

MARYLAND RULES OF PROCEDURE

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PART 1 - GENERAL PROVISIONS

Rule 19-701. DEFINITIONS

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

(a) Attorney

"Attorney" means ~~a person~~ 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 ~~a person~~ (1) an individual not admitted by the Court of Appeals but who engages in the practice of law in this State, ~~or who~~ holds himself or herself out as practicing law in this State, or who has the obligation of supervision or control over another ~~lawyer~~ 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 19-358 (8.5) of the Maryland Lawyers' 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.

~~(e)~~ (d) Commission

"Commission" means the Attorney Grievance Commission of Maryland.

~~(d)~~ (e) Conditional Diversion Agreement

"Conditional diversion agreement" means the agreement provided for in Rule ~~16-736~~ 19-715.

~~(e)~~ (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.

~~(f)~~ (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 ~~an~~ alcohol, one or more drugs or other intoxicants, [or an addiction to gambling] ~~or drug~~.

~~(g)~~ (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.

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

"Petition for disciplinary or remedial action" means the ~~initial pleading filed in the Court of Appeals against an attorney alleging that the attorney has engaged in professional misconduct or is incapacitated or both~~ petition filed by Bar Counsel pursuant to Rule 19-721.

~~(i)~~ (j) Professional Misconduct

"Professional misconduct" or "misconduct" has the meaning set forth in Rule 19-357 (8.4) of the Maryland Lawyers' Rules of Professional Conduct, ~~as adopted by Rule 16-812 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.

~~(j)~~ (k) Reinstatement

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

~~(k)~~ (l) Serious Crime

"Serious crime means ~~a crime that is in at least one of the following categories:~~ (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.

~~(l)~~ (m) State

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

~~(m)~~ (n) Statement of Charges

"Statement of charges" means the document ~~that alleges professional misconduct or incapacity and initiates disciplinary or remedial proceedings against an attorney~~ filed by Bar Counsel pursuant to Rule ~~16-741~~ 19-717.

~~(n)~~ (o) Suspension

"Suspension" means the temporary ~~or indefinite~~ 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.

~~(e)~~ (p) Warning

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

Source: This Rule is derived ~~in part~~ from former Rule 16-701 ~~(BV1) and is in part new~~ (2011).

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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 counsel 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

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 ~~16~~ 19, Chapter ~~600~~ 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 ~~Rules 16-702 a, b, and c (BV2 a, b, and c), and 16-703 (BV3)~~ Rule 16-711 (2011).

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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 ~~16-732~~ 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 ~~16~~ 19, Chapter ~~600~~ 400 (Attorney Trust Accounts).

Source: This Rule is derived from former Rule ~~16-704~~ ~~(BV4)~~ 16-712 (2011).

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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 ~~16-742~~ 19-718.

(b) Composition

The Peer Review Committee consists of the number of persons 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) Persons Ineligible for Appointment as ~~a Lawyer~~ an Attorney Member

The Commission may not appoint as ~~a lawyer~~ an attorney member to the Peer Review Committee a person 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) Persons Ineligible for Appointment as a ~~Non-lawyer~~ Non-attorney Member

The Commission may not appoint as a ~~non-lawyer~~ non-attorney member to the Peer Review Committee a person 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 ~~new~~ derived from former Rule 16-713

(2011).

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 ~~to which, 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 pursuant to Rule 16-811.~~ The Disciplinary 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 Lawyers' Rules of Professional Conduct adopted by the Court. The Fund consists entirely of contributions made by ~~lawyers as a condition of their right to practice law in Maryland~~ attorneys pursuant to section (b) of this Rule and income from those contributions. ~~The principal and income of the Fund shall be~~ It is dedicated exclusively entirely to the purposes established by the Rules in this Title.

~~(a)~~ (b) Payment by Attorneys

As a condition precedent to the practice of law, each attorney shall pay annually ~~to the Fund the sum that the~~ an

amount prescribed by the Court of Appeals prescribes. The ~~sum~~
amount shall be ~~paid~~ in addition to and paid by the same date as
other sums required to be paid pursuant to ~~Rule 16-811~~ the
Client Protection Fund by Rule 19-605.

~~(b)~~ (c) Collection and Disbursement of ~~Disciplinary Fund~~

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.

~~(e)~~ (d) Audit

~~There shall be~~ The Court of Appeals shall direct an
independent audit of the Disciplinary Fund. The expense of the
audit shall be paid out of the Fund.

~~(d)~~ (e) Enforcement

Enforcement of payment of annual assessments of
attorneys pursuant to this Rule is governed by the provisions of
Rule ~~16-811~~ ~~(g)~~ 19-606.

Source: ~~This Rule is derived from former Rule 16-702 d (BV2 d)~~
~~and 16-703 b (vii) (BV3 b (vii)).~~ Section (a) of this Rule is
new. The balance of the Rule is derived from former Rule 16-714
(2011).

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-706. SANCTIONS AND REMEDIES ~~FOR MISCONDUCT OR~~
~~INCAPACITY~~

(a) For Professional Misconduct

~~One or more of the following sanctions or remedies may be imposed upon an attorney for professional misconduct~~ An attorney who is found to have committed professional misconduct is subject to 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 ~~entered into pursuant to Rule 16-736; and;~~
or

(5) termination of a disciplinary ~~or remedial~~ proceeding ~~accompanied by~~ with or without a warning pursuant to Rule 16-735

~~(b).~~

(b) For Incapacity

~~One of the following remedies may be imposed upon an~~

~~attorney 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; ~~or~~

(2) conditional diversion in accordance with a Conditional Diversion Agreement ~~entered pursuant to Rule 16-736;~~ or

(3) termination of a remedial proceeding **with or without a warning.**

~~(c) Conditions~~

~~An order, decision, or agreement that imposes a disciplinary sanction upon an attorney or places an attorney on inactive status may include one or more specified conditions, as authorized by Rules 16-736, 16-760, and 16-781.~~

DRAFTER'S NOTE:

(1) The changes in section (a) are mostly style, although the "and" following subsection (a)(4) is changed to "or."

(2) Termination of a remedial proceeding accompanied by a warning is dealt with in subsection (b)(2).

(3) Section (c) is deleted as redundant. The authority to add and specify conditions should be in the Rules dealing with the particular sanctions or remedies.

Source: This Rule is ~~new~~ derived from former Rule 16-721 (2011).

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-707. CONFIDENTIALITY

(a) ~~Confidentiality of Peer Review Meetings~~

~~All persons present at a peer review meeting shall maintain the confidentiality of all speech, writing, and conduct made as part of the meeting and may not disclose or be compelled to disclose the speech, writing, or conduct in any judicial, administrative, or other proceeding. Speech, writing, or conduct that is confidential under this Rule is privileged and not subject to discovery, but information otherwise admissible or subject to discovery does not become inadmissible or protected from disclosure solely by reason of its use at the peer review meeting.~~

(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, persons 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

~~Speech, writing, or~~ Communications and conduct that ~~is~~
are confidential under this Rule ~~is~~ 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 ~~the~~ a peer review meeting.

DRAFTER'S NOTE:

The rewriting is principally a matter of style, with no change in substance intended. Subsection (a)(1) more directly declares the material to be confidential and not open to public inspection. Excepted is criminal conduct occurring at a peer review meeting - an assault on a member of the panel, for example.

(b) Other Confidential ~~Matters~~ Material

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

[KKL Drafter's Note: Second sentence of section (b) may need to be restyled.]

(1) the records of an investigation by Bar Counsel, including the existence and content of any complaint or response;

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

(3) information that is the subject of a protective order;

~~(5)~~ (4) 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)(4) of this Rule is not dependent upon a finding of relevance under Rule 19-719 (c)(1).

~~(4)~~ (5) the contents of a warning issued by the Commission ~~pursuant to Rule 16-735 (b), but the fact that a warning was issued shall be disclosed to the complainant~~ as provided in Rule 19-714 (d);

~~Committee note: The peer review panel is not required to find that information disclosed under subsection (b)(5) is relevant under Rule 16-743 (c)(1).~~

(6) the contents of a Conditional Diversion Agreement ~~entered into pursuant to Rule 16-736, but the fact that an attorney has signed such an agreement shall be public~~ as

provided in Rule 19-715 (j);

DRAFTER'S NOTE: Confidentiality of a warning and a Conditional Diversion Agreement is dealt with in more detail in current Rules 16-735 (b) and 16-736 (h) [proposed new Rule 19-714 (d) and 19-715 (i)]. The deleted language here is moved to Rules 19-714 (c) and 19-715 (j).

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

(8) 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

(9) a petition for an audit of an attorney's accounts filed pursuant to Rule ~~16-722~~ 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)(8) 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 ~~16-772~~ 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 ~~16-737~~ 19-716; 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.

(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) ~~In Preparation To Investigate a Complaint; Prepare a Defense to a Complaint; Prepare~~ In Preparation 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, ~~territory, or district of the United States,~~ 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 ~~may~~ 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.

~~(5)~~ (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.

~~(6)~~ (7) ~~Subpoena or~~ Court Order **or Grand Jury Subpoena**

~~If satisfied that an attorney has received prior notice and an opportunity to object or move for a protective order,~~ Bar Counsel ~~may~~ shall comply with ~~a subpoena or an~~ 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.

~~(7)~~ (8) ~~Information Involving Criminal Activity~~ 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, ~~including information requested by a subpoena from a grand jury pursuant to Rule 4-643.~~

DRAFTER'S NOTE: The intent of the changes in subsections (f)(7) and (f)(8) is to require Bar Counsel to comply with a grand jury subpoena but to retain discretion and require Commission Chair approval with respect to disclosures to police and prosecutors. One gap is the limited power of State's Attorneys to issue subpoenas in aid of a criminal investigation. See Code, Criminal Procedure Article, §15-108.

~~(8)~~ (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.

~~(9)~~ (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 ~~in part~~ from former Rule ~~16-708~~
(~~BV8~~) and in part new 16-723 (2011).

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 ~~16-741~~ 19-717 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 ~~of the Bar of Maryland~~ pursuant to Rule ~~16-811 e 1 (x)~~ 19-604 (a)(11), 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 ~~16-753~~ 19-721 concerning service of a Petition for Disciplinary or Remedial Action.

Source: This Rule is ~~in part~~ derived from former Rule ~~16-706~~ (BV6) and ~~in part~~ new 16-724 (2011).

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

PART 2. ADMINISTRATIVE PROCEDURES

Rule 19-711. COMPLAINT; INVESTIGATION BY BAR COUNSEL

(a) Complaints Who May Initiate

~~A complaint alleging that an attorney has engaged in professional misconduct or is incapacitated shall be in writing and sent to Bar Counsel. Any written communication that includes the name and address of the person making the communication and states facts which, if true, would constitute professional misconduct by or demonstrate incapacity of an attorney constitutes a complaint. Bar Counsel also may initiate a complaint based on information from any other sources.~~

Bar Counsel may file a complaint on Bar Counsel's own initiative, based on information from any source. Any other person also may file a complaint with Bar Counsel. Any written 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 person making the communication, and (4) states facts which, if true, would constitute professional misconduct by or demonstrate an

incapacity of an attorney constitutes a complaint.

(b) Review of Complaint

(1) Bar Counsel shall make an appropriate investigation of every complaint that is not facially frivolous or unfounded.

(2) If Bar Counsel concludes that the complaint is either frivolous or unfounded 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, 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.

(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 ~~16-724~~ 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 ~~16-771, 16-773, or 16-774~~ 19-737, 19-738, or 19-739.

(d) Time for Completing Investigation

(1) Generally

Unless the time is extended ~~by the Commission for good cause 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

~~Upon written request by Bar Counsel establishing good cause for an extension for a specified period, the Commission may grant one or more extensions.~~

(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 this section, the Commission may take any action appropriate under the circumstances, including dismissal of the complaint and termination of the investigation.

Source: This Rule is ~~new~~ derived from former Rule 16-731.

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 ~~16-731~~ 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 ~~a lawyer~~ 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 ~~16-724~~ 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 persons other than Bar Counsel, the attorney, and those persons whose presence the court deems necessary.

(g) Recording of Statements

~~Everything said by the witness at the time and place specified in the subpoena shall be contemporaneously recorded stenographically or electronically, and the witness shall be placed under oath.~~ All statements by the subpoenaed witness shall be under oath and shall be **contemporaneously recorded** stenographically or electronically.

DRAFTER'S NOTE: The rewording of section (g) is intended as a style change only.

Source: This Rule is ~~new~~ derived from former Rule 16-732 (2011).

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-713. ~~PROCEDURE~~ ACTION BY BAR COUNSEL UPON COMPLETION OF INVESTIGATION

Upon completion of an investigation, Bar Counsel shall ~~take one of the following actions:~~

~~(a)~~ (1) recommend to the Commission dismissal of the complaint or termination of the proceeding without ~~discipline~~ disciplinary or remedial action, with or without a warning, in accordance with Rule ~~16-735~~ 19-714;

~~(b)~~ (2) recommend to the Commission approval of a Conditional Diversion Agreement ~~signed by Bar Counsel and the attorney~~ in accordance with Rule ~~16-736~~ 19-715;

~~(c)~~ (3) recommend to the Commission a reprimand in accordance with Rule ~~16-737~~ 19-716;

~~(d)~~ (4) file with the Commission a Statement of Charges ~~with an election for peer review~~ in accordance with Rule ~~16-741~~ 19-717; or

~~(e)~~ (5) 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 ~~16-771, 16-773, or 16-774~~ 19-737, 19-738, or 19-739.

DRAFTER'S NOTE: The changes are essentially ones of style. The change in (1) is to add a reference to remedial action. The language deleted in (2) and (4) is unnecessary as it is covered in the referenced Rules.

Source: This Rule is new derived from former Rule 16-734 (2011).

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-714. ~~DISMISSAL OR OTHER TERMINATION OF COMPLAINT;~~
TERMINATION OF DISCIPLINARY OR REMEDIAL PROCEEDING

(a) ~~Dismissal or Termination~~ Recommendation by Bar Counsel or Peer Review Panel

~~(1) Bar Counsel, upon completion of an investigation, Bar Counsel or, after a Peer Review Panel meeting, the Peer review Panel, after a meeting of the Panel, may recommend to the Commission that:~~

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

~~(B) (2) the a disciplinary or remedial proceeding be terminated, with or without a warning, because (A) Bar Counsel or the Panel has concluded that any professional misconduct on the part of the attorney (i) was not sufficiently serious to warrant discipline and (ii) is not likely to be repeated, or (B) that 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.~~

DRAFTER'S NOTE: The current language, though referring to a remedial proceeding, does not take proper account of the nature of the incapacity but deals only with professional misconduct.

(b) Action by Commission

~~(2)~~ If satisfied with the recommendation of Bar Counsel or the Peer Review Panel, the Commission shall dismiss the complaint or ~~otherwise~~ terminate the disciplinary or remedial proceeding, as appropriate. ~~If Bar Counsel or the Panel has recommended~~ the recommendation includes a warning, the matter shall proceed as provided in section ~~(b)~~ (c) of this Rule.

(c) Termination Accompanied by Warning

(1) Recommendation by Bar Counsel or Peer Review Panel

~~(1) If Bar Counsel or the Panel concludes that the attorney may have engaged in some professional misconduct, that the conduct was not sufficiently serious to warrant discipline, but that a specific warning to the attorney would be helpful to ensure that the conduct is not repeated, Bar Counsel or the Panel may recommend that the termination be accompanied by a warning against repetition.~~ 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 (A) the conduct that led to the proceeding is not repeated or (B) in the case of an incapacity, the attorney will take all necessary and practicable steps to

decrease the risk of a recurrence of the incapacity.

DRAFTER'S NOTE:

(1) It is not clear from the current language under what circumstances a warning would be useful or practicable in a remedial action based on an incapacity. The new language in subsection (c)(1) attempts to deal with that circumstance. It may require the attorney to take certain physician prescribed medication or seek some therapy.

(2) The stricken language is deleted as unnecessary. It relates to the criteria for recommending that the proceeding be terminated and is included in section (a). The only relevant consideration in section (c) is whether a warning is appropriate.

(2) Action by Commission

~~If satisfied with the recommendation, the Commission shall proceed in accordance with subsection (b)(2) of this Rule and, if the warning is not rejected, accompany the termination of the disciplinary or remedial proceeding with a warning. A warning does not constitute discipline, but the complainant shall be notified that termination of the proceeding was accompanied by a warning against repetition of the conduct.~~

(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.

~~(2) At least 30 days before a warning is issued, the Commission shall mail to the attorney a notice that states the date on which it intends to issue the warning and the content of the warning. No later than five days before the intended date of issuance of the warning, the attorney may reject the warning by filing a written rejection with the Commission. If the warning is not rejected, the Commission shall issue it on or after the date stated in the initial notice to the attorney. If the warning is rejected, it shall not be issued, and Bar Counsel or the Commission may take any other action permitted under this Chapter. Neither the fact that a warning was proposed or rejected nor the contents of a warning that was not issued may be admitted into evidence.~~

(3) Nature and Effect of Warning

A warning does not constitute discipline.

~~(c)~~ (d) Effect of Dismissal or Termination Disclosure of

Termination or Warning

(1) Disclosure of Dismissal or Termination

(A) Except as provided in subsection ~~(e)~~ (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, ~~and~~.

(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 ~~misconduct~~ 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 ~~may be admitted into evidence~~ is admissible into evidence in any

judicial or administrative proceeding.

Source: This Rule is ~~new~~ derived from former Rule 16-735 (2011).

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-715. 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 ~~16-771~~ 19-737, ~~16-773~~ 19-738, or ~~16-774~~ 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 ~~an~~ the attorney is ~~required~~ under any obligation to propose or enter into a Conditional Diversion Agreement. ~~The Agreement shall state that the attorney voluntarily consents to its terms and promises to pay all expenses reasonably incurred in connection with its performance and enforcement.~~

DRAFTER'S NOTE: For style purposes, the second sentence is moved to subsection (c)(2)(B).

(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 ~~Conditional Diversion~~ 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; ~~By signing the Agreement, the attorney (A) acknowledges that the attorney has engaged in conduct that constitutes professional misconduct or is currently incapacitated, and (B) warrants that the attorney has not concealed from or misrepresented to Bar Counsel any material facts pertaining to the attorney's conduct or the Agreement.~~

~~(3) The Agreement shall state the particular course of remedial action that the attorney agrees to follow and a time for the performance or completion of that action. The Agreement is expressly conditioned on the attorney's not engaging in any further conduct that would constitute professional misconduct and~~

(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:

~~(A)~~ (i) mediation or binding arbitration of a fee

dispute;

~~(B)~~ (ii) restitution of unearned or excessive fees in a stipulated amount;

~~(C)~~ (iii) a public apology to designated ~~individuals~~ persons;

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

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

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

~~(G)~~ (vii) one or more specific courses of treatment for emotional distress, mental disorder or disability, ~~or~~ dependence on ~~alcohol or other drugs~~; and alcohol, drugs or other intoxicant, or an addiction to gambling;

~~(H)~~ (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 19-715 (j) and 19-716.

~~(4) The Agreement shall provide for a stay of any disciplinary or remedial proceeding pending satisfactory performance by the attorney. The Agreement may designate either a private monitor engaged at the attorney's expense or Bar Counsel to supervise performance and compliance. The Agreement shall authorize the monitor to request and receive all information and inspect any records necessary to verify compliance and, if a private monitor is selected, to report any violation or noncompliance to Bar Counsel. The Agreement shall specify the fees of any private monitor and the method and frequency of payment of those fees.~~

(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) ~~Approval by~~ Submission to Commission

A Conditional Diversion Agreement is not ~~valid~~ **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 ~~that~~ they believe relevant, and any further information that the Commission requests.

(e) Action by Commission

(1) Generally

After consideration, the Commission may:

~~(1)~~ (A) approve the Agreement if satisfied that it is reasonable and in the public interest;

~~(2)~~ (B) disapprove the Agreement if not convinced that it is reasonable and in the public interest; or

~~(3)~~ (C) recommend amendments to the Agreement as a condition of approval, ~~which the parties may accept or reject.~~

(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 ~~then~~ 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.

~~(e)~~ (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.

~~(f)~~ (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 ~~16-751~~ 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 19-719.

~~(g)~~ (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.

~~(h)~~ (j) Effect of Agreement Confidentiality

(1) Fact that Approved Agreement was Signed

~~(1) Approval by the Commission of a Conditional Diversion Agreement does not constitute discipline.~~

~~(2) Except as provided in subsections (h)(4) and (h)(5) of this Rule, the contents of the Agreement are confidential and may not be disclosed.~~

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

~~(3)~~ (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, and (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.

~~The complainant shall also be notified of the potential for and~~

~~consequences of noncompliance. Except to the extent that the Agreement requires the transfer of property to the complainant or other communication with the complainant, the terms of the Agreement shall not be disclosed.~~

(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 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.

~~(4) (C) Upon revocation of an Agreement pursuant to section (f) (h) of this Rule, the contents of the Agreement lose their confidentiality and may be disclosed in any ensuing disciplinary or remedial proceeding.~~

DRAFTER'S NOTE: Does this provision make the contents generally accessible to the public or only in an ensuing proceeding? May the complainant be informed?

~~(5) (D) The contents of an a Conditional Diversion Agreement may be disclosed in a subsequent proceeding against the attorney when if relevant to a subsequent complaint based on similar misconduct or incapacity.~~

Source: This Rule is ~~new~~ derived from former Rule 16-736

(2011).

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-716. 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 19-715 (c)(3)(ix).

~~(a)~~ (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.

~~(b)~~ (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.

~~(e)~~ (d) ~~Action by~~ Submission to Commission

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

(e) Action by Commission

~~Upon the submission, the Commission may take any of the~~

~~following actions:~~

(1) Generally

After consideration, the Commission may:

~~(1) (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;~~

~~(3) (B) the Commission may disapprove the reprimand, if not satisfied that it is appropriate under the circumstances and direct Bar Counsel to proceed in another manner; or~~

~~(2) (C) the Commission may recommend amendments to the reprimand as a condition of approval, which the parties may accept or reject.~~

(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.

~~(d) **(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 and any stipulation may be admitted into evidence.

~~(e)~~ **(g)** Effect of Reprimand

A reprimand constitutes discipline.

Source: This Rule is ~~new~~ derived from former Rule 16-737 (2011).

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Rule 19-717. STATEMENT OF CHARGES

(a) ~~Filing of Statement of Charges~~

~~(1)~~ Upon completion of an investigation, Bar Counsel shall file with the Commission a Statement of Charges if Bar Counsel determines that:

~~(A)~~ (1) the attorney ~~either~~ engaged in conduct constituting professional misconduct or is incapacitated;

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

~~(C)~~ (3) a Conditional Diversion Agreement ~~is either~~ is not appropriate under the circumstances ~~or the parties were unable to agree on one~~; and

~~(D)~~ (4) a reprimand is ~~either~~ not appropriate under the circumstances or a proposed reprimand (i) ~~one~~ was offered and rejected by the attorney, or (ii) ~~a proposed reprimand~~ was disapproved by the Commission and Bar Counsel was directed to file a Statement of Charges.

~~(2) Bar Counsel shall include with the Statement of Charges a fair summary of the evidence developed through the~~

~~investigation, including any response that the attorney sent to Bar Counsel regarding the matter.~~

(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 Lawyers' 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.

DRAFTER'S NOTE: Subsections (b)(1) and (2) put into the Rule requirements articulated in case law. See *Bar Ass'n v. Cockrell*, 270 Md. 686, 692-93 (1974).

~~(b) (c) Service of Statement of Charges; 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 subsection (a)(2) of this Rule. The matter shall then proceed in accordance with Rules ~~16-742 and 16-743~~ 19-718 and 19-719.

Cross reference: See Rule ~~16-724~~ 19-708 (a) concerning service of the Statement of Charges on the attorney.

Source: This Rule is ~~new~~ derived from former Rule 16-741 (2011).

MARYLAND RULES OF PROCEDURE

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Rule 19-718. 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 ~~16-743-(b)~~ 19-719 (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 ~~of the Bar of Maryland~~, 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 ~~new~~ derived from former Rule 16-742 (2011).

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Rule 19-719. PEER REVIEW PROCESS

(a) Purpose of ~~Peer Review Process~~

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 ~~lawyer~~ 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 ~~lawyer~~ attorney and the complainant, and (B) to encourage the ~~lawyer~~ 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 ~~lawyer~~ 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 ~~lawyers~~ attorneys and a lay person, expressed in the form of advice and opinion rather than in the form of adjudication, may assist the ~~lawyer~~ 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 person. 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) 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 ~~Peer Review~~ Panel

(1) Agreed Upon Recommendation

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

(B) If ~~a Peer Review~~ the Panel determines that the attorney committed professional misconduct, or is incapacitated, and that the parties should ~~enter into~~ consider a Conditional

Diversion Agreement, the Panel shall orally advise the parties of that determination and afford them ~~an~~ the opportunity to consider and enter into a Conditional Diversion such an Agreement in accordance with Rule ~~16-736~~ 19-715. 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 ~~16-737~~ 19-716;

(C) dismissal of the complaint or termination of the proceeding without discipline, but with a warning, in accordance with Rule ~~16-735~~ 19-714 (c); or

(D) dismissal of the complaint or termination of the proceeding without discipline and without a warning, in accordance with Rule ~~16-735~~ 19-714.

(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 ~~may~~ could take on a similar recommendation made by Bar Counsel under Rule ~~16-734~~, 19-713; or

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

Source: This Rule is ~~new~~ derived from former Rule 16-743 (2011).

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**PART 3. PROCEEDINGS ON PETITION FOR DISCIPLINARY
OR REMEDIAL ACTION**

Rule 19-721. PETITION FOR DISCIPLINARY OR REMEDIAL ACTION

(a) Commencement of ~~Disciplinary or Remedial~~ 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 ~~16-771 (b) or 16-773 (b)~~ 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. ~~Bar Counsel promptly shall notify the commission of the filing.~~ On review, the Commission ~~on review~~ may direct the withdrawal of a petition ~~that was~~ filed pursuant to this subsection, in which event, Bar Counsel shall withdraw the petition.

Cross reference: See Rule ~~16-723~~ 19-707 (b)(8) concerning confidentiality of a petition to place an incapacitated attorney on inactive status.

~~(b) Parties~~

~~The petition shall be filed in the name of the Commission, which shall be called the petitioner. The attorney shall be called the respondent.~~

(e) (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 ~~respondent~~ attorney of any professional misconduct charged and the basis of any allegation that the ~~respondent~~ attorney is incapacitated and should be placed on inactive status.

Source: This Rule is derived ~~in part from former Rules 16-709 (BV9) and 16-711 b 2 (BV11 b 2) and is in part new~~ from former Rule 16-751 (2011).

MARYLAND RULES OF PROCEDURE

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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** ~~defining~~ the extent of discovery and ~~setting~~ **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.

DRAFTER'S NOTE: Current Rule, 16-752 requires the entry of a scheduling order setting time limits for completion of discovery and the filing of motions and a hearing. Neither that Rule, nor any other, specifically authorizes an amendment to the scheduling order. Implicitly, if another judge is designated pursuant to current Rule 16-752 (c), the new judge could enter a superseding scheduling order. 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. The underscored language permits amendments to the scheduling order, subject to the 120-day

requirement.

(b) Service of ~~Petition and Order~~

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 ~~16-753~~ 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 Rules ~~16-709 b (BV9 b), 16-709 e-1 (BV9 e-1) and 16-710 e (BV10 e)~~ Rule 16-752 (2011).

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Rule 19-723. SERVICE OF PETITION AND ORDER

(a) Generally

A copy of a Petition for Disciplinary or Remedial Action filed pursuant to Rule ~~16-751~~, 19-721 and the order of the Court of Appeals ~~designating a judge~~ entered pursuant to Rule ~~16-752~~, 19-722 shall be served on ~~an~~ 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 ~~upon~~ on the attorney by serving the employee designated by the Client Protection Fund ~~of the Bar of Maryland~~ pursuant to Rule ~~16-811 e 1 (x)~~ 19-604, who shall be deemed the attorney's agent for receipt of service. The ~~Fund's~~ employee promptly shall (1) send, by ~~both~~ certified and ordinary 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 ~~16-709~~
(~~BV9~~) and in part new 16-753 (2011).

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-724. ANSWER

(a) ~~Timing; Contents~~

~~Within 15 days after being served with the petition,~~
~~unless a different time is ordered, the~~ The respondent attorney
shall file with the designated clerk and serve on the petitioner
Bar Counsel an answer to the petition ~~and serve a copy on the~~
~~petitioner. Sections (c) and (c) of Rule 2-323 apply to the~~
~~answer.:~~

(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.

DRAFTER'S NOTE: Subsection (a)(2) is designed to start the 15 days from the time the CPF employee mails the papers to the attorney. Otherwise, the attorney may have fewer than 15 days to file an answer. Subsection (a)(3) clarifies that an alternative time must be set by the Court of Appeals. The current Rule is silent on who can specify such an alternate time.

(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.

~~(b) Procedural Defects~~ (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 ~~respondent~~ 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 ~~Rules 16-709 e (BV9 e) and 16-710 b (BV10 b)~~ and is in part new Rule 16-754 (2011).

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-725. PLEADINGS; MOTIONS; AMENDMENTS TO PLEADINGS

(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

A party Bar Counsel may amend a petition or 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: ~~This Rule is new.~~ Sections (a) and (c) of this Rule are new. Section (b) is derived from former Rule 16-755 (2011).

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 ~~16-752~~ ~~(a)~~ 19-722.

Source: This Rule is derived from former Rule ~~16-710 a~~ ~~(BV10 a)~~ 16-756 (2011).

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 ~~court~~ non-
jury trial in a civil action ~~tried~~ in a circuit court. ~~Unless~~
~~extended by the Court of Appeals, the hearing shall be completed~~
~~within 120 days after service on the respondent of the order~~
~~designating a judge.~~

(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) ~~A respondent~~ 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.

~~(b)~~ (c) Burdens of Proof

~~The petitioner~~ Bar Counsel has the burden of proving the

averments of the petition by clear and convincing evidence. A ~~respondent who~~ 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.

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

The judge shall prepare and file ~~or dictate into the~~ record a written statement ~~of the judge's findings of fact,~~ **including which shall contain: (1) findings as to any evidence regarding remedial action, and conclusions of law. If dictated into the record, the statement shall be promptly transcribed. 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 ~~written or transcribed~~ 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.

~~(d)~~ (f) Transcript

~~The petitioner~~ Bar Counsel shall cause a transcript of the hearing to be prepared and included in the record.

~~(e)~~ (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.

DRAFTER'S NOTE: Because clear and detailed findings of fact and conclusions of law are required with respect to each charge in the petition, the proposed Rule requires a written statement and deletes the alternative of an extemporaneous reading of those findings and conclusions into the record.

Source: This Rule is derived from former Rules ~~16-710 d (BV10 d) and 16-711 a and b-1 (BV11 a and b-1)~~ Rule 16-757 (2011).

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

Within 15 days after service of the notice required by section (a) of this Rule, each party may file (1) exceptions to the findings and conclusions of the hearing judge and (2) recommendations concerning the appropriate disposition under Rule ~~16-759 (e)~~ 19-729 (c).

(c) Response

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

(d) Form

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

Source: This Rule is derived ~~in part from former Rule 16-711 (BV11) and is in part new~~ from former Rule 16-758 (2011).

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-729. ~~DISPOSITION~~ 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 [**for the purpose of determining appropriate sanctions, if any**].

Drafter's Note: Is the bracketed language necessary? Findings of fact may also be relevant to determine whether the attorney committed misconduct.

(B) If Exceptions are Filed

If exceptions are filed, the Court of Appeals shall determine whether the findings of fact have been proven by the requisite standard of proof set out in Rule ~~16-757 (b)~~ 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 ~~in part from former Rule 16-711 (BV11) and is in part new~~ from former Rule 16-759 (2011).

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

PART 4. 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 ~~of the Bar of Maryland~~ 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. ~~Proceedings under this Rule shall be sealed and stamped "confidential" at the time of filing, and the docket entries shall not divulge the name or otherwise identify the attorney against whom the petition is filed.~~

(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 ~~16-723~~ ~~(b)(9)~~ 19-707 (b)(9) 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, but 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 ~~in part derived from former Rule 16-718 (BV18) and in part new~~ derived from former Rule 16-722 (2011).

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-732. INJUNCTION; EXPEDITED ~~DISCIPLINARY OR REMEDIAL~~
ACTION

(a) Authority to Seek Injunction to Prevent Serious Harm

~~(1) Authority of Commission~~

Upon receiving information that an attorney is engaging in professional misconduct or has an incapacity and poses an immediate threat of causing ~~(A)~~ (1) death or substantial bodily harm to another, ~~(B)~~ (2) substantial injury to the financial interest or property of another, or ~~(C)~~ (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 ~~16-777~~ 19-734 for the right of Bar Counsel to request the appointment of a conservator when an attorney no longer can practice.

~~(2)~~ (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.

~~(3)~~ (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 ~~16-731~~ 19-711 or the basis for a Statement of Charges under Rule ~~16-741~~ 19-717.

~~(4)~~ (d) Order Granting Injunction

In addition to meeting the requirements of Rule 15-502 (e), an order granting a preliminary or permanent injunction ~~pursuant to~~ under this section shall include specific findings by a preponderance of the evidence that the attorney has engaged in the 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.

~~(5)~~ (e) Service of ~~Injunction~~ on Financial Institution

An order granting an injunction under this section that limits or prohibits withdrawals from any account or that

limits or prohibits ~~transfers~~ a transfer of funds or property is effective against any financial institution upon which it is served from the time of service.

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

(1) Filing of Petition

When an injunction ~~has~~ is issued ~~in accordance with~~ pursuant to this Rule, ~~and regardless of~~ notwithstanding any pending appeal or motion to modify or dissolve the injunction, Bar Counsel shall immediately ~~commence an action against the attorney by filing in the Court of Appeals~~ file a Petition for Disciplinary or Remedial Action pursuant to Rule ~~16-751~~ 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 ~~16-751~~ 19-721 through ~~16-761~~ 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 ~~new~~ derived from former Rule 16-776 (2011).

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 ~~16-751~~ ~~(a)(1)~~ 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 ~~16-753~~ 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 ~~16-752~~ 19-722 to hold a hearing in accordance with Rule ~~16-757~~ 19-727, or (3) containing any other appropriate provisions. The provisions of ~~Rule 16-760~~ 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 ~~new~~ derived from former Rule 16-778 (2011).

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-734. CONSERVATOR OF CLIENT MATTERS

(a) Appointment; When Authorized

If (1) an attorney dies, disappears, ~~or~~ has been disbarred, suspended, or placed on inactive status, or has abandoned the practice of law, (2) there are open client matters, and (3) and ~~no~~ there is not known to exist any personal representative, partner, or other ~~responsible party~~ individual who is willing to conduct and capable of conducting the ~~former~~ attorney's client affairs ~~is known to exist~~, 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.

DRAFTER'S NOTE: The current Rule does not provide for service of the petition. How is that to be done? Compare section (f), which provides for service of a motion for judgment on the attorney at his/her last known address (which may be too limiting), but also does not specify how service is to be effected.

(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 ~~former~~ 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 1.17 of the Maryland Lawyers' Rules of Professional Conduct.

(f) Compensation

(1) Entitlement

The conservator ~~shall be~~ 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 ~~upon~~ on the attorney at the attorney's last known address or, if the attorney is deceased, upon 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.

DRAFTER'S NOTE: See DRAFTER'S NOTE, *supra*, regarding service. Also, is it intended that an order to pay, either against the attorney or the personal representative, may be enforced by contempt?

(3) Payment from Disciplinary Fund

If the conservator is unable to obtain full payment within one year after entry of judgment, the Commission ~~in its sole discretion~~ 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 ~~in part derived from former Rule 16-717 (BV17) and in part new~~ derived from former Rule 16-777 (2011).

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 ~~16-723 (e)~~ 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 ~~in a case of~~ if there has been intrinsic or extrinsic fraud.

DRAFTER'S NOTE: See Drafter's note to Rule 19-752 (b)(3)(B) concerning reinstatement following resignation.

Source: This Rule is ~~in part derived from former Rules 16-712 (BV12) and 16-713 a (BV13 a) and in part new~~ derived from former Rule 16-775 (2011).

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 ~~16-760~~ 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 ~~16-760~~ 19-742

apply to an order entered under this subsection.

(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 this subsection;

~~(A)~~ (B) consents to the placement on inactive status;

~~(B)~~ (C) gives the consent freely and voluntarily without coercion or duress;

~~(C)~~ (D) is currently incapacitated and unable to render adequate legal service;

~~(D)~~ (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;

~~(E)~~ (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;

~~(F)~~ (G) agrees to comply with Rule ~~16-760~~ 19-744 and any conditions stated in the petition that the Court of Appeals may impose;

~~(G)~~ (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;

~~(H)~~ (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

~~(I)~~ (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 ~~16-760~~ 19-744 apply to an order entered under this section.

(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 strike the name of the attorney from the register of attorneys in that Court and shall certify to the Trustees of the Client Protection Fund ~~of the Bar of Maryland~~ and the clerks of all courts in this State that the attorney's name has been so stricken.

(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 ~~in part derived from former Rules 16-712 d (BV12 d) and 16-713 a (BV13 a) and in part new~~ derived from former Rule 16-772 (2011).

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 ~~16-751 (a)(2)~~ 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 ~~16-753~~ 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 ~~15 days from the date~~ **of 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 ~~Rule 16-760~~ 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) ~~may~~ enter an order designating a judge pursuant to Rule ~~16-752~~ 19-722 to hold a hearing in accordance with Rule ~~16-757~~ 19-727; or (3) ~~may~~ enter any other appropriate order. The provisions of ~~Rule 16-760~~ 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.

Source: This Rule is ~~in part derived from former Rule 16-710 e (BV10 e) and in part new~~ derived from former Rule 16-773 (2011).

ALTERNATIVE A

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-738. ~~DISCIPLINARY OR REMEDIAL ACTION UPON~~ DISCIPLINE ON
CONVICTION OF CRIME

(a) Definition

In this Rule, "conviction" includes acceptance by the
court of a plea of nolo contendere.

~~(a)~~ (b) Duty of Attorney Charged

An attorney charged with a serious crime in this State or
any other jurisdiction shall promptly inform Bar Counsel in
writing of ~~the criminal charge~~ (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. Thereafter,
~~the attorney shall promptly notify Bar Counsel of the final~~
~~disposition of the charge in each court that exercises~~
~~jurisdiction over the charge.~~

Cross reference: Rule ~~16-701 (k)~~ 19-701 (1).

~~(b)~~ (c) Petition in Court of Appeals 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 ~~in the Court of Appeals pursuant to Rule 16-751 (a)(2)~~ 19-721 (a)(2). The petition may be filed ~~whether the conviction resulted from a plea of guilty, nolo contendere, or a verdict after trial and~~ 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.

~~(e)~~ (d) Temporary Suspension ~~of Attorney~~

Upon filing of the petition pursuant to section ~~(b)~~ (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 ~~at any stage of appellate or collateral review.~~

Cross reference: Rule ~~16-760~~ 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 indefinitely or for a period of more than [30] [60] days, Bar Counsel may file a Petition for Interim Disciplinary or Remedial Action. The petition may be filed whether 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

15 days from the date of 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 indefinitely or for a period of more than [30] [60] 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.

~~(d)~~ (f) Statement of Charges

If the Court of Appeals denies a petition filed under section ~~(b)~~ (c) of this Rule, Bar Counsel may file a Statement of Charges under Rule ~~16-741~~ 19-717.

~~(e)~~ (g) Further Proceedings ~~on Petition~~

When a petition filed pursuant to section ~~(b)~~ (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 ~~16-752~~ 19-722 to hold a hearing in accordance with Rule ~~16-757~~ 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 ~~(f)~~ (g), 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.

~~(f)~~ (h) Right to Earlier Hearing

If the hearing on the petition has been delayed under subsection ~~(e)~~ (f)(2) of this Rule and the attorney has been suspended from the practice of law under section ~~(e)~~ (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.

~~(g)~~ (i) Conclusive Effect of Final Conviction ~~of Crime~~

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 guilt of the attorney 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.

Source: This Rule is ~~in part derived from former Rules 16-710 e (BV10 e) and 16-716 (BV16) and in part new~~ derived from former Rule 16-771 (2011).

ALTERNATIVE B

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-738. ~~DISCIPLINARY OR REMEDIAL ACTION UPON~~ DISCIPLINE ON CONVICTION OF CRIME

(a) Definition

In this Rule, "conviction" includes the entry of a plea of nolo contendere that had been accepted by the court.

~~(a)~~ (b) Duty of Attorney Charged

(1) Notification of Criminal Charge

An attorney charged with a serious crime in this State or any other jurisdiction shall promptly inform Bar Counsel in writing of the criminal charge. ~~Thereafter,~~

(2) Notification of Disposition

[If sentencing is delayed for more than 30 days,] the attorney shall promptly notify Bar Counsel of any guilty finding. The attorney shall promptly notify Bar Counsel of the final disposition of the charge in each court that exercises jurisdiction over the charge. Cross reference: ~~Rule 16-701(k)~~ 19-701 (1).

~~(b)~~ (c) Petition in Court of Appeals

(1) Upon Guilty Finding

If there has been a finding of guilty, [and sentencing is delayed for more than 30 days,] Bar Counsel may file a petition for an interim suspension pending a judgment of conviction. A certified copy of [the docket entry?] shall be attached to the petition and shall be prima facie evidence of the fact that the attorney has been found guilty of the crime charged. Upon conviction, Bar Counsel shall amend its petition to conform with subsection (c)(2).

(2) Upon Conviction

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 in the Court of Appeals pursuant to Rule ~~16-751 (a)(2)~~ 19-721 (a)(2). The petition may be filed whether the conviction resulted from a plea of guilty, nolo contendere, or a verdict after trial and whether an appeal or any other post-conviction proceeding is pending. 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.

~~(c)~~ (d) Temporary Suspension of Attorney; Interim Suspension

(1) Interim Suspension Upon Guilty Finding

Upon filing of a petition pursuant to subsection (c)(1) of this Rule, the Court of Appeals [may/shall] issue an order for an interim suspension pending a judgment of conviction. Upon receiving a petition for temporary suspension upon conviction, the Court of Appeals shall proceed in accordance with subsection (d)(2) of this Rule.

(2) Temporary Suspension Upon Conviction

Upon filing of the petition pursuant to ~~section (b)~~ **subsection (c)(2)** 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~~ any 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 at any stage of appellate or collateral review.

[KKL Drafter's Note: Should an attorney against whom a petition for an order for interim suspension has been filed be permitted to show cause, or is it sufficient that the attorney have the

opportunity to show cause upon the filing of a petition for temporary suspension?]

Cross reference: Rule ~~16-760~~ 19-742.

~~(d)~~ (e) Statement of Charges

If the Court of Appeals denies a petition filed under subsection ~~(b)~~ (c)(2) of this Rule, Bar Counsel may file a Statement of Charges under Rule ~~16-741~~ 19-717.

~~(e)~~ (f) Further Proceedings ~~on~~ ~~Petition~~

When a petition filed pursuant to subsection ~~(b)~~ (c)(2) of this Rule alleges the conviction of a serious crime, the Court of Appeals may enter an order designating a judge pursuant to Rule ~~16-752~~ 19-722 to hold a hearing in accordance with Rule ~~16-757~~ 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 ~~(f)~~ (g), 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.

~~(f)~~ (g) Right to Earlier Hearing

If the hearing on the petition has been delayed under subsection ~~(e)~~ (f)(2) of this Rule and the attorney has been suspended from the practice of law under section ~~(e)~~ (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.

~~(g)~~ (h) Conclusive Effect of Final Conviction ~~of Crime~~

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 a plea of guilty, nolo contendere, or a verdict after trial, is conclusive evidence of the guilt of the attorney 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.

Source: This Rule is ~~in part derived from former Rules 16-710-e (BV10 e) and 16-716 (BV16) and in part new~~ derived from former Rule 16-771 (2011).

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 ~~placed~~ 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,~~with~~

~~the approval of the Commission,~~ may file ~~in accordance with Rule 16-751~~ 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 ~~16-723 (b)(8)~~ 19-707 (b)(8).

(2) Service

The petition and all papers filed with the petition shall be served upon the attorney in accordance with Rule ~~16-753 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) ~~may~~ enter an order designating a judge in accordance with Rule ~~16-752 19-722~~ to hold a hearing in accordance with Rule ~~16-757 19-727~~; or (3) ~~may~~ enter any other appropriate order. The provisions of Rule ~~16-760 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 ~~16-752~~ 19-722 to hold a hearing in accordance with Rule ~~16-757~~ 19-727.

Source: This Rule is ~~new~~ derived from former Rule 16-774 (2011).

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

PART 5. 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 [**for the purpose of determining appropriate sanctions, if any**].

Drafter's Note: Is the bracketed language necessary? Findings of fact may also be relevant to determine whether the attorney committed misconduct.

(B) If Exceptions are Filed

If exceptions are filed, the Court of Appeals shall

determine whether the findings of fact have been proven by the requisite standard of proof set out in Rule ~~16-757 (b)~~ 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 (1) disbarment, (2) suspension ~~for a fixed period or indefinitely~~, (3) a reprimand, (4) placement on inactive status, (5) dismissal of the disciplinary or remedial action, or (6) 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.

Source: This Rule is derived ~~in part from former Rule 16-711 (BV11) and is in part new~~ from former Rule 16-759 (2011).

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-742. ORDER ~~IMPOSING DISCIPLINE OR INACTIVE STATUS OF~~
DISBARMENT OR SUSPENSION

INTRODUCTORY DRAFTER'S NOTE:

(1) Current Rule 16-760 covers disbarments, suspensions, and placements on inactive status. Because placement on inactive status, even if triggered by conduct that may constitute a violation of the MLRPC, 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 lawyer 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 (19-744).

(2) In order to eliminate some perceived ambiguities and redundancies, the provisions of the current Rule are reorganized and some language changes are proposed. This Rule and Rule 19-744, dealing with inactive status, are drafted as total replacements of current Rule 16-760, so the entire Rules are underlined. For convenience, changes of a substantive nature are shown through brackets and bolded language. A major part of the reorganization consists of combining current Rule 16-760 (c)(1), (c)(2), and (d).

(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 ordinary mail, and, if practicable, by electronic mail, (2) strike the name of the attorney from the register of attorneys in that Court, (3) certify that fact to the Trustees

of the Client Protection Fund and to the clerks of all courts in this State, 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 (4) give the notice required by Rule 19-707 (e).

(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 an attorney, officer, director, partner, trustee, agent, or employee 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, or advertisement suggesting that the attorney is entitled to practice law or maintain, alone or with another, an office for the practice of law; or

(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 persons who may visit the office that the attorney is not a lawyer 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.

DRAFTER'S NOTE: The exception in subsection (b)(6), which is not articulated in the current Rule, is to recognize that, in order to protect the interests of existing clients and to conclude client matters, as required in section (c), the attorney may need access to files and other records maintained at the attorney's former law office and may need to use trust account checks in order to distribute client funds and close out the trust account.

(c) Affirmative Duties of Attorney

DRAFTER'S NOTE: The following provisions are taken from current Rule 17-760 (c). Those requirements have different effective dates and time deadlines - some require completion "promptly," some within 15 days, some within 30 days. This draft reorganizes the requirements based on when they take effect or must be completed. Some of these requirements may be unnecessary or impracticable when the attorney is suspended for a fixed, short period. The Court can deal with that in its order.

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;

[KKL Drafter's note: Are there things that "can" be completed, but are not necessary to complete? Is it clear that the attorney may only "practice law" for limited purposes here?]

(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.

[KKL Drafter's note: Should a Committee note be included: 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 is not presently performing any legal work for that person.]

(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) 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 other counsel, 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.

(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).

(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. [If no minimum time is specified, an attorney who was disbarred may not file for reinstatement sooner than [5/7/10 years] after entry of the order of disbarment, and, except with leave of the Court, an attorney who was suspended for an indefinite period may not file for reinstatement sooner than [3/2 years] after entry of the order of suspension.]

DRAFTER'S NOTE: There is an anomaly in current practice. Unlike in some States, attorneys who are disbarred in Maryland are permitted to apply for reinstatement, but there is no minimum time for when they may do so. Similarly, there is no minimum time for when an attorney who was suspended for an indefinite period may apply, unless the Court specifies one in its

suspension order. The bracketed language presents for discussion whether, in default of the Court setting a minimum time, the Rule should do so. This is proposed purely for discussion and not necessarily as a recommendation.

(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.

DRAFTER'S NOTE: Current Rule 16-760 (h) specifies a number of conditions to reinstatement that the Court may include in a disbarment, suspension, or inactive status order. Rule 16-781 (g) also lists certain criteria for reinstatement that complement the conditions in Rule 16-760 (i), including compliance with Rule 16-760. There is thus an overlap. Other than establishing a minimum time for application for reinstatement, it may be more appropriate to list the conditions to reinstatement in the reinstatement Rule rather than in the disciplinary order. The Court may not know at the time it imposes discipline what conditions may be appropriate months or years later and probably would be guided by the recommendations made by Bar Counsel in his/her response to a petition for reinstatement. The specific conditions and the section on monitors in Rule 16-760 are moved to Rule 19-752 (the rewrite of current Rule 16-781) but this Rule preserves the right of the Court to include conditions in the disciplinary order should it choose to do so.

(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 ~~respondent~~ 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 ~~shall~~ 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 ~~16-752~~ 19-722 to hold a hearing in accordance with Rule ~~16-757~~ 19-727.

(i) Sanctions for Violations

(1) Disciplinary or Remedial Action

Upon receiving information from any source that the attorney has violated sections (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.

DRAFTER'S NOTE:

(1) Current Rule 16-760 (m)(1), allowing a petition for reinstatement to be dismissed if the attorney fails to demonstrate compliance with sections (b) and (c) has been moved to the reinstatement Rule.

(2) Can an attorney be held in contempt for violating a Rule (as opposed to a court order)?

Source: This Rule is derived, in part, from former Rule 16-760 (2011).

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.

DRAFTER'S NOTE: 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. They would not seem to apply to a reprimand in any event, which does not act as a suspension that could lead to a reinstatement. Nonetheless, some of them might be appropriate to be attached as a reprimand, not as conditions but as part of the reprimand itself. Section (a) provides for that.

(b) Content of Order

Unless accompanied by a reported opinion, an order that

reprimands ~~the respondent~~ 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 ~~respondent~~ attorney, and (3) state any requirements imposed ~~upon~~ on the respondent 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 ~~16-723 (e)~~ 19-707 (e).

Source: This Rule is derived from former Rule 16-760 (b)(2011).

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 (2011).

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

PART 6. 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 a copy of the Court's order imposing the suspension, any opinion that accompanied that order, and any filing fee prescribed by law.

(d) Review by Bar Counsel

Bar Counsel shall promptly review the petition and, within five days after service, file with the Clerk of the Court of Appeals and serve on the attorney any objections 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 did not file 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.

Source: This Rule is new.

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, 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 [or (ii) if no time was specified, the time specified in Rule 19-742 (e)(1)].

DRAFTER'S NOTE: See DRAFTER'S NOTE to Rule 19-742 (e)(1) concerning the possible addition of a "default" minimum time. Because Rule 19-742 does not apply to inactive status, the "default" minimum time specified in subsection (e)(1) of that Rule does not apply to petitions for reinstatement following placement on inactive status. Because inactive status is based on the attorney's incapacity, providing a default minimum time for reinstatement following placement on inactive status would be problematic.

(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;

DRAFTER'S NOTE: Current Rule 16-775 deals with the resignation of an attorney but says nothing about reinstatement. Rule 16-781 (a) appears to be the only other place in the AGC Rules in

which mention is made of a lawyer who resigned. Is it intended that an attorney who resigned, where there was no misconduct or incapacity, go through the same reinstatement procedure as disbarred or suspended lawyers? It may be clearer to deal with reinstatement in the Rule dealing with resignation.

(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;

SFH Comment: Should the terminology be "requirements" or "criteria"? The existing language is "documentary evidence supporting the petitioner's claim that the criteria specified in section (g) have been satisfied."

(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 under Code, Courts Article, §§9-109 and 9-109.1 with respect to each psychiatrist, psychologist, or psychiatric-mental health nursing specialist named subsection (c)(3)(A) of this Rule.

DRAFTER'S NOTE: There is no general physician-patient privilege. See *Butler-Tulio v. Scroggins*, 139 Md. App. 122, 135-36 (2001). There are limited patient privileges in Courts Article, §§9-109 and 9-109.1.

(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 (A) the attorney was suspended for a fixed period, (B) that period has expired, (C) 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, and (D) 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 (d)(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 (e)(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.

SFH Comment: Rather than "applicable provisions" of Rule 19-727, it may be better to specify which sections apply and how they apply. For example, are sections (e) and (f) applicable? If section (f) applies, shouldn't the attorney be responsible for payment?

(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 [and reformation], (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 ~~and had not engaged in any other professional misconduct~~ during the period of disbarment, suspension, or inactive status;

DRAFTER'S NOTE: The deleted language is moved to subsection (g)(2)(E).

(C) if the attorney was placed on inactive status, the incapacity or infirmity, including alcohol or drug abuse no longer exists and is not [reasonably] 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 [other] 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, lawyer assistance or counseling, treatment for [alcohol or] substance or gambling abuse, **or** psychological counseling;

(9) demonstrate, by a report of a health care professional or other [proper] 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 ~~may be reasonable~~ or the Court deems appropriate.

Source: This Rule is derived from former Rule 16-781 (2011).