

STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
NOTICE OF PROPOSED RULES CHANGES

The Rules Committee has submitted a Supplement to its Two Hundred and Eleventh Report to the Court of Appeals, recommending amendments to current Rules 18-302 and 19-414.

The Committee's Supplement to the Two Hundred and Eleventh Report and the proposed Rules changes are set forth below.

Interested persons are asked to consider the Committee's Report and proposed Rules changes and to forward on or before September 13, 2022 any written comments they may wish to make to rules@mdcourts.gov or:

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Reporter, Rules Committee
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new Rule 19-414 that altered the method for dealing with presumed-abandoned funds in an attorney's client trust account. At the time, the prevailing practice was to transfer those funds, eventually, to the Client Protection Fund (CPF). There was no legal basis for such a practice, however, and it was criticized several times by the Judiciary's auditors in their Reports. Apart from that, because dealing with those funds was not part of the CPF's statutory mission and because the data that might lead to locating the rightful owners was often missing or incomplete, relatively little of those funds was ever disbursed to a rightful owner. In time, CPF ended up holding approximately five million dormant dollars.

The Committee recommended, and the Court approved, new Rule 19-414 and amendments to Rule 19-604 that (1) required attorneys holding abandoned funds in their client trust accounts to transfer those funds to the State Comptroller in accordance with Code, Commercial Law Article, Sections 17-310 and 17-312 and to cease sending those funds to CPF, and (2) required CPF to transfer the presumed-abandoned attorney trust funds it was holding to the Comptroller as well. Pursuant to new Rule 19-414, the first transfer was to occur on or before October 31, 2022. The Comptroller's Office has been very cooperative and approved that plan.

Recently, the Rules Committee was informed that, given CPF's other press of business and its practical inability to assemble and analyze all of the massive data that would need to accompany the transfer, it would not be able to meet the October 2022 deadline, and it requested a six- to twelve-month extension to make the transfer. The Committee has been advised that the Court would prefer to consider a six-month extension, to April 30, 2023. Because of the urgency of the matter, the Committee is forwarding that proposal to the Court as a Supplement to its Two Hundred and Eleventh Report, which is currently pending before the Court, rather than in a separate Report. The proposal is to retain the October 31 deadline for attorneys because that is provided by statute, but to extend the time for the transfer by CPF to April 30, 2023. The Committee is advised that the Comptroller's Office would accept that limited extension.

For the further guidance of the Court and the public, following 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,

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Alan M. Wilner
Chair

AMW:sdm

cc: Suzanne C. Johnson, Clerk

MARYLAND RULES OF PROCEDURE
TITLE 18 - JUDGES AND JUDICIAL APPOINTEES
CHAPTER 300 - JUDICIAL ETHICS COMMITTEE

AMEND Rule 18-302 by adding one circuit court judge and one senior judge to the composition of the Judicial Ethics Committee, as follows:

Rule 18-302. EXISTENCE; MEMBERSHIP; TERMS

(a) Creation

There is a Judicial Ethics Committee.

(b) Membership

The Committee consists of ~~13~~ 15 members appointed by the Chief Judge of the Court of Appeals. Of the ~~13~~ 15 members:

- (1) one shall be a judge of the Court of Special Appeals;
- (2) ~~two~~ three shall be circuit court judges;
- (3) two shall be judges of the District Court;
- (4) one shall be a judge of an orphans' court;
- (5) ~~three~~ four shall be senior judges;
- (6) one shall be a clerk of a circuit court;
- (7) one shall be a judicial appointee as defined in Rule 18-200.3; and
- (8) two shall not be a judge or other official or employee of the Judicial Branch of the State government or an attorney.

(c) Terms

(1) The term of a member is three years and begins on July 1, except that the former judges appointed pursuant to subsection (b) (5) of this Rule shall not have a term and shall serve at the pleasure of the Chief Judge of the Court of Appeals.

(2) The terms of the members shall be staggered so that the terms of not more than four members expire each year.

(3) At the end of a term, a member continues to serve until a successor is appointed.

(4) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed.

(5) A member may not serve more than two consecutive three-year terms.

Source: This Rule is derived from sections (b), (c), and (d) of former Rule 16-812.1 (2016).

REPORTER'S NOTE

Proposed amendments to Rule 18-302 increase the membership of the Judicial Ethics Committee by adding two new members - one additional circuit court judge and one additional senior judge.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 400 - ATTORNEY TRUST ACCOUNTS

AMEND Rule 19-414 by extending from October 31, 2022 to April 30, 2023 the deadline stated in section (d) for the Client Protection Fund to prepare and transmit the reports required by Code, Commercial Law Article, § 17-310 and transfer certain funds to the State Comptroller and by adding an exception to the initial compliance requirement in section (e), as follows:

Rule 19-414. FUNDS PRESUMED ABANDONED

(a) Definition

In this Rule, "Client Protection Fund" means the Client Protection Fund of the Bar of Maryland.

(b) Generally

Funds deposited in an attorney's trust account pursuant to Rule 19-404 for the benefit of a client or other person are presumed abandoned if: (A) the beneficial owner affirmatively declined in writing to accept the funds, other than because of a dispute as to the amount owed; or (B) after three years from the date the funds were deposited or were required to be deposited pursuant to that Rule, the attorney is unable to determine the

identity or location of the beneficial owner after having made reasonable efforts to do so.

Committee note: Reasonable efforts must commence when the attorney first has notice of a problem identifying or locating a person who may be entitled to trust account funds or other property held by the attorney. Reasonable efforts may include (1) making a diligent search for any records or information in the attorney's file, any court file to which the attorney has access, and any published directory, available public records, estate records, or obituary records in a jurisdiction in which the attorney has reason to believe the person may reside; (2) seeking the assistance of the client and, if ethically appropriate, other attorneys, unrepresented parties, and witnesses in the case who may have information regarding the name or whereabouts of the person; (3) attempting to determine whether the person is in the custody of the Federal Bureau of Prisons, the Maryland Department of Public Safety and Correctional Services, or the local government of a jurisdiction in which the attorney has reason to believe the person may reside; (4) conducting an internet search for the person using information possessed by the attorney; and (5) attempting to contact the person by first-class mail, certified mail, and e-mail.

Code, Commercial Law Article, § 17-306 declares, for purposes of the Maryland Uniform Disposition of Abandoned Property Act, that intangible personal property held in a fiduciary capacity for the benefit of another person is presumed abandoned unless, within three years after it becomes payable or distributable, the owner has increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary. That is not a workable definition with respect to attorney trust accounts. Persons who may be entitled to the payment of attorney trust account funds would not be able to increase or decrease the funds, and, if they correspond with the attorney, their identity and likely their location will be revealed. The definition in this Rule is intended to be a reasonable and practicable one that would be acceptable to the Comptroller.

(c) Duty of Attorney upon Presumed Abandonment

(1) Upon determining that attorney trust funds are presumed abandoned pursuant to section (b) of this Rule, the attorney shall: (A) comply with Code, Commercial Law Article, § 17-308.2, and (B) prepare the requisite report and transmit it, together with the funds and any non-IOLTA accrued interest, to the State Comptroller in accordance with Code, Commercial Law Article, §§ 17-310 and 17-312.

(2) The transmission shall be accompanied by a report filed at the times specified and containing the information required by Code, Commercial Law Article, § 17-310.

Cross reference: See Rule 19-301.6 regarding confidential information.

Committee note: Code, Commercial Law Article, § 17-310(d) anticipates an annual report covering the period July 1 through June 30 to be filed no later than October 31.

(3) No such funds or report shall be transmitted to the Client Protection Fund.

Committee note: For several decades, a practice was in place for attorneys who have been unable to identify or locate persons entitled to trust funds received by the attorney to transfer those funds to the Client Protection Fund. The intent of this Rule is to end that practice. The sole statutory mission of the Client Protection Fund is to receive, investigate, and pay claims filed by persons injured by the misconduct of attorneys, not deal with abandoned money in attorney trust fund accounts. See Rule 19-602 (a) and Maryland State Bar Association Committee on Ethics, Ethics Docket 92-2 (1992), which states: "After the property is presumed abandoned, you, as holder, are required to file a report with the State Comptroller's Office regarding the property."

(d) Transfer of Funds from Client Protection Fund

On or before ~~October 31, 2022~~ April 30, 2023, the Client Protection Fund shall (1) prepare the reports required by Code, Commercial Law Article, § 17-310, and (2) transmit them, together with all attorney trust account funds that, on or prior to that date, were received by the Client Protection Fund and all non-IOLTA accrued interest thereon that have not previously been paid by the Client Protection Fund to persons lawfully entitled to those funds, to the State Comptroller, in accordance with Code, Commercial Law Article, §§ 17-310 and 17-312 and applicable regulations adopted by the Comptroller.

(e) Initial Compliance with this Rule

Except as provided in section (d) of this Rule, the The first reports under this Rule shall be filed no later than October 31, 2022 and shall include all attorney trust funds that qualify as abandoned as of June 30, 2022.

Committee note: Notwithstanding the provisions of this Rule, Rule 19-407 requires attorneys to keep certain records pertaining to the attorney's trust accounts and to maintain those records for at least five years after the date the record was created.

REPORTER'S NOTE

Proposed new Rule 19-414 was included in the 209th Report of the Rules Committee. It was adopted by Rules Order dated February 9, 2022, with an effective date of April 1, 2022.

Section (d) of the Rule currently provides that the Client Protection Fund will prepare and transmit the reports required

by Code, Commercial Law Article, § 17-310, together with all applicable funds in its possession, to the State Comptroller no later than October 31, 2022. The Client Protection Fund advises that, in spite of its best efforts, it is unable to meet the October 31, 2022 deadline; therefore, the deadline is proposed to be extended to April 30, 2023.

Section (e) is amended to exempt the reports and monetary transfers by the Client Protection Fund from the initial compliance date for attorneys, which remains October 31, 2022.