for Reinstatement

(1) Requirement

An attorney who seeks reinstatement under this Rule shall file a verified petition for reinstatement with the Clerk of the Court of Appeals and serve a copy on Bar Counsel. The attorney shall be the petitioner. Bar Counsel shall be the respondent.

(2) Timing Following Order of Suspension or Disbarment

(A) If the attorney was suspended for a fixed period, the petition may not be filed earlier than 30 days prior to the end of the period of suspension.

(B) If the attorney was suspended for an indefinite period or disbarred, the petition may not be filed earlier than (i) the time specified in the order of suspension or disbarment.

(3) Content

The petition shall state or be accompanied by the following:

(A) docket references to all prior disciplinary or remedial actions to which the attorney was a party;

(B) a copy of the order that disbarred or suspended the attorney, placed the attorney on inactive status, or accepted the resignation of the attorney and any opinion of the Court that accompanied the order;

(C) that the attorney has complied in all respects with the provisions of Rule 19-742 or, if applicable, Rule 19-744, and with any terms or conditions stated in the disciplinary or remedial order;

(D) a description of the conduct or circumstances leading to the order of disbarment, suspension, placement on inactive status, or acceptance of resignation; and

(E) facts establishing the attorney's subsequent conduct and reformation, present character, present qualifications and competence to practice law, and ability to satisfy the criteria set forth in section (g) of this Rule.

(d) Information for Bar Counsel

(1) Generally

Upon the filing of the petition, the attorney shall

separately supply to Bar Counsel, in writing, the following information:

(A) the attorney's current address, e-mail address, if any, and telephone number;

(B) the information specified in subsection (c)(2) or (c)(3) of this Rule, as applicable;

(C) evidence establishing compliance with all applicable requirements set forth in section (g) of this Rule;

(D) a statement of whether the attorney has applied for reinstatement in any other jurisdiction and the current status of each such application; and

(E) any other information that the attorney believes is relevant to determining whether the attorney possesses the character and fitness necessary for reinstatement; and

(2) If Disbarred or Suspended

If the attorney has been disbarred or suspended, the information supplied to Bar Counsel shall include:

(A) the address of each residence of the attorney during the period of discipline, with inclusive dates of each residence;

(B) the name, address, e-mail address, if any, and telephone number of each employer, associate, and partner of the attorney during the period of discipline, together with (i) the inclusive dates of each employment, association, and partnership, (ii) the positions held, (iii) the names of all immediate supervisors, and (iv) if applicable, the reasons for termination of the employment, association, or partnership;

(C) the case caption, general nature, and disposition of each civil and criminal action pending during the period of discipline to which the attorney was a party or in which the attorney claimed an interest;

(D) a statement of monthly earnings and all other income during the period of discipline, including the source;

(E) copies of the attorney's state and federal income tax returns for the three years preceding the effective date of the order of disbarment or suspension and each year thereafter;

(F) a statement of the attorney's assets and financial obligations;

(G) the names and addresses of all creditors;

(H) a statement identifying all other business or occupational licenses or certificates applied for during the period of discipline and the current status of each application; and

(I) the name and address of each financial institution at which the attorney maintained or was signatory on any account, safe deposit box, deposit, or loan during the period of discipline and written authorization for Bar Counsel to obtain financial records pertaining to such accounts, safe deposit boxes, deposits, or loans.

(3) If Placed on Inactive Status

If the attorney was placed on inactive status, the information supplied to Bar Counsel shall include:

(A) the name, address, and telephone number of each health

care provider or addiction care provider and institution that examined or treated the attorney for incapacity during the period of inactive status; and

(B) a written waiver of any physician-patient privilege with respect to each psychiatrist, psychologist, or psychiatric-mental health nursing specialist named subsection (c) (3) (A) of this Rule.

(e) Response to Petition

(1) Generally

Within 30 days after service of the petition, Bar Counsel shall file and serve on the attorney a response. Except as provided in subsection (d) (2) of this Rule, the response shall admit or deny the averments in the petition in accordance with Rule 2-323 (c). The response may include Bar Counsel's recommendations in support of or opposition to the petition and with respect to any conditions to reinstatement.

(2) Consent

If Bar Counsel is satisfied that the attorney has complied fully with the provisions of Rule 19-742 and any requirements or conditions in the order of suspension or disbarment, and there are no known complaints or disciplinary proceedings pending against the attorney, the response may be in the form of a consent to the reinstatement.

(f) Disposition

(1) Consent by Bar Counsel

If, pursuant to subsection (e) (2) of this Rule, Bar

Counsel has filed a consent to reinstatement, the Clerk shall proceed in accordance with Rule 19-751 (e) (1).

(2) Other Cases

In other cases, upon review of the petition and Bar Counsel's response, the Court may (A) without a hearing, dismiss the petition or grant the petition and enter an order of reinstatement with such conditions as the Court deems appropriate, or (B) order further proceedings in accordance with section (g) of this Rule.

(g) Further Proceedings

(1) Order Designating Judge

If the Court orders further proceedings pursuant to subsection (f) (2) (B) of this Rule, it shall enter an order designating a judge of any circuit court to hold a hearing.

(2) Discovery

The judge shall allow reasonable time for Bar Counsel to investigate the petition and, subject to Rule 19-726, to take depositions and complete discovery.

(3) Hearing

The applicable provisions of Rule 19-727 shall govern the hearing and the findings and conclusions of the judge, except that the attorney shall have the burden of proving the averments of the petition by clear and convincing evidence.

(4) Proceedings in Court of Appeals

The applicable provisions of Rules 19-728 and 19-729 (a), (b), and (d) shall govern subsequent proceedings in the Court of

Appeals. The Court may (A) dismiss the petition, (B) order reinstatement, with such conditions as the Court deems appropriate, or (C) remand for further proceedings.

(h) Criteria for Reinstatement

(1) Generally

In determining whether to grant a petition for reinstatement, the Court of Appeals shall consider the nature and circumstances of the attorney's conduct that led to the disciplinary or remedial order and the attorney's (A) subsequent conduct, (B) current character, and (C) current qualifications and competence to practice law.

(2) Specific Criteria

The Court may order reinstatement if the attorney meets each of the following criteria or presents sufficient reasons why reinstatement should be ordered in the absence of satisfaction of one or more of those criteria:

(A) the attorney has complied in all respects with the provisions of Rule 19-742 or, if applicable, 19-744 and with the terms and conditions of prior disciplinary or remedial orders;

(B) the attorney has not engaged in or attempted or offered to engage in the unauthorized practice of law during the period of disbarment, suspension, or inactive status;

(C) if the attorney was placed on inactive status, the incapacity or infirmity, including alcohol or drug abuse no longer exists and is not likely to recur in the future;

(D) if the attorney was disbarred or suspended, the

petitioner recognizes the wrongfulness and seriousness of the professional misconduct for which discipline was imposed;

(E) the attorney has not engaged in any professional misconduct or, other than minor traffic or municipal infractions, any unlawful activity since the imposition of discipline;

(F) the attorney currently has the requisite honesty and integrity to practice law;

(G) the attorney has kept informed about recent developments in the law and is competent to practice law; and

(H) the attorney has complied with all financial obligations required by these Rules or by court order, including (i) reimbursement of all amounts due to the attorney's former clients, (ii) payment of restitution which, by court order, is due to the attorney's former clients or any other person, (iii) reimbursement of the Client Protection Fund for all claims that arose out of the attorney's practice of law and satisfaction of all judgments arising out of such claims, and (iv) payment of all costs assessed by court order or otherwise required by law.

(i) Conditions to Reinstatement

An order that reinstates an attorney may include, as a condition precedent to reinstatement or as a condition of probation after reinstatement that the attorney:

(1) take the oath of attorneys required by Code, Business Occupations and Professions Article, §10-212;

(2) pass either the comprehensive Maryland Bar examination or an attorney examination administered by the Board of Law

Examiners;

(3) attend a bar review course approved by Bar Counsel and submit to Bar Counsel satisfactory evidence of attendance;

(4) submit to Bar Counsel evidence of successful completion of a professional ethics course at an accredited law school;

(5) submit to Bar Counsel evidence of attendance at the professionalism course required for newly-admitted attorneys;

(6) engage an attorney satisfactory to Bar Counsel to monitor the attorney's legal practice for a period stated in the order of reinstatement;

(7) limit the nature or extent of the attorney's future practice of law in the manner set forth in the order of reinstatement;

(8) participate in a program tailored to individual circumstances that provides the attorney with law office management assistance, attorney assistance or counseling, treatment for substance or gambling abuse, or psychological counseling;

(9) demonstrate, by a report of a health care professional or other evidence, that the attorney is mentally and physically competent to resume the practice of law;

(10) issue an apology to one or more persons; or

(11) take any other corrective action that the Court deems appropriate.

(j) Effective Date of Reinstatement Order

An order that reinstates the petitioner may provide that

it shall become effective immediately or on a date stated in the order.

(k) Duties of Clerk

(1) Attorney Admitted to Practice

Promptly after the effective date of an order that reinstates a petitioner, the Clerk of the Court of Appeals shall comply with Rule 19-761.

(2) Attorney not Admitted to Practice

Upon receiving a reinstatement notice authorized by section (e) of this Rule, or on the effective date of an order or notice that reinstates a petitioner not admitted by the Court of Appeals to practice law, the Clerk of the Court of Appeals shall remove the petitioner's name from the list maintained in that Court of non-admitted attorneys who are ineligible to practice law in this State, and shall certify that fact to the Board of Law Examiners and the clerks of all courts in the State.

(1) Motion to Vacate Reinstatement

Bar Counsel may file a motion to vacate an order that reinstates the petitioner if (1) the petitioner has failed to demonstrate substantial compliance with the order, including any condition of reinstatement imposed under Rule 19-752 (h) or section (j) of this Rule or (2) the petition filed under section (a) of this Rule contains a false statement or omits a material fact, the petitioner knew the statement was false or the fact was omitted, and the true facts were not disclosed to Bar Counsel prior to entry of the order. The petitioner may file a verified

response within 15 days after service of the motion, unless a different time is ordered. If there is a factual dispute to be resolved, the court may enter an order designating a judge in accordance with Rule 19-722 to hold a hearing. The judge shall allow reasonable time for the parties to prepare for the hearing and may authorize discovery pursuant to Rule 19-726. The applicable provisions of Rule 19-727 shall govern the hearing. The applicable provisions of Rules 19-728 and 19-741, except section (c) of Rule 19-741, shall govern any subsequent proceedings in the Court of Appeals. The Court may reimpose the discipline that was in effect when the order was entered or may impose additional or different discipline.

Source: This Rule is derived from former Rule 16-781 (2016).

REPORTER'S NOTE

Proposed Rule 19-752, Reinstatement - Other Suspension; Disbarment; Inactive Status; Resignation, is derived from current Rule 16-781. See the Reporter's note to Rule 19-751, concerning the deletion of the second sentence of current Rule 16-781 (k).

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

REGISTER OF ATTORNEYS; NOTICES

Rule 19-761. DUTIES OF CLERK OF COURT OF APPEALS UPON ATTORNEY'S SUSPENSION, TERMINATION, OR REINSTATEMENT

(a) Register of Attorneys

Upon the entry of an Order of the Court of Appeals suspending or terminating an attorney's authority to practice law in this State, except an Order pursuant to Rule 19-409, 19-503, or 19-606, the Clerk of the Court of Appeals shall strike the name of the attorney from the register of attorneys maintained by the Clerk. Upon the entry of an Order of the Court of Appeals reinstating the attorney's authority to practice law, the Clerk shall replace the name of the attorney on the register as of the date of or specified in the Order.

(b) Notice

Upon the entry of an order of the Court of Appeals suspending, terminating, or reinstating an attorney's authority to practice law in this State, including a suspension or reinstatement pursuant to an Order of Decertification or Recertification under Rule 19-409 or 19-503 or a suspension or reinstatement under Rule 19-606, the Clerk shall:

- (1) send a copy of the order to the attorney;

(2) post notice of the order on the Judiciary website; and

(3) send notice of the order to:

(A) the Clerk of the Court of Special Appeals;

(B) the Clerk of each Circuit Court;

(C) the Chief Clerk of the District Court;

(D) the Clerk of the United States Supreme Court;

(E) the Clerk of the U.S. Court of Appeals for the Fourth Circuit;

(F) the Clerk of the U.S. District Court for the District of Maryland;

(G) the Register of Wills for each county;

(H) the State Court Administrator;

(I) the trustees of the Client Protection Fund;

(J) the Office of Administrative Hearings; and

(K) unless the suspension, termination, or reinstatement is solely pursuant to Rule 19-409, 19-503, or 19-606:

(i) the National Lawyer Regulatory Data Bank of the American Bar Association; and

(ii) the disciplinary authority of every other jurisdiction in which the Clerk knows the attorney is admitted to practice.

(c) Notice Upon Request

In addition to the persons listed in subsection (b) (3) of this Rule, the Clerk may send notice of the order to other persons who have requested such notice.

(d) Form of Notice

The Clerk may send the notice under subsection (b) (3) of this Rule in electronic or paper form.

Source: This Rule is new.

REPORTER'S NOTE

Rule 19-761 consolidates into a single Rule the duties of the Clerk of Court of Appeals when, by order of the Court of Appeals, the right of an attorney to practice law is terminated or temporarily suspended or the attorney is reinstated. Currently, the duties are contained in numerous Rules that are not uniform in content or style.