


Maryland Register

Issue Date: April 8, 2011

Volume 38 • Issue 8 • Pages 459—538

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Pursuant to State Government Article, §7-206, Annotated Code of Maryland, this issue contains all previously unpublished documents required to be published, and filed on or before March 21, 2011, 5 p.m.

Pursuant to State Government Article, §7-206, Annotated Code of Maryland, I hereby certify that this issue contains all documents required to be codified as of March 21, 2011.

Brian Morris
Acting Administrator, Division of State Documents
Office of the Secretary of State



Information About the Maryland Register and COMAR

MARYLAND REGISTER

The Maryland Register is an official State publication published every other week throughout the year. A cumulative index is published quarterly.

The Maryland Register is the temporary supplement to the Code of Maryland Regulations. Any change to the text of regulations published in COMAR, whether by adoption, amendment, repeal, or emergency action, must first be published in the Register.

The following information is also published regularly in the Register:

- Governor's Executive Orders
- Governor's Appointments to State Offices
- Attorney General's Opinions in full text
- Open Meetings Compliance Board Opinions in full text
- State Ethics Commission Opinions in full text
- Court Rules
- District Court Administrative Memoranda
- Courts of Appeal Hearing Calendars
- Agency Hearing and Meeting Notices
- Synopses of Bills Introduced and Enacted by the General Assembly
- Other documents considered to be in the public interest

CITATION TO THE MARYLAND REGISTER

The Maryland Register is cited by volume, issue, page number, and date. Example:

- 19:8 Md. R. 815—817 (April 17, 1992) refers to Volume 19, Issue 8, pages 815—817 of the Maryland Register issued on April 17, 1992.

CODE OF MARYLAND REGULATIONS (COMAR)

COMAR is the official compilation of all regulations issued by agencies of the State of Maryland. The Maryland Register is COMAR's temporary supplement, printing all changes to regulations as soon as they occur. At least once annually, the changes to regulations printed in the Maryland Register are incorporated into COMAR by means of permanent supplements.

CITATION TO COMAR REGULATIONS

COMAR regulations are cited by title number, subtitle number, chapter number, and regulation number. Example: COMAR 10.08.01.03 refers to Title 10, Subtitle 08, Chapter 01, Regulation 03.

DOCUMENTS INCORPORATED BY REFERENCE

Incorporation by reference is a legal device by which a document is made part of COMAR simply by referring to it. While the text of an incorporated document does not appear in COMAR, the provisions of the incorporated document are as fully enforceable as any other COMAR regulation. Each regulation that proposes to incorporate a document is identified in the Maryland Register by an Editor's Note. The Cumulative Table of COMAR Regulations Adopted, Amended or Repealed, found online, also identifies each regulation incorporating a document. Documents incorporated by reference are available for inspection in various depository libraries located throughout the State and at the Division of State Documents. These depositories are listed in the first issue of the Maryland Register published each year. For further information, call 410-974-2486.

HOW TO RESEARCH REGULATIONS

Each COMAR title has a Table of Contents and Index. An Administrative History at the end of every COMAR chapter gives information about past changes to regulations. To determine if there have been any subsequent changes, check the "Cumulative Table of COMAR Regulations Adopted, Amended, or Repealed" which is found online at www.dsd.state.md.us/CumulativeIndex.pdf. This table lists the regulations in numerical order, by their COMAR number, followed by the citation to the Maryland Register in which the change occurred. The Maryland Register serves as a temporary supplement to COMAR, and the two publications must always be used together. A Research Guide for Maryland Regulations is available. For further information, call 410-974-2486.

SUBSCRIPTION INFORMATION

For subscription forms for the Maryland Register and COMAR, see the back pages of the Maryland Register. Single issues of the Maryland Register are \$5.00 per issue, plus \$2.00 for postage and handling.

CITIZEN PARTICIPATION IN THE REGULATION-MAKING PROCESS

Maryland citizens and other interested persons may participate in the process by which administrative regulations are adopted, amended, or repealed, and may also initiate the process by which the validity and applicability of regulations is determined. Listed below are some of the ways in which citizens may participate (references are to State Government Article (SG), Annotated Code of Maryland):

- By submitting data or views on proposed regulations either orally or in writing, to the proposing agency (see "Opportunity for Public Comment" at the beginning of all regulations appearing in the Proposed Action on Regulations section of the Maryland Register). (See SG, §10-112)
- By petitioning an agency to adopt, amend, or repeal regulations. The agency must respond to the petition. (See SG §10-123)
- By petitioning an agency to issue a declaratory ruling with respect to how any regulation, order, or statute enforced by the agency applies. (SG, Title 10, Subtitle 3)
- By petitioning the circuit court for a declaratory judgment on the validity of a regulation when it appears that the regulation interferes with or impairs the legal rights or privileges of the petitioner. (SG, §10-125)
- By inspecting a certified copy of any document filed with the Division of State Documents for publication in the Maryland Register. (See SG, §7-213)

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Martin O'Malley, Governor; **John P. McDonough**, Secretary of State; **Brian Morris**, Acting Administrator; **Gail S. Klakring**, Senior Editor; **Mary D. MacDonald**, Editor, Maryland Register and COMAR; **Elizabeth Ramsey**, Editor, COMAR Online, and Subscription Manager; **Tami Cathell**, Help Desk, COMAR and Maryland Register Online.

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COMAR Online

The Code of Maryland Regulations is available at www.dsd.state.md.us as a free service of the Office of the Secretary of State, Division of State Documents. The full text of regulations is available and searchable. Note, however, that the printed COMAR continues to be the only official and enforceable version of COMAR.

The Maryland Register is also available at www.dsd.state.md.us.

For additional information, visit www.sos.state.md.us, Division of State Documents, or call us at (410) 974-2486 or 1 (800) 633-9657.

Availability of Monthly List of Maryland Documents

The Maryland Department of Legislative Services receives copies of all publications issued by State officers and agencies. The Department prepares and distributes, for a fee, a list of these publications under the title “Maryland Documents”. This list is published monthly, and contains bibliographic information concerning regular and special reports, bulletins, serials, periodicals, catalogues, and a variety of other State publications. “Maryland Documents” also includes local publications.

Anyone wishing to receive “Maryland Documents” should write to: Legislative Sales, Maryland Department of Legislative Services, 90 State Circle, Annapolis, MD 21401.

CLOSING DATES and ISSUE DATES through JULY 29, 2011

Issue Date	Emergency and Proposed Regulations* 5:00 p.m.	Final Regulations 10:30 a.m.	Notices, etc. 10:30 a.m.
April 22	April 4	April 13	April 11
May 6	April 18	April 27	April 25
May 20	May 2	May 11	May 9
June 3**	May 16	May 24	May 20
June 17**	May 26	June 8	June 6
July 1	June 13	June 22	June 20
July 15	June 27	July 6	July 1
July 29**	July 11	July 20	July 18

* Due date for documents containing 8 to 18 pages—48 hours before date shown

Due date for documents exceeding 18 pages—1 week before date shown

NOTE: ALL DOCUMENTS MUST BE SUBMITTED IN TIMES NEW ROMAN, 9-POINT, SINGLE-SPACED FORMAT. THE REVISED PAGE COUNTS REFLECT THIS FORMATTING REQUIREMENT.

** Note closing date changes

The regular closing date for Proposals and Emergencies is Monday.

REGULATIONS CODIFICATION SYSTEM

Under the COMAR codification system, every regulation is assigned a unique four-part codification number by which it may be identified. All regulations found in COMAR are arranged by title. Each title is divided into numbered subtitles, each subtitle is divided into numbered chapters, and each chapter into numbered regulations.

09.12.01.01D(2)(c)(iii)
 Title Chapter Section Paragraph
 Subtitle Regulation Subsection Subparagraph

A regulation may be divided into lettered sections, a section divided into numbered subsections, a subsection divided into lettered paragraphs, and a paragraph divided into numbered subparagraphs.

Cumulative Table of COMAR Regulations Adopted, Amended, or Repealed

This table, previously printed in the Maryland Register lists the regulations, by COMAR title, that have been adopted, amended, or repealed in the Maryland Register since the regulations were originally published or last supplemented in the Code of Maryland Regulations (COMAR). The table is no longer printed here but may be found on the Division of State Documents website at www.dsd.state.md.us.

Table of Pending Proposals

The table below lists proposed changes to COMAR regulations. The proposed changes are listed by their COMAR number, followed by a citation to that issue of the Maryland Register in which the proposal appeared. Errata pertaining to proposed regulations are listed, followed by "(err)". Regulations referencing a document incorporated by reference are followed by "(ibr)". None of the proposals listed in this table have been adopted. A list of adopted proposals appears in the Cumulative Table of COMAR Regulations Adopted, Amended, or Repealed.

<p style="text-align: center;">03 COMPTROLLER OF THE TREASURY</p> <p>03.02.06.01—.04 • 37:3 Md. R. 181 (1-29-10)</p> <p style="text-align: center;">05 DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT</p> <p>05.05.07.01—.31 • 37:20 Md. R. 1398 (09-24-10)</p> <p style="text-align: center;">07 DEPARTMENT OF HUMAN RESOURCES</p> <p>07.01.04.03 • 38:4 Md. R. 265 (2-11-11) 07.07.01.02 • 38:4 Md. R. 265 (2-11-11) 07.07.08.01—.06 • 38:4 Md. R. 266 (2-11-11)</p> <p style="text-align: center;">08 DEPARTMENT OF NATURAL RESOURCES</p> <p>08.07.05.02,,03 • 38:6 Md. R. 399 (3-11-11) 08.18.14.05 • 38:7 Md. R. 435 (3-25-11) 08.18.20.04 • 38:3 Md. R. 175 (1-28-11)</p> <p style="text-align: center;">09 DEPARTMENT OF LABOR, LICENSING, AND REGULATION</p> <p>09.12.26.02—.04,,06—.10,,12,,13 • 38:8 Md. R. 510 (4-8-11) 09.12.31 • 38:5 Md. R. 322 (2-25-11) 09.13.06.12 • 38:4 Md. R. 267 (2-11-11) 09.15.02.12 • 37:23 Md. R. 1614 (11-5-10) 09.18.02.07 • 38:1 Md. R. 25 (1-3-11) 09.20.04.01,,02 • 37:4 Md. R. 346 (2-12-10) 38:3 Md. R. 176 (1-28-11) 09.22.01.13 • 37:26 Md. R. 1790 (12-17-10) 09.22.02.03 • 37:26 Md. R. 1791 (12-17-10) 09.23.01.04 • 38:4 Md. R. 268 (2-11-11) 09.23.04.03 • 38:8 Md. R. 516 (4-8-11) 09.23.06.01—.17 • 38:8 Md. R. 517 (4-8-11) 09.25.01.01,,01-1,,04,,06,,07 • 37:4 Md. R. 350 (2-12-10) 09.32.01.18-3 • 36:26 Md. R. 2024 (12-18-09)</p>	<p>09.38.01.01—.04 • 38:3 Md. R. 178 (1-28-11)</p> <p style="text-align: center;">10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE</p> <p style="text-align: center;">Subtitles 01 — 08 (1st Volume)</p> <p>10.01.04.01—.11 • 38:3 Md. R. 180 (1-28-11) 10.01.17.02 • 38:8 Md. R. 521 (4-8-11) 10.07.05.01—.28 • 38:4 Md. R. 269 (2-11-11)</p> <p style="text-align: center;">Subtitle 09 (2nd Volume)</p> <p>10.09.06.01,,03,,09 • 38:7 Md. R. 435 (3-25-11) 10.09.24.13 • 38:3 Md. R. 180 (1-28-11) 10.09.34.01 • 38:4 Md. R. 281 (2-11-11) 10.09.36.06,,11 • 38:4 Md. R. 281 (2-11-11) 10.09.65.20 • 38:7 Md. R. 437 (3-25-11) 10.09.81.01—.07 • 37:20 Md. R. 1409 (09-24-10)</p> <p style="text-align: center;">Subtitles 10 — 22 (3rd Volume)</p> <p>10.10.01.03 • 37:25 Md. R. 1745 (12-3-10) 10.10.03.02 • 37:25 Md. R. 1745 (12-3-10) 10.10.06.02 • 37:25 Md. R. 1745 (12-3-10) 10.16.06.08,,14,,27 • 38:8 Md. R. 521 (4-8-11) 10.21.25.03-1,,08,,09 • 38:3 Md. R. 192 (1-28-11) 10.22.17.02,,03,,06—.08 • 37:14 Md. R. 956 (7-2-10)</p> <p style="text-align: center;">Subtitles 23 — 36 (4th Volume)</p> <p>10.24.05.01—.07 • 38:7 Md. R. 438 (3-25-11) 10.25.16.01—.07 • 37:16 Md. R. 1064 (7-30-10) 10.27.01.12 • 38:7 Md. R. 440 (3-25-11) 10.27.07.01—.11 • 38:1 Md. R. 26 (1-3-11) 10.27.10.01—.04 • 38:3 Md. R. 193 (1-28-11) 10.27.11.02,,04,,05 • 37:21 Md. R. 1456 (10-8-10) 10.27.25.01—.09 • 37:19 Md. R. 1298 (9-10-10)</p>
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 19A.03.03.01,.02 • 38:8 Md. R. 525 (4-8-11)

20 PUBLIC SERVICE COMMISSION

20.50.01.03,.05 • 38:5 Md. R. 332 (2-25-11)
 20.50.10.01—.08 • 38:5 Md. R. 332 (2-25-11)

22 STATE RETIREMENT AND PENSION SYSTEM

22.01.07.02—.05 • 38:7 Md. R. 448 (3-25-11)
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 22.05.06.01—.03 • 38:7 Md. R. 450 (3-25-11)

26 DEPARTMENT OF THE ENVIRONMENT

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 26.11.01.01 • 38:2 Md. R. 101 (1-14-11)
 26.11.01.10,.11 • 38:2 Md. R. 104 (1-14-11)
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 26.11.19.13 • 38:2 Md. R. 117 (1-14-11)
 26.11.23.05,.06,.10,.11 • 38:2 Md. R. 120 (1-14-11)
 26.11.31.01—.15 • 38:2 Md. R. 121 (1-14-11) (ibr)
 26.11.34.02 • 38:2 Md. R. 125 (1-14-11) (ibr)
 26.11.36.01—.04 • 38:2 Md. R. 106 (1-14-11)

Subtitles 13—18 (Part 3)

26.17.01.01 • 37:19 Md. R. 1329 (9-10-10) (err)

26.17.01.01—.11 • 37:18 Md. R. 1244 (8-27-10) (ibr)

26.17.01.09 • 37:19 Md. R. 1329 (9-10-10) (err)

29 MARYLAND STATE POLICE

29.06.06.01—.07 • 36:20 Md. R. 1554 (9-25-09)

**30 MARYLAND INSTITUTE FOR EMERGENCY MEDICAL
SERVICES SYSTEMS (MIEMSS)**

30.02.02.02—.06,.09 • 38:4 Md. R. 296 (2-11-11)

31 MARYLAND INSURANCE ADMINISTRATION

31.04.21.01—.03 • 38:3 Md. R. 230 (1-28-11)

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34 DEPARTMENT OF PLANNING

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The Attorney General

OPINIONS

March 14, 2011

Thomas Phelan
CEO/President
Injured Workers Insurance Fund

You have asked for our opinion on two questions concerning the Injured Workers' Insurance Fund ("IWIF"). Specifically, you ask:

1. Who owns IWIF's reserves and surplus?
2. Does the State have any claim to IWIF's reserves, surplus, or other assets?

For the reasons set forth below, it is our opinion that:

1. The reserves and surplus that the Insurance Article requires IWIF to maintain with respect to its policies are held in trust for the employers who are IWIF's policyholders and the employees who are entitled to benefits under IWIF's policies. If the General Assembly chose to terminate IWIF's existence, it would need to make arrangements to preserve such funds for those purposes.

2. To the extent that IWIF has assets in excess of the reserves and surplus required by the Insurance Article, upon IWIF's termination, those assets would belong to the State, which created IWIF. The statute governing IWIF provides for the General Assembly to direct the disposition of those assets or for the assets to be distributed "as justice requires."

I

Background

A. State Workers' Compensation System

Like the laws of other states, Maryland law requires employers to have workers' compensation insurance to compensate employees for workplace injuries. Annotated Code of Maryland, Labor & Employment Article ("LE"), §9-402. Many employers purchase workers' compensation insurance from insurers, while other employers self-insure. The Workers' Compensation Commission adjudicates employees' entitlement to benefits and oversees the workers' compensation system. As part of that system, the Legislature has created several entities to ensure that employers can obtain the necessary insurance and that benefits are paid even when employers fail to arrange for insurance.¹

B. IWIF – the Agency

IWIF was created by statute to provide insurance for employers who would otherwise be unable to obtain coverage. See R. P. Gilbert & R. L. Humphreys, *Maryland Workers' Compensation Handbook* (3d ed. 2007) at pp. 2-18. Since its inception, IWIF has been an agency or instrumentality of the State. *Central Collection Unit v. DLD Assoc. Limited Partnership*, 112 Md. App. 502, 510, 685 A.2d 873 (1996). It was established in 1914 as part of the State Industrial Accident Commission, a predecessor to the Workers' Compensation Commission.² Chapter 800, §16, Laws of Maryland 1914. It was made a separate agency in 1941, later incorporated into the Department of Personnel, and still later made an independent agency. See Chapters 584, 585, Laws of Maryland 1987; Chapter 98, Laws of Maryland 1970; Chapter 504, Laws of Maryland 1941.

¹ In addition to the Workers' Compensation Commission and IWIF, the Legislature has established the Uninsured Employers' Fund, which provides benefits to employees whose employers have failed to obtain insurance, and the Subsequent Injury Fund, which provides additional benefits to injured workers with pre-existing health conditions. LE §9-801 *et seq.*; LE §9-1001 *et seq.*

² IWIF was originally known as the State Accident Fund. It was renamed in 1990. Chapter 71, Laws of Maryland 1990.

IWIF is governed by a board, which is appointed by the Governor with the advice and consent of the Senate. LE §10-110. Although the Legislature has exempted IWIF generally from laws affecting State agencies, it has explicitly made the agency and its employees subject to specified laws governing State agencies and employees. See LE §10-107(b). Among those laws are the Public Information Act, the Public Ethics Law, and the State whistleblower law. *Id.*

IWIF's operations are limited to the realm of workers' compensation insurance. LE §10-106(b)(4). IWIF is to function in a manner similar to a private workers' compensation insurer. LE §10-106(a). While it is to operate as a competitive insurer in the marketplace, it must also guarantee the availability of workers' compensation insurance in Maryland and serve as the insurer of last resort. LE §10-106(b)(1)-(3). In addition to providing insurance, IWIF administers claims for certain employers who choose to self-insure. See LE §10-105(b). As a workers' compensation insurer, IWIF is subject to oversight by the Workers' Compensation Commission. See LE §9-309(e) (approval of policy forms); LE §9-316(a)(3), (c) (Commission assessment). IWIF is also a member of Property and Casualty Insurance Guaranty Corporation, a State-created entity that backstops claims against insurers that become insolvent. LE §10-107(c); see also Annotated Code of Maryland, Insurance Article, §9-301 *et seq.*

IWIF is also subject to regulation by the Maryland Insurance Administration ("MIA") in much the same manner as a private workers' compensation insurer. LE §10-105(a). It is exempted from provisions specifically directed to stock and mutual insurers, the premium tax, and insurance rate making. *Id.* It is subject to examination by the MIA, which must determine, at least once every five years, whether IWIF's rates are actuarially sound. LE §10-125. IWIF is also to file a report each year with the Governor about its operations, its financial condition, and market trends. LE §10-126(a). In addition, on an annual basis, it is to provide the Governor with a copy of each policy form it uses, a schedule of its rates, its provisions for payment of claims, and other information, all in a format similar to that used by insurance rating organizations. LE §10-126(b).

C. IWIF - the Fund

The agency administers a fund that finances the insurance coverage it was created to provide. LE §10-117 *et seq.* The statute governing IWIF refers to "the Fund" to mean both the agency and the moneys that the agency oversees. For purposes of this opinion, we will use the term "IWIF" to refer to the agency and the term "Fund" to refer to the moneys that the agency administers.

The Fund consists of premiums received for insurance policies, income from invested funds, interest from deposited funds, and proceeds of any debt collections. LE §10-118(a). IWIF is to use these moneys to pay the expenses of the agency and any losses incurred on its policies. LE §10-118(c). It is to keep reserves and surplus in accordance with the Insurance Article. LE §10-121. The statute provides that, if IWIF's enabling legislation is repealed, the moneys that are in the Fund are to be distributed as directed by the General Assembly or, failing specific direction, "as justice requires, with due regard for existing obligations for compensation." LE §10-127.

II

Analysis

You first ask who owns IWIF's reserves and surplus. Secondly, you ask whether the State has any claim to IWIF's reserves, surplus, or assets. From these questions – and the discussion in your letter – we gather that your concern is the ultimate disposition of IWIF's assets, should IWIF cease to exist, either in its current form or

altogether. Because a change in the form of IWIF could raise a host of issues that may or may not affect our answer, we will focus on a scenario where IWIF's existence is simply terminated.

A. *Disposition of the Fund upon IWIF's Termination*

IWIF's enabling law provides that, if it should be repealed, the moneys in the Fund are to be distributed "as the General Assembly provides" or, failing such direction, "as justice requires, with due regard for existing obligations for compensation." LE §10-127. Thus, the Fund would not automatically revert to the State's general fund. Indeed, such a reversion might well be challenged as a unconstitutional impairment of the insurance contracts between IWIF and its policyholders. See *Allstate Insurance Co. v. Kim*, 376 Md. 276, 298-300, 829 A.2d 611 (2003) (discussing whether legislation substantially impaired insurance contract).

On the other hand, the Fund is not simply the property of the current policyholders. IWIF was not created as a mutual insurance company. Nor is there any indication in its enabling law that its assets belong to its current policyholders. If the Fund simply belonged to current policyholders, there would be no need for the General Assembly's direction on how to distribute its funds upon termination. Moreover, the statute explicitly contemplates the possibility that there may be assets to be distributed even after there has been "due regard for existing obligations for compensation." This provision has been part of IWIF's enabling law since its inception. See Chapter 800, §28, Laws of Maryland 1914. This indicates that it has always been the intention of the General Assembly to retain authority over the disposition of any residual of the Fund.

What part of the Fund is devoted to "existing obligations for compensation," and what part is subject to other dispositions? Part of the Fund that consists of the statutorily-mandated reserves and surplus required to service IWIF's liabilities and existing policies. If IWIF were to cease operations, that part of the Fund would presumably fulfill IWIF's "existing obligations" under current and past insurance contracts. Any moneys in the Fund in excess of the required reserves and surplus would belong to the State, as the "owner" of IWIF.³ There would not appear to be a basis for any other disposition. For example, payment of excess funds that derived from prior operations to current policyholders would simply be a windfall to current policyholders without any apparent economic or legal basis.⁴ If the Fund lacked sufficient funds to satisfy IWIF's required reserves and surplus, there would be no excess assets for the State to distribute.

B. *1968 Attorney General Opinion*

More than 40 years ago, Attorney General Burch was asked whether the Legislature could make the Fund part of the State's general fund. He was also asked whether the State would be liable for claims against IWIF⁵ if the Fund were insolvent. The resulting opinion concluded, correctly in our view, that (1) the Legislature could not "take over the moneys [of the Fund] and apply them to general State purposes" and (2) the State was not liable for claims

against IWIF. 53 *Opinions of the Attorney General* 3, 12 (1968) ("1968 Opinion"). However, some of the language of that opinion was more expansive than necessary and could be read to espouse what is, in our view, an unwarranted assignment of the entire Fund to current policyholders. We explain.

In concluding that the Fund could not be merged into the State's general fund, the 1968 Opinion observed that the moneys in the Fund derived from premiums paid by employers for insurance. 1968 Opinion at 4. Part of that sum would be used to pay current claims by injured employees. The remainder would be used for reserves and surplus. The opinion noted that IWIF was required by statute to set up a reserve sufficient to meet anticipated losses and "carry all claims and policies to maturity" and to maintain a surplus "sufficiently large to cover the catastrophe hazard." *Id.* at 5 (quoting Article 101, §78). Those statutory requirements have been modified in the intervening years, but IWIF's basic obligation to maintain a sufficient balance in the Fund to cover anticipated claims remains in the law.⁶

The 1968 Opinion observed that the Fund, as well as similar funds in other states, had been created for the benefit of employers and employees, and not for the benefit of the State. 1968 Opinion at 5. It noted that "if the Legislature were to appropriate the assets of [IWIF] and use them for general State purposes, employers would be deprived of the protection of adequate reserves to guard against claims of injured employees." *Id.* at 5-6. The opinion appeared to be focused on the validity of the State "taking over the reserves and surplus of the ... Fund." *Id.* at 9; see also *id.* at 11. Indeed, it posited a situation in which the distribution of Fund assets would mean that there would not be "adequate reserves to cover incurred liabilities." *Id.* at 11.

The diversion of the necessary reserves and surplus from the Fund to other uses obviously would undermine its purpose and might well impair the contracts between IWIF and its policyholders.⁷ However, the 1968 Opinion summarized its analysis by stating that "the assets [of IWIF] belong exclusively to the policyholders ..." *Id.* at 3 (emphasis added). The use of the words "belong exclusively," which might suggest that current policyholders had a property interest in the entirety of the Fund and that no portion of the Fund could ever be devoted to anything other than the payment of claims or dividends, went beyond the reasoning of the opinion. In particular, the 1968 Opinion did not consider the possibility that the Fund might contain funds in excess of those needed to pay current claims and to satisfy the statutorily required reserves and surplus. Nor did it discuss the possibility that only a portion of the Fund, as opposed to the entire Fund, might be directed to general State purposes.

Similarly, the 1968 Opinion stated that the Fund was "in effect a trust fund which belongs to employers..." *Id.* at 11.⁸ It is true that, in creating IWIF, the State pledged the Fund, including the amounts needed for current claims and the statutorily described reserves and surplus, for the benefit of the policyholders. The statute limited the State's liability to the amount of the Fund and did not permit any

³ The principle that the State may control the disposition of assets in excess of the required reserves and surplus applies even without the dissolution of IWIF. The circumstances under which the State would do so, and the mechanics by which the extent of excess assets would be determined are beyond the scope of this opinion.

⁴ It is notable that a federal tax exemption for entities such as IWIF contemplates, as a condition of the exemption, that assets of those organizations revert to the state upon dissolution of the entity. See 26 U.S.C. §501(c)(27)(B)(iii)(I); April, *The Integral, Essential, and the Instrumental: Federal Income Tax Treatment of Governmental Affiliates*, 23 J. Corp. L. 803, 833 (1998).

⁵ At the time of the opinion, the agency was still known as the State Accident Fund. To avoid confusion, we use its current name in this opinion.

⁶ During the past decade, after the relevant provision was recodified as LE §10-121, the specific reserves and surplus requirements in IWIF's enabling law were eliminated, and the agency was made subject to the same requirements that apply to other insurers. See Chapter 336, Laws of Maryland 2009.

⁷ The 1968 Opinion did not itself analyze the impairment of contract issue. For a discussion of a state government's obligation not to impair its own contracts, see 90 *Opinions of the Attorney General* 195, 207-9 (2005). The issue has been discussed in the context of state-created workers' compensation insurers in numerous cases in other states. See Part II.B of this opinion.

⁸ The 1968 Opinion supported its conclusion that IWIF held the Fund "in trust" for policyholders and employees with a survey of similar laws in many other states. 53 *Opinions of the Attorney General* at 6-9. However, as will be seen in the next section of this opinion, courts in a number of those states have concluded that funds similar to the Fund do *not* belong exclusively to the policyholders served by those funds.

recourse to other State funds.⁹ Thus, the current liabilities, reserve, and surplus could properly be considered to be held in trust for the policyholders and their employees. However, that does not mean that all assets of IWIF are held in trust for, or owned by, the policyholders and that the General Assembly is helpless to devise some other disposition of any excess assets. Indeed, the General Assembly reserved the power to distribute funds remaining after “due regard” for existing obligations.

Thus, we agree with the essential conclusions of the 1968 Opinion that the Legislature may not merge the reserves and surplus of the Fund into the State’s general fund and that the State is not liable for claims against the Fund. To the extent that some language of the 1968 Opinion could be read to adopt a more expansive view of current policyholders’ interest in the Fund and a more restrictive view of the State’s interest, we overrule that opinion.

C. Cases Involving State-Created Workers’ Compensation Insurers in Other States

Questions concerning the disposition of assets of state-sponsored workers’ compensation insurers have been addressed by courts in other jurisdictions. While none of those insurers is identical to IWIF¹⁰, and the courts have reached varying results, the cases make clear that a state may retain some interest in the assets of a state-created workers compensation insurer.

The highest appellate courts in several states with state-sponsored workers’ compensation insurers similar to IWIF have rejected claims that policyholders have a property interest in the funds administered by those insurers. On the other hand, several courts in other states have held that the state had no interest in funds administered by a state-sponsored workers’ compensation insurer and overturned efforts to transfer moneys from those funds to a state general fund. However, the latter holdings appear to be based on specific provisions of the enabling statutes not found in the Maryland statute or on a finding that all of the moneys in the fund were needed to fulfill the obligations of the fund.

Sale or Liquidation of State-Created Insurer

In a case involving privatization of a state-created insurer, the Michigan Supreme Court was asked to determine the constitutionality of legislation authorizing the sale of the State Accident Fund (“SAF”) – the Michigan analog to IWIF. *In re Certified Question: Fun ‘n Sun RV, Inc. v. Michigan*, 527 N.W.2d 468 (Mich. 1994). That legislation authorized the sale of the assets of SAF, together with the transfer of its liabilities, with the proviso that most of the consideration for the transaction would go to the state treasury. Policyholders asserted that they were entitled to a distribution of any profit from the transaction. They argued that the direction of the profits to the state treasury was unconstitutional as an impairment of contract and a deprivation of property without compensation. *Id.* at 473.

The Michigan Supreme Court acknowledged that, in prior unrelated cases, a federal court and an intermediate state appellate court had held that SAF’s assets were held in trust for its policyholders and could not be used by the state for general purposes. *Id.* at 472. However, by the time of the *Fun ‘n Sun RV* case, the structure of SAF had been fundamentally changed by the legislature. In particular, it had been made independent of any state department

and various changes had been made in its statute to put it on “an equal footing with private insurers in the marketplace and ensure that it did not compete unfairly with them.” *Id.* at 473.

In the end, the Michigan Supreme Court found no merit in either constitutional claim. First, it concluded that the relevant statutes did not give the policyholders a contractual right to SAF’s excess assets. Rather, they had a vested contractual right to liability coverage for the period for which they had paid premiums. There had been no showing that those contractual rights would be impaired by the sale. *Id.* at 473-78.¹¹ Second, it held that the federal court’s statement that the assets of SAF were held “in trust” for policyholders did not mean that those assets were the property of the policyholders. The Michigan court explained:

We note that the “trust” language then employed by the Court did not speak in terms of an ownership interest on the part of the policyholders. Indeed, the Court did not expressly identify any beneficiary of the “trust” to which it referred.

We are convinced that the Court of Appeals used the words “in trust” in an informal, descriptive sense, rather than as declaration of a formal trust relationship.... The better inference is that the Court of Appeals used the words “in trust” in the sense that the state’s receipt of the policyholders’ premiums resulted in an obligation to manage those premiums to assure the intended benefit, insurance coverage.

Id. at 479. The court contrasted SAF to a mutual insurance company, in which a policyholder would have a property interest in the surplus of the company. *Id.* at 480. In the absence of such a property interest, there could be no taking in violation of due process. *Id.* at 480-82.

In *Moran v. State*, 534 P.2d 1282 (1975), the Oklahoma Supreme Court reached a different conclusion in a case involving a partial liquidation of the state-created workers compensation insurer when there was no surplus in the fund. In that case, the legislature directed the partial liquidation of the fund of the insurer for appropriation by the legislature. Upon a constitutional challenge by policyholders, the court held that, because the funds were not “state funds,” but rather funds held in trust for insured employers and their employees, they were not subject to appropriation by the legislature. This conclusion was based, in part, on a finding that there were “no excess surplus funds” in the fund and that policyholders would be obligated to make up any shortfall. 534 P.2d at 1285-88.

Transfers of Funds from State-Created Insurer

In the early 1980s, the New York legislature passed a law that transferred \$190 million from the State Insurance Fund (“SIF”), a fund that existed to insure employers with respect to workers’ compensation claims, to the state’s general fund. *See Methodist Hospital of Brooklyn v. State Insurance Fund*, 476 N.E.2d 304 (N.Y. 1985). The same law provided for an appropriation of the same amount back to SIF for the purpose of maintaining its solvency if deemed necessary by the state’s budget director. 476 N.E.2d at 306-7. Two employers insured by SIF sought to overturn the law, alleging that it was unconstitutional for a variety of reasons.

The New York Court of Appeals rejected the notion that SIF was essentially a mutual insurance pool such that its policyholders had a

⁹ This has been the case since the creation of the Fund. *See* Chapter 800, §16, Laws of Maryland 1914 (“Such fund shall be administered by the Commission without liability on the part of the State or the custodian thereof beyond the amount of such fund and shall be applicable to the payment of losses sustained on account of insurance and to the payment of expenses in the manner provided in this Act.”).

¹⁰ The variety of such entities poses a particular challenge to authors of legal encyclopedias who attempt a general description. *See* 100 CJS *Workers’ Compensation* §647 (“Nature of fund”).

¹¹ The court distinguished an Oregon case in which the state had explicitly disclaimed any state proprietary interest in a workers’ compensation fund. *See Eckles v. State*, 760 P.2d 846 (1988), described later in the text.

property interest in it. While SIF was required to make reports to the state insurance commissioner similar to those made by mutual insurance companies, its policyholders were not members and had no say in its governance. *Id.* at 308. Nor did they have any responsibility to contribute to make up its losses. Like IWIF, SIF was a state agency. *Id.* at 309. Unlike the situation with IWIF, the state faced potential liability if SIF were insufficient to satisfy claims.¹² The New York court concluded that the policyholders had no property interest in the surplus amount of that fund, unless SIF exercised its discretion to declare a dividend to policyholders. *Id.* at 310. Accordingly, the transfer of a portion of the surplus to the state's general fund did not violate state or federal law. *Id.*¹³

A different conclusion was reached when the state legislature explicitly disclaimed any interest in the fund. In *Eckles v. State* 760 P.2d 846 (Or. 1988), the Oregon Supreme Court held that a transfer of funds from a state-created workers' compensation insurer to the state's general fund breached the state's contract with employers and violated the state constitution. State law had specifically provided that the fund was a trust fund "exclusively for the uses and purposes of" the workers' compensation law, that the state had "no proprietary interest" in the fund, and that it had waived any right to reclaim its own initial contributions to the fund. 760 P.2d at 852. In tracing the origin of the key statutory provisions, the court demonstrated that they were a reaction to an earlier instance in which money had been transferred out of the fund for other governmental purposes. The court concluded that the statutory provisions disclaiming any state interest in the fund amounted to a contractual promise to induce employers to obtain insurance from the fund. *Id.* at 855. It held that the subsequent amendment allowing a transfer of money from the fund for general government use impaired existing insurance contracts, although the amendment would be valid as to subsequent contracts and contract renewals. *Id.* at 858.¹⁴

General Question of Ownership of Funds of State-Created Insurer

In a variety of circumstances, courts in other states have held that policyholders do not have a property interest in a state-created workers' compensation fund, unless the law creating the fund clearly dedicated the entirety of the fund to the policyholders. In *Kelso & Irwin, P.A. v. State Insurance Fund*, 997 P.2d 591, 596-97 (Id. 2000),

¹² A state's exposure to liability should not be a determining factor as to its ownership interest in a state-created workers compensation insurer, according to the Michigan Supreme Court. In the *Sun 'n Fun RV* case, it rejected an argument that a state that has limited its exposure would thereby lose its ownership interest. 527 N.W.2d at 785 n. 21.

¹³ The New York Court of Appeals reached a somewhat different result in a subsequent case concerning a transfer from New York's Property and Liability Insurance Security Fund – a fund perhaps analogous to Maryland's Property and Casualty Insurance Guaranty Corporation – to the New York general fund. *Alliance of American Insurers v. Chu*, 571 N.E.2d 672 (1991). The court held that the transfer was unconstitutional because the insurers that had contributed to the fund had a property right in the earnings of the fund. The court distinguished *Methodist Hospital* on the grounds that the payment of dividends to policyholders by SIF was discretionary, that SIF's policyholders had no obligation to make contributions to offset losses of the fund, and that the state had not pledged its full faith and credit in the case of SIF. 571 N.E. 2d at 680-81. Each of those factors also distinguishes the Fund managed by IWIF.

¹⁴ In Colorado, the state's Solicitor General looked to similar provisions in Colorado law in concluding that moneys of a state sponsored workers' compensation insurer could not be used for general state purposes. See www.coloradoattorneygeneral.gov/sites/default/files/press_releases/2009/04/10/.pdf (noting that state law provided that the state-sponsored workers' compensation insurer was to "operate as a domestic mutual insurance company," that its board was to have the powers, rights, and duties of the board of a mutual insurance company, that all revenues, moneys, and assets of the insurer belonged "solely" to the insurer, and that the state had "no claim to, nor any interest in" those revenues, moneys, and assets).

the Idaho Supreme Court held that policyholders had no ownership interest by statute or by contract in a state-created worker's compensation insurer and therefore could not compel the insurer to issue a dividend to them. Rather, the court held that, because assets of the fund belonged to the fund for purposes of insuring employers against liability under the workers' compensation law, the fund itself was the "owner." *Id.* at 597. The fact that the relevant statute provided that the fund was to be "deemed" a mutual insurer did not change that conclusion. The court did not consider the disposition of the assets, were the insurer to be dissolved by the state legislature. See also *Williams v. Industrial Commission of Ohio*, 156 N.E. 101, 103 (Oh. 1927) (holding that an employee of an insolvent employer could recover from fund created under worker's compensation law and consisting of premium payments of other employers because "the fund becomes property of the state, and is held in trust for the payment of compensation to such injured employees as the State may designate").

By contrast, in *Workers' Compensation Fund v. Utah*, 125 P.3d 852 (Ut. 2005), the Supreme Court of Utah held that the state had no ownership interest in a quasi-public corporation created by the state to provide workers' compensation insurance when, among other things, a state statute explicitly prohibited the use of its funds "for any purpose other than the operation of the fund." See also *Chez v. Industrial Commission of Utah*, 62 P.2d 549, 551 (Ut. 1936) (if Utah fund were discontinued by state, any excess proceeds of liquidation would belong to policyholders, not state); *State Compensation Fund of Arizona v. Peterson*, CV 2003-011970 (Ariz. Super. Ct. 4/13/04) (employer policyholders had vested right in workers' compensation fund when underlying statute provided that assets of fund were to be used "solely" for workers' compensation benefits and administrative expenses; accordingly, a transfer of part of fund to state's general fund was unconstitutional).

Summary

In sum, courts in other jurisdictions have recognized a state's right to dispose of funds of a state-sponsored workers' compensation insurer when those funds exceeded the amount necessary to fulfill the insurer's contractual obligations and when the underlying statute did not explicitly disclaim the state's interest in those moneys or dedicate all moneys in such a fund *solely* to the payment and administration of claims.

III Conclusion

As explained above, it is our opinion that:

1. The reserves and surplus that the Insurance Article requires IWIF to maintain with respect to its policies are held in trust for the employers who are IWIF's policyholders and the employees who are entitled to benefits under IWIF's policies. If the General Assembly chose to terminate IWIF's existence, it would need to make arrangements to preserve such funds for those purposes.

2. To the extent that IWIF has assets in excess of the reserves and surplus required by the Insurance Article, upon IWIF's termination, those assets would belong to the State, which created IWIF. The statute governing IWIF provides for the General Assembly to direct the disposition of those assets or for the assets to be distributed "as justice requires."

Douglas F. Gansler, Attorney General
Robert N. McDonald, Chief Counsel, Opinions and Advice

[11-08-36]

Open Meetings Compliance Board

OPINIONS

December 22, 2010

George R. "Rusty" Talcott, V

The Open Meetings Compliance Board has considered your complaint concerning the Charles County Commissioners' attendance at a meeting of the Charles County Economic Executive Committee on August 24, 2010.

For the reasons explained below, we find that the Board of County Commissioners did not violate the Act in that they appeared to have attended as guests of the designated chair of the Executive Committee and did not conduct any business as the Board. We find, however, that the Executive Committee itself was a public body governed by the Open Meetings Act. Because the Executive Committee failed to give notice of the meeting, the meeting was conducted in violation of the Act.

I

Complaint and Response

According to the complaint, four county commissioners¹ attended the first meeting with the newly appointed Charles County Economic Executive Committee during the afternoon of August 24, 2010, at the County Office Building. No notice of this meeting was given to the public. Included with the complaint was a July 2, 2010, press release from the County Commissioners' Office announcing the Commissioners' appointment of the Executive Committee. The County Commissioners charged the Executive Committee with developing bylaws for the planned Economic Development Advisory Board for approval by the Commissioners. According to the complaint, the 12 individuals appointed to the Executive Committee and the four County Commissioners, as well as certain County staff members, attended the meeting. While the complaint appeared to focus primarily on the presence of the County Commissioners, a preliminary question is whether the Executive Committee itself was subject to the Act.

In a timely response to the complaint, Roger Lee Fink, County Attorney for Charles County, described the development of the Executive Committee in further detail.² On May 21, 2010, the County Commissioners announced their intent to establish an Economic Development Advisory Board. Following that announcement, the County Commissioners determined to first create an Executive Committee to develop recommendations for the County Commissioners' consideration concerning the Board's powers and duties, as well as suggested bylaws. It was envisioned that, once the County Commissioners approved the bylaws, they would establish the Board by formal action.

The County Commissioners appointed the members of the Executive Committee over a period of several months. As of August 24, 2010, about 15 members had been appointed, at least 10 of whom were not officials or employees of the County, State, or any municipal government.³ Because more than three months had passed since the May 21 announcement, the designated chairman of the Executive Committee invited the other appointees to attend an organizational meeting at the County Office Building on August 24, 2010. The chairman also extended a courtesy invitation to the individual County Commissioners in the event any of them wished to

attend. The response acknowledged that no public notice was given in advance of the meeting.

As to the suggestion that the meeting was a County Commissioner meeting, the response stated, "it clearly [was] not." The Commissioners were invited merely to offer welcoming remarks. After their remarks, three of the Commissioners left. Only Commissioner Patterson--a non-voting, *ex officio* member of the Executive Committee-- remained for the meeting. Included with the response was a draft copy of minutes of the meeting, showing that the Commissioners had no functional role to play. The response cited *Ajamian v. Montgomery County*, 99 Md. App. 665 (1994) as well as 1 *OMCB Opinions* 104 (1994) and 1 *OMCB Opinions* 120 (1995), in support of its position.

The response also addressed whether the Executive Committee meeting was subject to the Act. As phrased in the response, the issue is whether, "at this stage of its yet-to-be fully formed existence, was the ... Executive Committee a public body subject to the Open Meetings Act at the time the meeting was scheduled? Additionally, in the absence of formal establishment, bylaws, clear direction from the appointing authority and other matters relating to the roles and responsibilities of the committee and its members, was the Committee empowered to exercise any more than an administrative internal organizational function at its August 24th first meeting?" Based on prior opinions of the Compliance Board, the response conceded that the Executive Committee was sufficiently formed to be a public body and that at least part of the session involved an advisory function that would be subject to the Act's open meeting requirements unless the meeting was properly closed. The response noted that the Executive Committee conducted its first meeting evidently unaware of the applicability of the Act and its need to provide public notice. However, the County Attorney did provide an overview of the Act as the first item at the Executive Committee's second meeting and indicated that notice was provided for that meeting and will be provided for future sessions.

II

Analysis

We agree with the County Attorney that the County Commissioners did not violate the Open Meetings Act by attending the August 24, 2010, meeting. The authorities cited in the response might be distinguished in that the meeting here was conducted by a public body created by the County Commissioners. Nevertheless, there is no suggestion that the County Commissioners were present in anything other than their individual capacities or that they convened as a public body to consider or to transact public business. To be sure, the recommendations of the Executive Committee would be considered and perhaps adopted by the County Commissioners before the establishment of the Economic Development Advisory Board. However, based on the response, we understand that only one County Commissioner was present at the time the Executive Committee actually started its work.

We do find that the Executive Committee itself was a public body. Although it apparently was not created by any formal instrument, we find that the Commissioners' appointment of the members did result in establishment of a "public body" under §10-502(h)(2)(i). The fact that additional members were appointed subsequent to the meeting does not alter our analysis. It appears that a quorum was available to start the work of the Executive Committee on August 24, 2010. In fact, it is noteworthy that the press release from the County dated July 2, 2010, indicated that the Executive Committee existed as of that date. Based on the draft minutes included with the response, a quorum had assembled. While the response raised questions as to the

¹ The Board of County Commissioners ordinarily consists of five members, but we understand that currently there is currently a vacancy on the Board.

² We had granted the County Attorney a brief extension of time to reply.

³ Apparently, the County Commissioners made additional appointments on September 21, 2010.

authority of the Executive Committee to act at that point, the draft minutes illustrate that the Executive Committee operated under the assumption that it had the necessary authority. Further, the members conducted a “meeting” during which, for at least part of the time, they carried out an advisory function as defined under the Act. §10-502(c)(3). That is, the Executive Committee considered proposed bylaws to be recommended to the County Commissioners for the planned Economic Development Advisory Board in accordance with the County Commissioners’ charge. Had the County Commissioners questioned the Executive Committee’s authority to meet on August 24, 2010, the County Commissioners or their staff clearly would have advised the Committee or its chairman before that date.

Given the acknowledgment that no notice was provided, extensive discussion is unnecessary. We find that the Executive Committee violated §10-506 by holding a meeting without providing public notice as required by the Act. However, we commend the County Attorney’s Office for advising the Executive Committee of the requirements of the Act after the deficiency came to the office’s attention.

**III
Conclusion**

We find that the Charles County Commissioners did not violate the Open Meetings Act by attending the Economic Executive Committee meeting on August 24, 2010. However, we find that the Executive Committee violated the Act in that the Committee failed to give public notice of its meeting that date.

Open Meetings Compliance Board
Elizabeth A. Nilson, Esquire
Courtney J. McKeldin
Julio Morales, Esquire

[11-08-17]

OPINIONS

January 10, 2011

Frances Joines

The Open Meetings Compliance Board has considered your complaint with respect to the minutes of the Town Council of Brentwood. For the reasons explained below, we find that the Council violated the Act by failing to create and approve minutes on a timely basis. However, we are encouraged by the Town’s representation that the Council has undertaken a program to bring its minutes up to date in the near future.

**I
Complaint and Response**

The complaint concerned access to records relating to the meetings of the Town Council of Brentwood. Attached to the complaint was a copy of a public records request sent by the complainant to the Town for copies of tapes of Town Council meetings for March, June, and July 2010. The complaint also asserted that no minutes had been prepared for Council meetings since the beginning of this year.

A response submitted by the Mayor of Brentwood conceded that there had been a delay in the preparation of the Council’s minutes due to a large number of meetings related to the adoption of the Fiscal Year 2011 budget and a change in the format of minutes that was adopted in May. The Mayor reported that minutes have now been “provisionally” approved for meetings in April, May, June, and July. She anticipated that they would receive final approval at the

next Town Council meeting and that the Council will also adopt a plan to finalize minutes for meetings that occurred during August, September, October, and November 2010. She also indicated that several Council members are reviewing audio recordings of nine “Executive Sessions”—presumably referring to closed portions of meetings—with a goal of producing draft minutes in first quarter of 2011.¹

**II
Creation and Approval of Minutes**

The Open Meetings Act requires that written minutes of a meeting of a public body such as the Town Council be prepared “[a]s soon as practicable after a public body meets.” §10-509(b). The minutes should be in a format that includes at least the information required by the Act—that is, each item considered at the meeting, any action that the Town Council took on an item, and each vote that was recorded. §10-509(c)(1). Minutes should also include certain basic information concerning any closed sessions. *See* §10-509(c)(2).

Although special circumstances may occasionally result in some delay, preparation and approval of minutes should normally occur on a cycle that parallels the public body’s meetings—that is, the public body should ordinarily review and approve minutes for a meeting at the next subsequent meeting. *See 6 OMCB Opinions* 85, 87-88 (2009). Once draft minutes are adopted by a public body, they are to be open to public inspection during regular business hours. §10-509(d).

Extended discussion of the circumstances of this matter is unnecessary as the Town has admitted that the Town Council had fallen nearly seven months behind in the review and approval of its minutes. Accordingly, we find that the Town Council violated the Act to prepare, review, and approve minutes on a timely basis. It is to be hoped that the initiative that the Town has undertaken to bring its minutes up to date will bring the Council into compliance with the Act.

We note that public access to tapes and other records of Town Council meetings is governed by the Public Information Act (“PIA”), Annotated Code of Maryland, State Government Article, §10-611 *et seq.*, and is beyond the jurisdiction of the Compliance Board.²

**III
Conclusion**

The Town Council violated the Act by failing to create and approve minutes on a timely basis. We are encouraged that the Council has undertaken a program to bring its minutes up to date in the near future.

Open Meetings Compliance Board
Elizabeth L. Nilson, Esquire
Courtney J. McKeldin
Julio A. Morales, Esquire

[11-08-18]

¹ The complaint did not raise any issue as to whether meetings had been properly closed and, accordingly, we express no opinion concerning the propriety of the closed sessions.

² The complainant may obtain useful information about the PIA from several publications on the Attorney General’s website.

OPINIONS

January 10, 2011

Mr. Gary E. Coldsmith

The complaint relates to a hearing held by the Board of Appeals for the Town of Chesapeake Beach on September 7, 2010. There appears to be no dispute that the meeting was subject to the Open Meetings Act. The Board of Appeals conducted the hearing as an open meeting, except for a brief closed session to consult with its counsel on a legal issue. The complaint concerns the minutes—or lack thereof—for that meeting.

We conclude that the Board of Appeals violated the Act in failing to have minutes approved by the Board that are publicly accessible. We note that the Board of Appeals has indicated that it will soon consider the adoption of new procedures that will avoid future violations.

I

Complaint and Response

The complaint alleged that no minutes of the September 7, 2010 meeting, including its closed portion, were made available to the public. The complainant did not indicate when, or under what circumstances, he made a request to review the minutes. The response by the Board of Appeals stated that the complainant inquired about the minutes of the September 7 meeting at the next meeting of the Board of Appeals in October 2010. At that time, the Secretary of the Board of Appeals stated that, because that Board does not approve its minutes, minutes for a prior meeting are not typically set out for the public at a subsequent meeting. The Board of Appeals' response also suggests that the complainant did not clearly request access to the minutes.

In the response to the complaint, counsel for the Board of Appeals stated that its practice was likely to change in the near future. She indicated that new rules of procedure will likely require that draft minutes be placed on the agenda of the immediately subsequent meeting for approval and, upon approval, be made available to the public.

II

Access to Minutes

The Open Meetings Act requires that minutes be prepared for a meeting governed by the Act. §10-509. The minutes are to include at least the information set out in §10-509(c). As we have held on a number of occasions, draft minutes that are not reviewed and approved by the public body do not satisfy this requirement. “As a legal matter, the ‘minutes of a public body’ become such only after the public body itself has had an opportunity to review and correct the work of whoever prepared the draft minutes. 2 *OMCB Opinions* 11, 13 (1998) (emphasis in original); see also 6 *OMCB Opinions* 187, 190 (2009); 3 *OMCB Opinions* 303, 306 (2003). Once draft minutes are adopted by a public body, they are to be open to public inspection during regular business hours. §10-509(d).

There appears to be no dispute that the Board of Appeals never reviewed or approved the draft minutes of the September 7, 2010 meeting. Thus, whether or not the complainant clearly requested access to the minutes, the draft that existed did not satisfy the requirements of the Act. We believe that the anticipated change in the Board's procedures concerning its minutes will help clarify the status and availability of its minutes to the public.

III Conclusion

The Board of Appeals violated the Open Meetings Act in that it did not consider and approve minutes for its September 7, 2010 meeting. The anticipated change in the Board's procedures concerning its minutes should help ensure compliance in the future.

Open Meetings Compliance Board
Elizabeth L. Nilson, Esquire
Courtney J. McKeldin
Julio A. Morales, Esquire

[11-08-18]

The General Assembly

For additional up-to-date information concerning bills introduced in the General Assembly, log on to <http://mlis.state.md.us> Click on Bill Information and Status. You may then enter a specific bill number for information about that bill. You may also click on Senate Synopsis or House Synopsis for the most recent synopsis list for each house, or click on Synopsis Index for a listing of all bill synopses since the beginning of the legislative session.

Synopsis No. 3

House Bills

HB1349 Del Branch. Maryland Community Enhancement Transit-Oriented Development Fund.

HB1350 Del Cane. Wicomico County - Alcoholic Beverages Licenses - Pub-Breweries and Micro-Breweries.

HB1351 Del Howard. Prior Authorizations - Prince George's County - Ebenezer Community Life Center Loans of 2001 and 2006.

HB1352 Del Hixson, et al. Local School Boards - Authority to Impose a Property Tax.

HB1353 Del O'Donnell, et al. Crimes - Food Service Facility - Rodenticide Placed on Food Prepared for Human Consumption.

HB1354 Del Cane. Environment - Construction of Wells.

[11-08-42]

Senate Bills

SB0984 Sens Pipkin and Brinkley. Budget Reconciliation and Balancing Act.

SB0985 Sen Benson. Legislative Community Initiatives Loan of 2004 - Prince George's County - Ivy Youth and Family Center.

SB0986 Sen Benson. Creation of a State Debt - Prince George's County - Suitland and Capitol Heights Green Initiative.

SB0987 Sen Benson. Creation of a State Debt - Prince George's County - Capitol Heights Seat Pleasant Boys and Girls Club Initiative.

SB0988 Sen Klausmeier. Circuit Court - Civil Actions - Waiver of Discovery Deadlines - Informed Written Consent.

SB0989 Sen Klausmeier. Courts - Civil Matters and Jury Trials - Informed Written Consent.

SB0990 Sen Klausmeier. Swimming Pools - Automated External Defibrillator Programs.

SB0991 Sen Stone. Homeowner's Insurance - Coverage for Other Structures.

SB0992 Sen Dyson. Vehicle Laws - Window Tinting - Certification by Inspection Stations.

SB0993 Sen Middleton, et al. Maryland Automobile Insurance Fund - Employee Compensation.

SB0994 Sens Jones-Rodwell and Madaleno. Sales and Use Tax - Alcoholic Beverages.

SB0995 Sen Kelley. Real Property - Condominiums and Homeowners Associations - Governing Bodies.

SB0996 Sens DeGrange and Astle. Sales and Use Tax - Machinery and Equipment - Energy Star Windows and Doors.

SB0997 Sen Klausmeier. Baltimore County - Alcoholic Beverages - Expiration of Licenses - Extension for Casualty Loss.

[11-08-43]

The Judiciary

COURT OF APPEALS OF MARYLAND

SCHEDULE

Wednesday, May 4, 2011
Bar Admissions

- AG 22 Attorney Grievance Commission of Maryland v. Roland Nathaniel Patterson, Jr.
No. 130 George Poole v. Coakley & Williams Construction, Inc., et al.
No. 126 Enrique Pizzaro Silva v. State of Maryland
No. 119 Tyrone Lawson v. Bowie State University
No. 57 Stalker Brothers, Inc., et al. v. Alcoa Concrete and Masonry, Inc.

Thursday, May 5, 2011

- AG 18 Attorney Grievance Commission of Maryland v. Michael Robert Carithers, Jr.
No. 122 Douglas Wietzke, et ux. v. The Chesapeake Conference Association, et al.
No. 106 Terry Shawn Stevenson v. State of Maryland
No. 127 Ariel Rosita King v. Michael Herbert Pfeiffer

Monday, May 9, 2011:

- No. 123 John L. Boland, et al. v. Sean F.X. Boland, et al.
No. 129 John L. Boland, et al. v. Boland Trane Associates, Inc., et al.
No. 107 Dedrick Tyrone Wilkerson v. State of Maryland
No. 128 Dumbarton Improvement Association, Inc., et al. v. Druid Ridge Cemetery Company, et al.

Tuesday, May 10, 2011:

- Misc. 15 Ford Motor Credit Company LLC v. Maureen P. Roberson
No. 120 Montgomery County, Maryland v. Kenneth Deibler
No. 125 Ronald Cox v. State of Maryland
No. 131 Maryland Transportation Authority v. Maryland Transportation Authority Police Lodge #34 of the Fraternal Order of Police

On the day of argument, counsel are instructed to register in the Clerk's Office no later than 9:30 a.m. unless otherwise notified.
After May 10, 2011, the Court will recess until June 1, 2011.

BESSIE M. DECKER
Clerk

[11-08-41]

DISCIPLINARY PROCEEDINGS

This is to certify that by Order of this Court dated March 9, 2011, **PATRICK JOSEPH REDD**, 809 Gleneagles Court, Towson, MD 21286, has been disbarred by consent from the further practice of law in this State and his name as an attorney at law has been stricken from the register of attorneys in this Court (Maryland Rule 16-713).

* * * * *

This is to certify that by Opinion and Order of this Court dated March 22, 2011, **ROBERT J. PLESHAW**, 4309 Van Ness Street, N.W., Washington, DC 20016, has been disbarred from the further

practice of law in this State and his name as an attorney at law has been stricken from the register of attorneys in this Court (Maryland Rule 16-713).

* * * * *

This is to certify that by Opinion and Order of this Court dated March 24, 2011, **ANDREW GREGORY DE LA PAZ**, 10810 Mariner Drive, Fort Washington, MD 2074, and 41361 Irving Street, N.W., Apt. 11, Washington, DC 20010, has been disbarred from the further practice of law in this State and his name as an attorney at law has been stricken from the register of attorneys in this Court (Maryland Rule 16-713).

[11-08-48]

STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

NOTICE OF OPEN MEETING

The Standing Committee on Rules of Practice and Procedure will hold an open meeting on Friday, April 15, 2011, in the Judiciary Education and Conference Center, 2011-D Commerce Park Drive, Annapolis, Maryland, commencing at 9:30 a.m., to consider any questions relating to rules changes as may be brought before the meeting.

For further information contact Sandra F. Haines, Reporter, (410) 260-3630.

[11-08-32]

NOTICE OF PROPOSED RULES CHANGES

The Rules Committee has submitted its One Hundred Sixty-Eighth Report to the Court of Appeals, transmitting thereby proposed new Rules 4-281, 4-332, 9-205.2, 12-701, 12-702, 12-703, 12-704 and proposed amendments to Rules 1-202, 1-311, 1-326, 1-351, 2-131, 2-221, 2-311, 2-331, 2-332, 3-131, 3-221, 3-331, 3-332, 4-247, 4-248, 4-251, 4-263, 4-312, 4-314, 4-327, 4-403, 4-705, 4-706, 5-605, 6-208, 6-411, 6-416, 9-107, 9-202, 10-710, 13-201, 14-210, 15-306, 15-309, 15-901, 15-1103, 16-110, 16-204, 16-401, 16-808, 16-813, 16-815, 17-101, 17-105, and Rules 8.2 and 8.4 of the Maryland Lawyers' Rules of Professional Conduct.

The Committee's One Hundred Sixty-Eighth Report and the proposed new Rules and amendments are set forth below.

Interested persons are asked to consider the Committee's Report and proposed Rules changes and to forward on or before May 9, 2011 any written comments they may wish to make to:

Sandra F. Haines, Esq.
Reporter, Rules Committee
2011-D Commerce Park Drive
Annapolis, Maryland 21401

BESSIE M. DECKER
Clerk
Court of Appeals of Maryland

March 16, 2011

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

Your Honors:

The Rules Committee submits this, its One Hundred Sixty-Eighth Report and recommends that the Court adopt the new Rules and the amendments to existing Rules transmitted with this Report. The Report consists of eleven categories.

Category One consists of an addition to Rule 1-202 (Definitions) that would define the term “newspaper of general circulation” and conforming amendments to Rules 2-131, 2-221, 3-131, 3-221, 6-208, 9-107, 9-202, 14-210, 15-901, and 16-401.

Code, Article 1, §28 provides generally that, in any law, resolution, or court order that refers to publishing a legal advertisement or legal notice, words such as “paper,” “newspaper,” or “newspaper in general circulation,” mean a publication that meets the criteria set forth in §28. Among those criteria are the requirements that the newspaper be published and distributed “by sale” and that it be entitled to be entered as second-class matter in the United States mail. The effect of those requirements is to exclude from the statutory definition newspapers and periodicals that are distributed free – that are not sold and do not require a subscription by the recipient.

Prior to the rewriting of the mortgage foreclosure Rules in 2009, pursuant to the Committee’s One Hundred Sixtieth Report, Rule 14-206 defined “newspaper of general circulation,” for purposes of advertising notices of sale, as one that satisfied the criteria set forth in Code, Article 1, §28. Notices of foreclosure sales thus had to be published in newspapers that were distributed by sale or subscription. During the process of rewriting the foreclosure Rules, the Committee was urged to permit the publication of notices of sale in newspapers that were distributed free and without subscription. Representatives of newspapers meeting the criteria of §28 objected to that proposal and pointed out that that very issue had only recently been considered by the General Assembly.

The Committee was aware that there were other Rules requiring other kinds of notices to be published in newspapers of general circulation, but its immediate focus was on the comprehensive rewriting of the foreclosure Rules, which it regarded as a matter of considerable urgency, and it did not have the time then to investigate the full implications of changing the statutory criteria. The Committee thus opted to retain the existing definition with respect to notices of foreclosure sales but, as a temporary measure, to move the definition from the text of the Rule to a Committee note in new Rule 14-210. At the Court’s open hearing on the 160th Report, the Committee noted that it intended to take a broader look at the issue and consider the addition of a general definition to Title 1 of the Rules.

The Committee later held several open meetings on the matter, at which representatives from both the paid and the free press presented written material and made oral presentations. Some members of the Committee were of the view that, at some point, it might suffice

simply to post legal notices on the Judiciary’s website and avoid publication costs altogether, but the Committee agreed that a change of that magnitude ought not to be made at this time. After weighing the evidence and aware that recent efforts to amend §28 had failed in the General Assembly, the Committee decided not to recommend superseding the statutory criteria. Accordingly, it proposes to add a new section (r) to Rule 1-202 that adopts the definition of “newspaper of general circulation” stated in Code, Article 1, §28. As noted, the amendments to the other Rules in this **Category 1** are conforming ones.

Category 2 consists of proposed new Rule 4-332 (Writ of Actual Innocence), intended to implement Code, Criminal Procedure Article, §8-301, a statute first enacted in 2009 and amended in 2010. Unfortunately, even with the 2010 amendments, there are a number of ambiguities in the statute that may require either further legislation or judicial construction to resolve, but the Committee has tried to fill in the gaps as best it can. Essentially, a petition under §8-301 seeks either a new trial, an outright striking of the judgment of conviction, or a re-sentencing, based on newly discovered evidence that (1) could not have been discovered in time to move for a new trial under Rule 4-331, and (2) creates a substantial or significant possibility that the result would have been different had it been presented at trial.

Although the statute contains a number of procedural provisions, the Committee believes that an implementing Rule is necessary. The proposed Rule adds a number of required averments in the petition designed to assist in determining (1) whether the new evidence could have been discovered earlier, and (2) whether that issue had been raised or decided in an earlier proceeding. There is no provision in the statute for the appointment of counsel for a petitioner, and it appears that the current Public Defender law does not require representation by a public defender in this kind of proceeding. The Committee opted to track some of the procedure approved by the Court with respect to a petition for post-conviction DNA testing – sending a copy of the petition and the State’s answer to the Public Defender’s Office for its review and allowing the court to appoint counsel if (1) the petitioner is indigent and has requested but does not have counsel, and (2) the court does not deny the petition as a matter of law.

The Committee is undertaking a review of the whole panoply of post-verdict and post-judgment proceedings authorized by the Federal or State Constitution, statute, or Rule, of which there are more than a dozen, to see if there is a feasible way to consolidate some or all of them, but, pending any further recommendation in that regard, a Rule implementing Code, Criminal Procedure Article, §8-301 is recommended.

Category Three consists of proposed amendments to Rules 4-312 (Jury Selection) and a conforming amendment to Rule 4-314 (Defense of Not Criminally Responsible). The proposed amendments to Rule 4-312 are designed to protect the privacy and safety of jurors in criminal cases. Section (b) is amended to require that, in open court, jurors be referred to by juror number rather than by name. That appears to be the general practice now and is not regarded as a significant change. The major change is in new section (d), which permits the court to limit the disclosure of jurors’ names and city or town of residence¹⁵ upon a finding, made from clear and convincing evidence or information, that such disclosure would create a substantial danger that (1) the safety and security of one or

¹⁵ The county of residence or, in the case of Baltimore City, the city, would have to be disclosed, as residence there is a qualification for jury service and would necessarily be assumed in any event. What would be subject to exclusion is a town or city within a county, as disclosure of that, coupled with other information required to be disclosed, could lead to discovery of the identity of the juror and the juror’s family.

more jurors would likely be imperiled, or (2) one or more jurors would likely be subjected to coercion, inducement, other improper influence, or undue harassment.

In cases where those kinds of findings have been made based on credible evidence or information, nondisclosure of jurors' names and places of residence has been permitted under fairly consistent Federal case law and, increasingly, by State courts as well. The Committee note that follows section (d) of the Rule cites some of the Federal cases. Although the Federal case law has permitted nondisclosure of that information even to counsel in certain cases, the Rules Committee voted not to permit that information to be withheld from counsel in the case, subject to a direction to counsel, where appropriate, not to disclose it to the defendant.

Category Four consists of proposed new Rule 9-205.2, permitting a court, in a high-conflict child access case, to appoint a parenting coordinator to assist the parties in resolving, or at least lessening the level of, conflicts involving the child, and conforming amendments to Rules 16-204 and 17-101.

Parenting coordination is a relatively new calling or profession. It is defined in section (b) of the Rule. Although parenting coordinators use various ADR techniques when working with the parents, they regard themselves as more than just mediators, arbitrators, or neutral evaluators. Maryland Circuit Courts are already appointing parenting coordinators, without any uniform guidance as to qualifications, responsibilities, or permissible fees, and both existing coordinators and judges asked the Committee to develop some standards in those areas.

Section (c) sets forth the minimum qualifications that a person must possess in order to be designated or approved by the court as a parenting coordinator. They are generally comparable, but not identical, to those required of court-designated mediators. Pursuant to section (d), applicants possessing those qualifications would be placed on a court list which, along with the information supplied by the applicant, would be available to the public.

Sections (e) and (f) provide for the actual employment or designation of parenting coordinators. Section (e) permits the parties to employ a parenting coordinator on their own, without court approval or intervention, in which event they may choose anyone they like, whether or not the person possesses the minimum qualifications. They may agree on a parenting coordinator and ask the court to approve that choice, but in that event, the court may not approve the choice unless the coordinator possesses the minimum qualifications and the court is satisfied that the agreement satisfies the criteria set forth in section (e). A person selected by the parties, with or without court approval, is not subject to the maximum fee schedule that would apply with respect to a person designated by the court.

Section (f) authorizes the court to designate a parenting coordinator from the list, either during the pendency of the action or following the entry of judgment. A *pendente lite* designation, if warranted, is usually made early in the proceeding, either at the request of one or both parties or on the court's own initiative. Any such designation ends upon the entry of judgment. A post-judgment designation may be made only with the consent of the parties and, unless the parties agree to an extension in writing, may not last longer than two years. A court-designated parenting coordinator is subject to the maximum fee schedule set forth in section (k) of the Rule.

Two areas that received particular attention by the Committee were the duties and authority of parenting coordinators and their access to, and handling of, confidential records and information. Permitted services are set forth in section (g), and services that are not permitted are set forth in section (h). There was considerable discussion regarding the authority in subsection (g)(9) to make temporary modifications to access provisions embodied in a court order, but, with the limitations and conditions set forth in that subsection and the explanation in the Committee note that follows it, the Committee was convinced that that authority was useful, for the

purposes of encouraging discussion and collaboration between the parents and, to the extent possible, keeping those kinds of disputes out of court.

Section (i) of the Rule deals with the confidentiality issues. Finally, termination of a parenting coordinator's designation or employment is provided for in section (j), and the maximum fee schedule is provided for in section (k).

As noted, conforming amendments are proposed to Rules 16-204 and 17-101.

Category Five consists of four new Rules, 12-701 through 12-704, designed to implement a 2010 statute (Code, Environment Article, §§15-1201 through 15-1206), dealing with severed mineral interests. A copy of the statute is attached to this Report as Appendix A.

As the Court most recently recognized in *Calvert Joint v. Snider*, 373 Md. 18 (2003), where land contains subsurface minerals, it is permissible under Maryland property law to create a separate estate in the subsurface minerals and to sever that estate from the estate embodying the surface of the land. That has, in fact, been done in various areas of the State; the owner of the land has conveyed title to subsurface minerals to one or more other persons or entities and retained the surface estate, or has conveyed the surface estate to another and reserved title to the subsurface minerals. What led to the new statute (and to similar kinds of statutes in many other States) is the fact that (1) many of those severances occurred years ago, (2) there has been no recent interest on the part of the owners of the mineral estate in extracting the minerals, (3) some of those owners are now unknown or their whereabouts are unknown, and (4) economics and technology have made it feasible to extract the minerals, including, of particular relevance in Maryland, natural gas from the portion of the Marcellus shale formation located in the western part of the State.

In these circumstances, surface owners have looked for ways to terminate severed mineral interests that have become dormant, so that the two estates can be reunified and the subsurface minerals harvested. Several approaches have been tried. One approach centers on a statute that provides for a dormant interest to be terminated after a specified period of inactivity, usually through a court proceeding. A second statutory approach permits a court to put the mineral interest of an unknown or missing owner in trust for a limited period of time so that it can be made immediately productive. Eventually, the trust is terminated and the mineral interest is conveyed to the surface owner. Most States that have dealt with the matter have followed the former approach, by adopting a version of the Uniform Dormant Mineral Interests Act, proposed by the National Conference of Commissioners on Uniform State Laws in 1986. The Maryland statute combines both approaches.

Code, Environment Article, §§15-1203 through 15-1205 follow, in general, the Uniform Act. Section 15-1203 permits the surface owner, on or after October 1, 2011, to file an action to terminate a dormant mineral interest. It declares a mineral interest to be dormant when (1) the interest has remained unused for a period of 20 years preceding commencement of the termination of the interest, and (2) notice of an intent to preserve the mineral interest was not recorded during that period. The action is in the nature of an action to quiet title, and it may be maintained whether the mineral interest owners are known or unknown. A mineral interest may not be regarded as unused if the owner or the owner's agent takes certain actions specified in §§15-1203 (c) or 15-1204. The statute anticipates that, if the court finds the mineral interest to be dormant, the court must enter an order terminating the interest, which has the effect of merging the terminated interest with the surface estate.

Section 15-1206 adds the alternative approach of allowing the court, on petition by the surface owner and after notice and a hearing, to place the mineral interest of any unknown or missing owner in trust, to appoint a trustee for the unknown or missing owner, and to

authorize the trustee to lease the interest to the surface owner (but not to anyone else). Section 15-1206 (c) provides that, if the unknown or missing owner does not contest the trust within five years after its creation, the trustee must file a petition to terminate the trust and convey title to the severed interest to the surface owner. If the unknown or missing owner does not contest the petition and the court finds that the alleged surface owner is the surface owner, it must enter an order requiring the trustee to convey the mineral interest to the surface owner. There is no requirement in §15-1206 that the mineral interest be dormant.

During the Committee's consideration of implementing Rules, a question arose as to whether an equal protection problem is created by the ability of a surface owner to use the trust provision to terminate the mineral interest of an unknown or missing owner that is not dormant, when the mineral interest of a known owner cannot be terminated until after it has become dormant. That issue was not addressed by the Attorney General in his bill review letter to the Governor, and the Committee invited the Attorney General's Office to respond to that concern. The Committee's own research indicated that very few States have statutes creating that disparity, and none of them have ever addressed the question. The 1986 Uniform Act did not contain a trust provision, and the Uniform Law Commissioners recommended against its inclusion. The Attorney General's Office advised the Committee that it did not believe there was an equal protection problem and therefore saw no reason to suggest a legislative change. A copy of the Attorney General's letter is attached to this Report as Appendix B.

In light of the Attorney General's response, the Committee abandoned an effort to craft the Rule to avoid the issue, as it would require adding an element not found in the statute. The proposed Rules simply provide a procedure for implementing the statutory provisions. Rule 12-703 deals with the creation, operation, and termination of the trust, and Rule 12-704 deals with the judicial procedure for terminating a dormant severed mineral interest.

Category Six presents an issue regarding death penalty litigation that was raised but not resolved when, in September 2009, the Court considered amendments to Rule 4-343 proposed in the Committee's One Hundred Sixty-Second Report. These amendments were in response to 2009 legislative changes to the death penalty law (2009 Md. Laws, ch. 186).

The 2009 Act added two new conditions to imposition of a death sentence – (1) the State must produce DNA or biological evidence linking the defendant to the murder, a videotaped voluntary interrogation and confession of the defendant to the murder, or a video recording that conclusively links the defendant to the murder, and (2) the State must not rely solely on evidence provided by eye witnesses. It was evident to the Committee that, if the State has the kind of evidence that would satisfy those conditions, it would have to be disclosed to the defense in discovery pursuant to Rule 4-263. There was support in the Committee for adding to Rule 4-263 a requirement that, in a death penalty case, the State indicate whether the material disclosed constituted that kind of evidence and, if so, identify the material constituting such evidence.

It was proposed to the Committee as well that, if the State fails to disclose evidence that would satisfy those conditions, the defense could file a motion to strike a notice of intent to seek the death penalty or to preclude the State from filing such a notice. To the extent the motion presents only an issue of law, it could be ruled upon by the court. If the court grants the motion, that would end the ability of the State to seek the death penalty in that case. The only problem noted by the Committee was that, under the Court's decision in *State v. Manck*, 385 Md. 581 (2005), an order striking such a notice, but not going so far as to exclude evidence or dismiss the charging document, may not be subject to appellate review.

Ultimately, the Committee decided that the critical issue at the time was conforming the Rule to the new statute, that this proposal was not necessary to that effort, and that injecting it into the issues that *did* need to be resolved urgently could prove distracting. The Committee therefore decided not to present the issue at that time. The issue was raised by the Public Defender at the Court's open hearing on the One Hundred Sixty-Second Report, but it was deferred.

The issue was presented again to the Committee following adoption of the amendments to Rule 4-343, in the form of amendments to Rules 4-263 and a new Rule 4-281. There was a consensus on the part of both prosecutors and the Public Defender's Office that the proposed amendment to Rule 4-263 was acceptable, because if the State agrees that it does not possess the required evidence, the death penalty is not available. There was a *partial* consensus regarding a motion to strike a notice of intent to seek the death penalty. Where there is a disagreement between the State and the defense over whether evidence disclosed in discovery suffices to render the defendant eligible for the death penalty, the prosecutors seemed to have no objection to the trial court resolving that issue on motion, provided that the State could appeal an adverse ruling. They objected vigorously to a Rule that would expressly authorize what occurred in *State v. Manck*, permitting a trial judge to abort an effort to seek the death penalty through an interlocutory order from which no appeal could ever be taken.

The Committee considered whether, by Rule, the Court could authorize an appeal under the collateral order doctrine, a matter not expressly considered in *Manck*. Doubt was expressed whether the Court could, or would, adopt such a Rule, but it seemed to the Committee to be an open question. Because the Committee agreed that a Rule authorizing the trial judge to resolve such a dispute through a pretrial ruling could be beneficial, provided there was an opportunity for appellate review of the ruling, the Committee voted to submit proposed Rule 4-281, including the appeal provision in section (c), for the Court's consideration and disposition.

Category Seven consists of housekeeping conforming amendments to Rules 1-326, 1-351, 4-327, 5-605, 16-808, 16-813, 16-815, 17-105, and Maryland Lawyers' Rules of Professional Conduct 8.2 and 8.4, to correct cross references to the 2010 Code of Judicial Conduct.

Category Eight consists of proposed amendments to Rules 15-306, 15-309, and 15-1103 to deal with the situation of a person who is confined or restrained under a quarantine or isolation order issued pursuant to a public health or public emergency law. Rules 15-306 and 15-309 are habeas corpus Rules. Rule 15-306 (b) requires the person to whom the writ is directed to bring the confined individual before the court within three days after service of the writ. Given the nature and reason for a quarantine or isolation order, the amendment permits the production of the individual to be by electronic means. The amendments to Rule 15-309, which deals with the hearing, are of a similar nature, permitting the court to conduct the hearing by electronic means and to relax the rules of evidence when the individual or counsel is unable to appear personally.

Rule 15-1103 deals with the initiation of a proceeding under the Catastrophic Health Emergency Law to contest a quarantine or isolation order. When the Rules dealing with those proceedings were first adopted, it was thought best to require that the petition be filed with the Clerk of the Court of Appeals and thereafter directed by the Chief Judge to an appropriate circuit court. Because counsel must be appointed and a hearing held within three days after the petition is filed, the Director of Emergency Preparedness recommended that the petition be filed directly in the circuit court of the county where the quarantine or isolation is occurring or, if that court is not available, any other circuit court. The Committee concurs in that recommendation.

Category Nine consists of proposed amendments to Rules 1-311 (a), 2-311 (f), 2-331 (c), 2-332 (a), 3-331 (c), 3-332 (a), 4-403, 4-705, 4-706, 6-411 (c), 6-416 (b), and 13-201 (b) and a Committee Note added to Rule 10-710 (f). Those amendments and the reasons for them are explained in the respective Reporter’s Notes.

Category Ten consists of proposed amendments to Rules 4-247 (Nolle Prosequi), 4-248 (Stet), and 4-251 (Motions in District Court). The amendments are intended to clarify that notice of (1) a nolle prosequi, (2) a stet, or (3) dismissal of a charging document in open court need be sent to the defendant or defense counsel only if neither of them is in court when the nolle prosequi, stet, or dismissal occurs. Additionally, when the nolle prosequi, stet, or dismissal encompasses more than one charge, the amendments allow the clerk to send only one notice, embodying all of the affected charges.

Category Eleven consists of an amendment to the recently adopted Rule 16-110, dealing with cell phones and other electronic devices. The amendment would delete the requirement in subsection (d)(2) that notice be included in all summonses and other notices of court proceedings that the possession and use of those devices may be limited or prohibited. At one point in its deliberations, the Rules Committee was of the view that the public should not be permitted to bring those devices into the courthouses and that notice of that prohibition should be placed on summonses and other notices of court proceedings. When the Committee ultimately concluded that possession of the devices should be permitted, subject to regulation as to their use, it neglected to reconsider whether the provision in subsection (d)(2) was necessary. That provision has caused some practical problems for circuit court clerks and administrators. The Committee is convinced that because under the Rule adopted by the Court, possession of the devices is permitted and notice of limitations on their use can be provided by signs in the court facilities, subsection (d)(2) it is not necessary and should be deleted.

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

Respectfully submitted,
 Alan M. Wilner
 Chair
 Linda M. Schuett
 Vice-Chair

AMW/LMS:cdc

**MARYLAND RULES OF PROCEDURE
 TITLE 1 - GENERAL PROVISIONS
 CHAPTER 200 - CONSTRUCTION, INTERPRETATION, AND
 DEFINITIONS**

AMEND Rule 1-202 to add a definition of “newspaper of general circulation” and to make stylistic changes, as follows:

Rule 1-202. DEFINITIONS

- ...
 (r) *Newspaper of General Circulation*
“Newspaper of general circulation” means a newspaper as defined in Code, Article 1, §28.
- [(t)] (s) Original Pleading
- ...
 [(s)] (t) Person

- ...
 [(t)] (u) Pleading
- ...
 [(u)] (v) Proceeding
- ...
 [(v)] (w) Process
- ...
 [(w)] (x) Property
- ...
 [(x)] (y) Return
- ...
 [(y)] (z) Sheriff
- ...
 [(z)] (aa) Subpoena
- ...
 [(aa)] (bb) Summons
- ...
 [(bb)] (cc) Writ
- ...

Source: This Rule is derived as follows:

- ...
Section (r) is new.
 Section [(r)] (s) is derived from the last sentence of former Rule 5 v.
 Section [(s)] (t) is derived from former Rule 5 q.
 Section [(t)] (u) is new and adopts the concept of federal practice set forth in the 1963 version of Fed. R. Civ. P. 7 (a).
 Section [(u)] (v) is derived from former Rule 5 w.
 Section [(v)] (w) is derived from former Rule 5 y.
 Section [(w)] (x) is derived from former Rule 5 z.
 Section [(x)] (y) is new.
 Section [(y)] (z) is derived from former Rule 5 cc.
 Section [(z)] (aa) is derived from former Rule 5 ee.
 Section [(aa)] (bb) is new.
 Section [(bb)] (cc) is derived from former Rule 5 ff.

REPORTER’S NOTE

The issue of defining the term “newspaper of general circulation” arose in the context of Rule 14-210, Notice Prior to Sale, addressing publication of a notice in a foreclosure action. In order to clarify the meaning of the term, the Rules Committee recommends (1) adding to Rule 1-202 a definition of the term “newspaper of general circulation,” which refers to the definition in Code, Article 1, §28, and (2) amending Rules 6-208, 9-107, and 15-901 to either conform to this term or to clarify the location of circulation of the newspaper that is referred to in the Rule. With the addition of the definition, the Committee note in Rule 14-210 after section (a) is no longer necessary and is proposed to be deleted. Amendments to Rules 2-131, 2-221, 3-131, 3-221, 9-202, and 16-401 conform cross references in those Rules to the re-lettering of Rule 1-202.

**MARYLAND RULES OF PROCEDURE
 TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT
 CHAPTER 100 - COMMENCEMENT OF ACTION AND
 PROCESS**

AMEND Rule 2-131 to conform a reference to a section of Rule 1-202 to the relettering of that section, as follows:

Rule 2-131. APPEARANCE

- ...
 Cross reference: Rules 1-311, 1-312, 1-313; Rules 14, 15, and 16 of the Rules Governing Admission to the Bar. See also Rule 1-202 [(s)] (t) for the definition of “person”.
- Source: This Rule is derived from former Rule 124.

REPORTER'S NOTE

See the Reporter's note to Rule 1-202.

**MARYLAND RULES OF PROCEDURE
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT
CHAPTER 200 - PARTIES**

AMEND Rule 2-221 to conform a reference to a section of Rule 1-202 to the relettering of that section, as follows:

Rule 2-221. INTERPLEADER

(a) Interpleader Action

...
Cross reference: For the definition of property, see Rule 1-202 [(w)] (x).

REPORTER'S NOTE

See the Reporter's note to Rule 1-202.

**MARYLAND RULES OF PROCEDURE
TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT
CHAPTER 100 - COMMENCEMENT OF ACTION AND
PROCESS**

AMEND Rule 3-131 to conform a reference to a section of Rule 1-202 to the relettering of that section, as follows:

Rule 3-131. APPEARANCE

...
Cross reference: Rules 1-311, 1-312, 1-313; Rules 14 and 15 of the Rules Governing Admission to the Bar. See also Rule 1-202 [(s)] (t) for the definition of "person", and Code, Business Occupations and Professions Article, §10-206 (b)(1), (2), and (4) for certain exceptions applicable in the District Court.

Source: This Rule is derived from former Rule 124.

REPORTER'S NOTE

See the Reporter's note to Rule 1-202.

**MARYLAND RULES OF PROCEDURE
TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT
CHAPTER 200 - PARTIES**

AMEND Rule 3-221 to conform a reference to a section of Rule 1-202 to the relettering of that section, as follows:

Rule 3-221. INTERPLEADER

(a) Interpleader Action

...
Cross reference: For the definition of property, see Rule 1-202 [(w)] (x).

REPORTER'S NOTE

See the Reporter's note to Rule 1-202.

**MARYLAND RULES OF PROCEDURE
TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES
CHAPTER 200 - SMALL ESTATE**

AMEND Rule 6-208 to add the words "of appointment" to paragraph 5 of the register's order for a small estate, as follows:

Rule 6-208. FORM OF REGISTER'S ORDER

The order entered by the register shall be in the following form:

[CAPTION]

ORDER FOR SMALL ESTATE

Upon the foregoing Petition, it is this ___ day of _____, _____, by the Register of Wills ordered that:
(month) (year)

1. The estate of _____ shall be administered as a small estate.
2. _____ shall serve as personal representative.
3. The personal representative shall pay fees due the register, expenses of administration, allowable funeral expenses, and statutory family allowances, and, if necessary, sell property of the decedent in order to pay them.
4. The will dated _____ (including codicils, if any, dated _____) accompanying the petition is:

- admitted to probate; or
- retained on file only.

5. Publication is:
 - not required; or
 - required and Notice of Appointment shall be published once in a newspaper of general circulation in the county of *appointment*.

6. When publication is required, the personal representative shall, subject to the statutory order of priorities and the resolution of disputed claims by the parties or by the court: (a) pay all proper claims, expenses, and allowances not previously paid; (b) if necessary, sell property of the estate in order to do so; and (c) distribute the remaining property of the estate in accordance with the will or, if none, with the intestacy laws of this State.

Register of Wills

THIS ORDER DOES NOT CONSTITUTE LETTERS OF ADMINISTRATION AND DOES NOT AUTHORIZE THE TRANSFER OF ASSETS.

Certificate of Service

I hereby certify that on this ___ day of _____, _____,
(month) (year)
I delivered or mailed, postage prepaid, a copy of the foregoing Order to _____,
(name and address)
Personal Representative.

Register of Wills

REPORTER'S NOTE

See the Reporter's Note to Rule 1-202.

MARYLAND RULES OF PROCEDURE
TITLE 9 - FAMILY LAW ACTIONS
CHAPTER 100 - ADOPTION; GUARDIANSHIP
TERMINATING PARENTAL RIGHTS

AMEND Rule 9-107 (b)(4) to add the language “of general circulation” after the word “newspaper,” as follows:

Rule 9-107. OBJECTION

...
 (b) Time for Filing Objection

...
 (4) Service by Publication in a Newspaper and on Website

If the court orders service by publication, the deadline for filing a notice of objection shall be not less than 30 days from the later of (A) the date that the notice is published in a newspaper of *general circulation* or (B) the last day that the notice is published on the Maryland Department of Human Resources website.

...
REPORTER’S NOTE

See the Reporter’s Note to Rule 1-202.

MARYLAND RULES OF PROCEDURE
TITLE 9 - FAMILY LAW ACTIONS
CHAPTER 200 - DIVORCE, ANNULMENT, ALIMONY,
CHILD SUPPORT, AND CHILD CUSTODY

AMEND Rule 9-202 to conform a reference to a section of Rule 1-202 to the relettering of that section, as follows:

Rule 9-202. PLEADING

(a) Signing-Telephone Number

A party shall personally sign each pleading filed by that party and, if the party is not represented by an attorney, shall state in the pleading a telephone number at which the party may be reached during ordinary business hours.

Cross reference: See Rule 1-202 [(t)] (u).

...
REPORTER’S NOTE

See the Reporter’s note to Rule 1-202.

MARYLAND RULES OF PROCEDURE
TITLE 14 - SALES OF PROPERTY
CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-210 to delete the Committee note following section (a), as follows:

Rule 14-210. NOTICE PRIOR TO SALE

(a) By Publication

Before selling property in an action to foreclose a lien, the individual authorized to make the sale shall publish notice of the time, place, and terms of the sale in a newspaper of general circulation in the county in which the action is pending. Notice of the sale of an interest in real property shall be published at least once a week for three successive weeks, the first publication to be not less than 15 days before the sale and the last publication to be not more than one week before the sale. Notice of the sale of personal property shall be published not less than five days nor more than 12 days before the sale.

[Committee note: In this Rule, “newspaper of general circulation” is intended to mean a newspaper satisfying the criteria set forth in Code, Article 1,

Section 28. A newspaper circulating to a substantial number of subscribers in a county and customarily containing legal notices with respect to property in the county shall be regarded as a newspaper of general circulation in the county, notwithstanding that (1) its readership is not uniform throughout the county, or (2) its content is not directed at all segments of the population.]

...
REPORTER’S NOTE

See the Reporter’s note to Rule 1-202.

MARYLAND RULES OF PROCEDURE
TITLE 15 - OTHER SPECIAL PROCEEDINGS
CHAPTER 900 - NAME - CHANGE OF

AMEND Rule 15-901 (e)(2) to add the language “in which the action was pending,” as follows:

Rule 15-901. ACTION FOR CHANGE OF NAME

...
 (e) Notice

...
 (2) Publication

Unless the court on motion of the petitioner orders otherwise, the notice shall be published one time in a newspaper of general circulation in the county *in which the action was pending* at least fifteen days before the date specified in the notice for filing an objection to the petition. The petitioner shall thereafter file a certificate of publication.

...
REPORTER’S NOTE

See the Reporter’s Note to Rule 1-202.

MARYLAND RULES OF PROCEDURE
TITLE 16 - COURTS, JUDGES, AND ATTORNEYS
CHAPTER 400 - ATTORNEYS, OFFICERS OF COURT, AND
OTHER PERSONS

AMEND Rule 16-401 to conform a reference to a section of Rule 1-202 to the relettering of that section, as follows:

Rule 16-401. PROSCRIBED ACTIVITIES - GRATUITIES, ETC.

...
 b. Receiving Prohibited

No officer or employee of any court, or of any office serving a court, shall accept a gratuity or gift, either directly or indirectly, from a litigant, an attorney or any person regularly doing business with the court, or any compensation related to such officer’s or employee’s official duties and not expressly authorized by rule or law.

Cross reference: For definition of “person,” see Rule 1-202 [(s)] (t).

...
REPORTER’S NOTE

See the Reporter’s note to Rule 1-202.

MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
CHAPTER 300 - TRIAL AND SENTENCING

ADD new Rule 4-332, as follows:

Rule 4-332. WRIT OF ACTUAL INNOCENCE

(a) Scope

This Rule applies to an action seeking a writ of actual innocence as provided by Code, Criminal Procedure Article, §8-301.

(b) Filing; Caption

An action for a writ of actual innocence is commenced by the filing of a petition in the court where the conviction took place. The caption of the petition shall state the number of the criminal case to which the petition relates. If practicable, the petition shall be filed in the criminal action.

(c) Timing

A petition under this Rule may be filed at any time.

(d) Content of Petition

The petition shall be in writing, shall be signed and verified by the petitioner, and shall state:

(1) the court in which the indictment or criminal information was filed and the file number of that case;

(2) if the case was removed to another court for trial, the identity of that court;

(3) each offense of which the petitioner was convicted, the date of the judgment of conviction, and the sentence imposed;

(4) if the judgment was appealed, the case number in the appellate court, a detailed description of the issues raised in the appeal, the result, and the date of the appellate court's mandate;

(5) for each motion or petition for post-judgment relief, the court in which the motion or petition was filed, the case number assigned to each proceeding, a detailed description of the issues raised, the result, and the date of disposition;

(6) that the request for relief is based on newly discovered evidence which, with due diligence, could not have been discovered in time to move for a new trial pursuant to Rule 4-331;

(7) a detailed description of the newly discovered evidence, how and when it was discovered, why it could not have been discovered earlier, and, if the issue of whether due diligence would have revealed the newly discovered evidence in time to move for a new trial pursuant to Rule 4-331 was raised or decided in any earlier appeal or post-judgment proceeding, the identity of the appeal or proceeding and the decision on that issue;

(8) that the evidence creates a substantial or significant possibility that, if it had been admitted at trial, the result may have been different, as that standard has been judicially determined, and the factual and legal basis for that statement;

(9) that the petitioner is actually innocent and did not commit the crime;

(10) if the petitioner is not already represented by counsel, whether the petitioner desires to have counsel appointed by the court and, if so, facts establishing indigency;

(11) that a copy of the petition, together with all attachments, was mailed to the State's Attorney of the county in which the petition was filed;

(12) the relief requested; and

(13) whether a hearing is requested.

(e) Notices

(1) To State's Attorney

The petitioner shall send a copy of the petition with all attachments to the State's Attorney of the county in which the petition was filed.

(2) To Victim or Victim's Representative

Upon receipt of the petition, the State's Attorney shall notify any victim or victim's representative of the filing of the petition, as provided by Code, Criminal Procedure Article, §11-104 or §11-503.

(3) To Public Defender

If the petitioner has requested an attorney and has alleged inability to employ one, the court shall send a copy of the petition and attachments to the Office of the Public Defender.

(f) Response by State's Attorney

Within 90 days after receipt of the petition and attachments, the State's Attorney shall file a response, serve a copy on the petitioner,

and, if indigency is alleged, send a copy to the Office of the Public Defender.

(g) Response by Public Defender

Within 30 days after receipt of the petition and attachments, the Office of the Public Defender shall enter its appearance or notify the court in writing that it declines to provide representation to the petitioner.

(h) Amendments

Amendments to the petition shall be freely allowed in order to do substantial justice. If an amendment is made, the court shall allow the State a reasonable opportunity to respond to the amendment.

(i) Denial of Petition; Appointment of Counsel

(1) Denial of Petition

Upon consideration of the petition and the State's response, the court may (A) deny the petition if it finds as a matter of law that the petition fails to comply with the requirements of section (d) of this Rule or otherwise fails to assert grounds on which relief may be granted or (B) grant leave to amend the petition to correct the deficiency. If the court finds a lack of proper venue, the court shall transfer the petition to the court with proper venue.

(2) Appointment of Counsel

If the court finds that a petitioner who has requested the appointment of counsel is indigent and the Office of the Public Defender has declined to provide representation, the court may appoint counsel after the State has filed its response unless (A) the court denies the petition as a matter of law or (B) counsel has already filed an appearance to represent the petitioner.

(j) Hearing

(1) When Required

Except as provided in subsection (i)(1) of this Rule, the court shall hold a hearing on the petition if the petition complies with the requirements of sections (b) and (d) of this Rule and a hearing was requested.

(2) Right of Victim or Victim's Representative to Attend

A victim or victim's representative has the right to attend a hearing on the petition as provided under Code, Criminal Procedure Article, §11-102.

(k) Burden of Proof

The petitioner has the burden of proof to establish a right to relief.

(l) Ruling

(1) Actions of Court

If the court finds that the petitioner is entitled to relief, it may set aside the verdict or judgment of conviction, grant a new trial, re-sentence the petitioner, or correct the sentence.

(2) Reasons for Ruling

The court shall state the reasons for its ruling on the record.

Source: This Rule is new.

REPORTER'S NOTE

Proposed new Rule 4-332 implements the provisions of Code, Criminal Procedure Article, §8-301, which, under certain circumstances, allows a person convicted of a crime to petition the court for a writ of actual innocence. The Rule includes provisions from the statute and language borrowed from the Rules in Title 4, Chapter 400 (Post Conviction Procedure); Title 4, Chapter 700 (Post Conviction DNA Testing); and Title 15, Chapter 1200 (Coram Nobis).

MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-312 to require that jurors be addressed by number, to provide for nondisclosure of jurors' names and their cities or towns of residence under certain circumstances, to correct a cross reference, to add a cross reference, to add three Committee notes, and to make stylistic changes, as follows:

Rule 4-312. JURY SELECTION

...

(b) General Requirements

(1) *Uniform Method of Impaneling*

All individuals to be [impanelled] impaneled on the jury, including any alternates, shall be selected in the same manner, have the same qualifications, and be subject to the same examination.

(2) *Jurors Not to be Addressed by Name*

In any proceeding conducted in the courtroom or in chambers, a juror shall be referred to by juror number and not by name.

Committee note: The judge should advise prospective jurors and remind impaneled jurors that (1) it is standard procedure for jurors to be referred to in open court only by juror number and not by name, and (2) they may disclose their names to each other if they wish and, when not in open court, refer to each other by name, but they may not specifically disclose the names of other jurors to anyone else unless authorized by the judge.

(c) Jury List

(1) Contents

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

(2) Dissemination

(A) Allowed

A party may provide the jury list to any person employed by the party to assist in jury selection. With permission of the trial judge, the list may be disseminated to other individuals such as the courtroom clerk or court reporter for use in carrying out official duties.

(B) Prohibited

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

(3) Not Part of the Case Record; Exception

Unless the court orders otherwise, copies of jury lists shall be returned to the jury commissioner. Unless marked for identification and offered in evidence pursuant to Rule 4-322, a jury list is not part of the case record.

Cross reference: See [Rule 16-1009 concerning motions to seal or limit inspection of a case record] Rule 16-1004 (b)(2)(B) concerning disclosure of juror information by a custodian of court records.

(d) *Nondisclosure of Names and City or Town of Residence*

(1) *Finding by the Court*

If the court finds from clear and convincing evidence or information, after affording the parties an opportunity to be heard, that disclosure of the names or the city or town of residence of prospective jurors will create a substantial danger that (i) the safety and security of one or more jurors will likely be imperiled, or (ii) one or more jurors will likely be subjected to coercion, inducement, other improper influence, or undue harassment, the court may enter an order as provided in subsection (d)(2) of this Rule. A finding under

this section shall be in writing or on the record and shall state the basis for the finding.

(2) *Order*

Upon the finding required by subsection (d)(1) of this Rule, the court may order that:

(A) the name and, except for prospective jurors residing in Baltimore City, the city or town of residence of prospective jurors not be disclosed in voir dire; and

(B) the name and, except for jurors residing in Baltimore City, the city or town of residence of impaneled jurors not be disclosed (i) until the jury is discharged following completion of the trial, (ii) for a limited period of time following completion of the trial, or (iii) at any time.

Committee note: Nondisclosure of the city or town in which a juror resides is in recognition of the fact that some counties have incorporated cities or towns, the disclosure of which, when coupled with other information on the jury list, may easily lead to discovery of the juror's actual residence. The exception for Baltimore City is to take account of the fact that Baltimore City is both an incorporated city and the equivalent of a county, and because persons are not eligible to serve as jurors in the Circuit Court for Baltimore City unless they reside in that city, their residence there is necessarily assumed.

Cross reference: See Rule 16-1004 (b)(2)(B).

(3) *Extent of Nondisclosure*

An order entered under this section may direct that the information not be disclosed to (A) anyone other than the judge and counsel; (B) anyone other than the judge, counsel, and the defendant; or (C) anyone other than the judge, counsel, the defendant, and other persons specified in the order. If the court permits disclosure to counsel but not the defendant, the court shall direct counsel not to disclose the information to the defendant, except pursuant to further order of the court.

(4) *Modification of Order*

The court may modify the order to restrict or allow disclosure of juror information at any time.

Committee note: Restrictions on the disclosure of the names and city or town of residence of jurors should be reserved for those cases raising special and legitimate concerns of jury safety, tampering, or undue harassment. See United States v. Deitz, 577 F.3d 672 (6th Cir. 2009); United States v. Quinones, 511 F.3d 289 (2nd Cir. 2007). When dealing with the issues of juror security or tampering, courts have considered a mix of five factors in deciding whether such information may be shielded: (1) the defendant's involvement in organized crime, (2) the defendant's participation in a group with the capacity to harm jurors, (3) the defendant's past attempts to interfere with the judicial process, (4) the potential that, if convicted, the defendant will suffer a lengthy incarceration, and (5) extensive publicity that could enhance the possibility that jurors' names would become public and expose them to intimidation or harassment. See United States v. Ochoa-Vasquez, 428 F.3d 1015 (11th Cir. 2005); United States v. Ross, 33 F.3d 1507 (11th Cir. 1994). Although the possibility of a lengthy incarceration is a factor for the court to consider the court should not shield that information on that basis alone. In particularly high profile cases where strong public opinion about a pending case is evident, the prospect of undue harassment, not necessarily involving juror security or any deliberate attempt at tampering, may also be of concern.

[(d)] (e) *Examination and Challenges for Cause*

(1) *Examination*

The trial judge may permit the parties to conduct an examination of qualified jurors or may conduct the examination after considering questions proposed by the parties. If the judge conducts the examination, the judge may permit the parties to supplement the examination by further inquiry or may submit to the jurors additional questions proposed by the parties. The jurors' responses to any examination shall be under oath. On request of any party, the judge shall direct the clerk to call the roll of the array and to request each qualified juror to stand and be identified when called.

(2) Challenges for Cause

A party may challenge an individual qualified juror for cause. A challenge for cause shall be made and determined before the jury is sworn, or thereafter for good cause shown.

[(e)] (f) Peremptory Challenges

Before the exercise of peremptory challenges, the trial judge shall designate those individuals on the jury list who remain qualified after examination. The number designated shall be sufficient to provide the required number of sworn jurors, including any alternates, after allowing for the exercise of peremptory challenges pursuant to Rule 4-313. The judge shall at the same time prescribe the order to be followed in selecting individuals from the list.

[(f)] (g) [Impanelled] *Impaneled* Jury

(1) [Impanelling] *Impaneling*

The individuals to be [impaneled] *impaneled* as sworn jurors, including any alternates, shall be called from the qualified jurors remaining on the jury list in the order previously designated by the trial judge and shall be sworn.

(2) Oath; Functions, Powers, Facilities, and Privileges

All sworn jurors, including any alternates, shall take the same oath and, until discharged from jury service, have the same functions, powers, facilities, and privileges.

(3) Discharge of Jury Member

At any time before the jury retires to consider its verdict, the trial judge may replace any jury member whom the trial judge finds to be unable or disqualified to perform jury service with an alternate in the order of selection set under section (e). When the jury retires to consider its verdict, the trial judge shall discharge any remaining alternates who did not replace another jury member.

[(g)] (h) Foreperson

The trial judge shall designate a sworn juror as foreperson.

Source: This Rule is derived as follows:

Section (a) is in part derived from former Rule 754 a and in part new.

Section (b) is derived from former Rule 751 b.

Section (c) is new.

Section (d) is new.

Section [(d)] (e) is derived from former Rule 752 and 754 b.

Section [(e)] (f) is derived from former Rule 753.

Section [(f)] (g) is new.

Section [(g)] (h) is derived from former Rule 751 d.

REPORTER'S NOTE

The Maryland Circuit Judges Association suggested that the Maryland Rules be amended to provide for anonymous jurors in cases where the trial court determines that there are strong reasons to believe that juror safety, juror fear, or jury tampering will be a problem during the trial. The Rules Committee agrees with the Association, and proposes several modifications to Rule 4-312.

New subsection (b)(2) requires that in proceedings conducted in the courtroom or in chambers jurors be referred to only by juror number. This will help protect jurors' identities and avoid the need to explain to jurors why, in certain cases, they are being referred to by number only.

New section (d) provides that the court may order that the names of jurors and their cities or towns of residence not be disclosed in voir dire. An exception has been carved out for Baltimore City, because it is both a city and a county, and jurors cannot serve in the Circuit Court for Baltimore City unless they reside in that city. The Subcommittee has included three different time periods for nondisclosure. The Rule provides that the standard of clear and convincing evidence is the one for the court to use in determining whether juror information should not be disclosed.

There are a variety of levels of nondisclosure that have been included in the Rule. A Committee note following subsection (d)(4) references several federal cases setting out factors for courts to

consider in deciding whether juries should be anonymous. The Committee note also suggests that undue harassment of jurors in high profile cases may be of concern.

Also, the cross reference after subsection (c)(3) has been changed to cite a Rule that is more pertinent to disclosure of juror information than the previously cross-referenced Rule.

**MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
CHAPTER 300 - TRIAL AND SENTENCING**

AMEND Rule 4-314 to conform an internal reference to the relettering of Rule 4-312, as follows:

Rule 4-314. DEFENSE OF NOT CRIMINALLY RESPONSIBLE

...

(b) Procedure for Bifurcated Trial

...

(3) Examination of Jurors

The court shall inform qualified jurors before examining them pursuant to Rule 4-312 [(d)] (e) that the issues of guilt or innocence and whether, if guilty, the defendant is criminally responsible will be tried in two stages. The examination of qualified jurors shall encompass all issues raised.

...

REPORTER'S NOTE

The proposed amendment to Rule 4-314 conforms an internal reference to the relettering of Rule 4-312.

**MARYLAND RULES OF PROCEDURE
TITLE 9 - FAMILY LAW ACTIONS
CHAPTER 200 - DIVORCE, ANNULMENT, ALIMONY,
CHILD SUPPORT, AND CHILD CUSTODY**

ADD new Rule 9-205.2, as follows:

Rule 9-205.2. PARENTING COORDINATION

(a) Applicability

This Rule applies to the appointment of parenting coordinators by a court and to consent orders approving the employment of parenting coordinators by the parties in actions under this Chapter.

Committee note: Actions in which parenting coordination may be used include an initial action to determine custody or visitation and an action to modify an existing order or judgment as to custody or visitation.

(b) Definitions

In this Rule, the following definitions apply:

(1) Parenting Coordination

"Parenting coordination" means a process in which the parties work with a parenting coordinator to reduce the effects or potential effects of conflict on the parties' child. Although parenting coordination may draw upon alternative dispute resolution techniques, parenting coordination is not governed by the Rules in Title 17, except as otherwise provided in this Rule.

(2) Parenting Coordinator

"Parenting coordinator" means an impartial provider of parenting coordination services.

(c) Qualifications of Parenting Coordinator

(1) Age, Education, and Experience

To be designated or approved by the court as a parenting coordinator, an individual shall:

(A) be at least 21 years old and hold a bachelor's degree from an accredited college or university;

(B) hold a post-graduate degree in psychology, social work, counseling, negotiation, conflict management, or a related subject area, or from an accredited medical or law school;

(C) have at least three years of related professional experience undertaken after receiving the post-graduate degree; and

(D) hold a current license if required in the individual's area of practice.

(2) Parenting Coordination Training

A parenting coordinator also shall have completed:

(A) at least 20 hours of training in a family mediation training program meeting the requirements of Rule 17-106 (b); and

(B) at least 40 hours of accredited specialty training in topics related to parenting coordination, including conflict coaching, developmental stages of children, dynamics of high-conflict families, family violence dynamics, parenting skills, problem-solving techniques, and the stages and effects of divorce.

Committee note: The accredited specialty training requirement may be met by training offered by recognized national organizations such as the American Bar Association or the Association of Family and Conciliation Courts.

(3) Continuing Education

Within each calendar year, a parenting coordinator shall complete a minimum of four hours of continuing education approved by the Administrative Office of the Courts in one or more of the topics listed in subsection (c)(2) of this Rule and in recent developments in family law. The Administrative Office shall maintain a list of approved continuing education programs.

(d) Parenting Coordinator Lists

An individual who has the qualifications listed in section (c) of this Rule and seeks court appointment as a parenting coordinator shall submit an application to the family support services coordinator of the circuit court for each county in which the individual seeks appointment. The application shall document that the individual meets the qualifications required in section (c) of this Rule. If satisfied that the applicant meets the qualifications, the family support services coordinator shall place the applicant's name on a list of qualified individuals which, together with the information submitted by each individual on the list, shall be accessible to the public.

(e) Approval of Parenting Coordinator Employed by Parties

In any action in which the custody of or visitation with a child of the parties is or was at issue, the parties, by agreement, may employ a parenting coordinator to assist them in dealing with existing or future conflicts regarding their access to and responsibilities for the child. The parties may jointly request the court to enter a consent order approving the agreement. The court shall enter such an order if it finds that the parenting coordinator has the qualifications set forth in section (c) of this Rule and that the agreement:

(1) is in writing and signed by the parties and the parenting coordinator;

(2) states the services to be provided by the parenting coordinator;

(3) states the extent to which the parenting coordinator may receive confidential or privileged information pertaining to the child or the parties and any limitations on the use of that information by the parenting coordinator;

(4) states the amount or rate of compensation to be paid to the parenting coordinator, which may exceed the amount or rate provided for in section (k) of this Rule; and

(5) is otherwise consistent with the best interest of the child.

Committee note: Parties who, by agreement, employ a parenting coordinator on their own initiative are not required to seek court approval. Section (e) of this Rule applies only if they request a court order approving the agreement.

(f) Appointment of Parenting Coordinator by Court

In an action in which the custody of or visitation with a child of the parties is in issue and the court determines that the level of conflict between the parties with respect to that issue so warrants, the

court may appoint a parenting coordinator in accordance with this section.

(1) Appointment During Pendency of Action

On motion of a party, on joint request of the parties, or on the court's own initiative and after notice and hearing, the court may appoint a parenting coordinator during the pendency of the action. Unless sooner terminated in accordance with this Rule, the appointment shall terminate upon the entry of a judgment granting or modifying custody or visitation.

(2) Appointment Upon Entry of Judgment

Upon entry of a judgment granting or modifying custody or visitation, the court, with the consent of the parties and after a hearing, may appoint a parenting coordinator. The court may appoint the individual who served as a parenting coordinator during the pendency of the action. Unless sooner terminated in accordance with this Rule, the appointment of a post-judgment parenting coordinator shall not exceed two years unless the parties and the parenting coordinator agree in writing to an extension for a specified longer period.

Committee note: Appointment of a parenting coordinator does not affect the applicability of Rules 9-204, 9-205, or 9-205.1, nor does the appointment preclude the use of an alternative dispute resolution process under Title 17 of these Rules.

(3) Selection

The court may not appoint an individual as a parenting coordinator unless the individual:

(A) has the qualifications listed in section (c) of this Rule,

(B) is willing to serve as the parenting coordinator in the action, and

(C) agrees not to charge or accept a fee in excess of that allowed in the applicable fee schedule adopted pursuant to subsection (k)(1) of this Rule.

(4) Contents of Order or Judgment

An order or judgment appointing a parenting coordinator shall include:

(A) the name, business address, e-mail address, and telephone number of the parenting coordinator;

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

Committee note: The order must be consistent with the relevant provisions of any other existing order, such as a "no contact" requirement that is included in a civil protective order or is a condition of pre-trial release in a criminal case.

(C) if the appointment is of a post-judgment parenting coordinator, any decision-making authority of the parenting coordinator authorized pursuant to subsection (g)(9) of this Rule.

(g) Services Permitted

As appropriate, a parenting coordinator may:

(1) if there is no operative custody and visitation order, work with the parties to develop an agreed plan for custody and visitation;

(2) if there is an operative custody and visitation order, assist the parties in amicably resolving disputes about the interpretation of and compliance with the order and in making any joint recommendations to the court for any changes to the order;

(3) educate the parties about making and implementing decisions that are in the best interest of the child;

(4) assist the parties in developing guidelines for appropriate communication between them;

(5) suggest resources to assist the parties;

(6) assist the parties in modifying patterns of behavior and in developing parenting strategies to manage and reduce opportunities for conflict in order to reduce the impact of any conflict upon their child;

(7) in response to a subpoena issued at the request of a party or an attorney for a child of the parties, or upon action of the court pursuant to Rule 2-514 or 5-614, produce documents and testify in the action as a fact witness;

(8) if concerned that a party or child is in imminent physical or emotional danger, communicate with the court or court personnel to request an immediate hearing; and

(9) decide post-judgment disputes by making minor, temporary modifications to child access provisions ordered by the court if (A) the judgment or post-judgment order of the court authorizes such decision making, and (B) the parties have agreed in writing or on the record that the post-judgment parenting coordinator may do so.

Committee note: Examples of such modifications include one-time or minor changes in the time or place for child transfer and one-time or minor deviations from access schedules to accommodate special events or circumstances.

(h) Services Not Permitted

A parenting coordinator may not:

(1) except as permitted by subsections (g)(7) and (8) of this Rule, communicate orally or in writing with the court or any court personnel regarding the substance of the action;

Committee note: This subsection does not prohibit communications with respect to routine administrative matters; collection of fees, including submission of records of the number of contacts with each party and the duration of each contact; or resignation. Nothing in the subsection affects the duty to report child abuse or neglect under any provision of federal or State law or the right of the parenting coordinator to defend against allegations of misconduct or negligence.

(2) testify in the action as an expert witness; or
Cross reference: See Rule 5-702 as to expert witnesses.

(3) except for decision making by a post-judgment parenting coordinator authorized pursuant to subsection (g)(9) of this Rule, make parenting decisions on behalf of the parties.

(i) Confidential Information

(1) Access to Case Records

Except as otherwise provided in this subsection, the parenting coordinator shall have access to all case records in the action. If a document or any information contained in a case record is not open to public inspection under the Rules in Title 16, Chapter 1000, the court shall determine whether the parenting coordinator may have access to it and shall specify any conditions to that access.

Cross reference: See Rule 16-1001 for the definition of "case record."

(2) Other Confidential Information

(A) A parenting coordinator may not require or coerce the parties or an attorney for the child to release any confidential information that is not included in the case record.

(B) Confidential or privileged information received by the parenting coordinator from a party or from a third person with the consent of a party may be disclosed by the parenting coordinator to the other party, to an attorney for the child, and in court pursuant to subsections (g)(7) and (8) of this Rule. Unless otherwise required by law, the parenting coordinator may not disclose the information to anyone else without the consent of the party who provided the information or consented to a third person providing it.

(j) Removal or Resignation of Parenting Coordinator

(1) Removal

The court shall remove a parenting coordinator:

(A) on motion of a party or an attorney for the child, if the court finds good cause, or

(B) on a finding that continuation of the appointment is not in the best interest of the child.

(2) Resignation

A parenting coordinator may resign at any time by written notice sent by first-class mail to each party and any attorney for the child. The notice shall state the effective date of the resignation and that the parties may request the appointment of another parenting

coordinator. The notice shall be sent at least 15 days before the effective date of the resignation. Promptly after mailing the notice, and at least seven days before the effective date of resignation, the parenting coordinator shall file a copy of the notice with the court.

(k) Fees

(1) Fee Schedules

Subject to the approval of the Chief Judge of the Court of Appeals, the county administrative judge of each circuit court may develop and adopt maximum fee schedules for parenting coordinators. In developing the fee schedules, the county administrative judge shall take into account the availability of qualified individuals willing to provide parenting coordination services and the ability of litigants to pay for those services. A parenting coordinator appointed by the court may not charge or accept a fee for parenting coordination services in that action in excess of the fee allowed by the applicable schedule. Violation of this subsection shall be cause for removal from all lists maintained pursuant to section (d) of this Rule, Rule 9-205, and the Rules in Title 17.

(2) Allocation of Fees and Expenses

Subject to any agreement entered into by the parties pursuant to section (e) of this Rule, the court shall designate how and by whom the parenting coordinator shall be paid. If the court finds that the parties have the financial means to pay the fees and expenses of the parenting coordinator, the court shall allocate the fees and expenses of the parenting coordinator between the parties and may enter an order against either or both parties for the reasonable fees and expenses.

Source: This Rule is new.

REPORTER'S NOTE

A detailed description of proposed new Rule 9-205.2 is contained in the "Category 4" section of the One Hundred Sixty-Eighth Report.

**MARYLAND RULES OF PROCEDURE
TITLE 16 - COURTS, JUDGES, AND ATTORNEYS
CHAPTER 200 - THE CALENDAR – ASSIGNMENT AND
DISPOSITION OF MOTIONS AND CASES**

AMEND Rule 16-204 by adding a new subsection (a)(3)(G) pertaining to parenting coordination services, as follows:

Rule 16-204. FAMILY DIVISION AND SUPPORT SERVICES

(a) Family Division

(1) Established

In each county having more than seven resident judges of the circuit court authorized by law, there shall be a family division in the circuit court.

(2) Actions Assigned

In a court that has a family division, the following categories of actions and matters shall be assigned to that division:

(A) dissolution of marriage, including divorce, annulment, and property distribution;

(B) child custody and visitation, including proceedings governed by the Maryland Uniform Child Custody Jurisdiction Act, Code, Family Law Article, Title 9, Subtitle 2, and the Parental Kidnapping Prevention Act, 28 U.S.C. §1738A;

(C) alimony, spousal support, and child support, including proceedings under the Maryland Uniform Interstate Family Support Act;

(D) establishment and termination of the parent-child relationship, including paternity, adoption, guardianship that terminates parental rights, and emancipation;

(E) criminal nonsupport and desertion, including proceedings under Code, Family Law Article, Title 10, Subtitle 2 and Code, Family Law Article, Title 13;

(F) name changes;

(G) guardianship of minors and disabled persons under Code, Estates and Trusts Article, Title 13;

(H) involuntary admission to state facilities and emergency evaluations under Code, Health General Article, Title 10, Subtitle 6;

(I) family legal-medical issues, including decisions on the withholding or withdrawal of life-sustaining medical procedures;

(J) actions involving domestic violence under Code, Family Law Article, Title 4, Subtitle 5;

(K) juvenile causes under Code, Courts Article, Title 3, Subtitles 8 and 8A;

(L) matters assigned to the family division by the County Administrative Judge that are related to actions in the family division and appropriate for assignment to the family division; and

(M) civil and criminal contempt arising out of any of the categories of actions and matters set forth in subsection (a)(2)(A) through (a)(2)(L) of this Rule.

Committee note: The jurisdiction of the circuit courts, the District Court, and the Orphan's Court is not affected by this section. For example, the District Court has concurrent jurisdiction with the circuit court over proceedings under Code, Family Law Article, Title 4, Subtitle 5.

(3) Family Support Services

Subject to the availability of funds, the following family support services shall be available through the family division for use when appropriate in a particular action:

(A) mediation in custody and visitation matters;

(B) custody investigations;

(C) trained personnel to respond to emergencies;

(D) mental health evaluations and evaluations for alcohol and drug abuse;

(E) information services, including procedural assistance to pro se litigants;

Committee note: This subsection is not intended to interfere with existing projects that provide assistance to pro se litigants.

(F) information regarding lawyer referral services;

(G) *parenting coordination services as permitted by Rule 9-205.2;*

[(G)] (H) parenting seminars; and

[(H)] (I) any additional family support services for which funding is provided.

Committee note: Examples of additional family support services that may be provided include general mediation programs, case managers, and family follow-up services.

(4) Responsibilities of the County Administrative Judge

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

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

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

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

(i) requiring parties in an action assigned to the family division to attend a scheduling conference in accordance with Rule 2-504.1 (a) (1) and

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

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

(C) appoint a family support services coordinator whose responsibilities include:

(i) compiling, maintaining, and providing lists of available public and private family support services,

(ii) coordinating and monitoring referrals in actions assigned to the family division, and

(iii) reporting to the County Administrative Judge concerning the need for additional family support services or the modification of existing services; and

(D) prepare and submit to the Chief Judge of the Court of Appeals, no later than October 15 of each year, a written report that includes a description of family support services needed by the court's family division, a fiscal note that estimates the cost of those services for the following fiscal year, and, whenever practicable, an estimate of the fiscal needs of the Clerk of the Circuit Court for the county pertaining to the family division.

(b) Circuit Courts Without a Family Division

(1) Applicability

This section applies to circuit courts for counties having less than eight resident judges of the circuit court authorized by law.

(2) Family Support Services

Subject to availability of funds, the family support services listed in subsection (a)(3) of this Rule shall be available through the court for use when appropriate in cases in the categories listed in subsection (a)(2) of this Rule.

(3) Family Support Services Coordinator

The County Administrative Judge shall appoint a full-time or part-time family support services coordinator whose responsibilities shall be substantially as set forth in subsection (a)(4)(C) of this Rule.

(4) Report to the Chief Judge of the Court of Appeals

The County Administrative Judge shall prepare and submit to the Chief Judge of the Court of Appeals, no later than October 15 of each year, a written report that includes a description of the family support services needed by the court, a fiscal note that estimates the cost of those services for the following fiscal year, and, whenever practicable, an estimate of the fiscal needs of the Clerk of the Circuit Court for the county pertaining to family support services.

Source: This Rule is new.

REPORTER'S NOTE

Proposed amendments to Rule 16-204 conform the Rule to provisions in new Rule 9-205.2.

MARYLAND RULES OF PROCEDURE TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION CHAPTER 100 - PROCEEDINGS IN CIRCUIT COURT

AMEND Rule 17-101 (b) to add a reference to parenting coordinators appointed under Rule 9-205.2, as follows:

Rule 17-101. APPLICABILITY

...

(b) Rules Governing Qualifications and Selection

The rules governing the qualifications and selection of a person designated to conduct court-ordered alternative dispute resolution proceedings apply only to a person designated by the court in the absence of an agreement by the parties. They do not apply to a master, examiner, [or] auditor, *or parenting coordinator* appointed under Rules 2-541, 2-542, [or] 2-543, *or 9-205.2.*

...

REPORTER'S NOTE

New Rule 9-205.2 is a self-contained Rule pertaining to parenting coordination. The second sentence of Rule 9-205.2 (b)(1) reads, "Although parenting coordination may draw upon alternative dispute resolution techniques, parenting coordination is not governed by the Rules in Title 17, except as otherwise provided in this Rule."

The proposed amendment to Rule 17-101 (b) excludes a parenting coordinator appointed under Rule 9-205.2 from the applicability of the Rules in Title 17 that govern the qualifications and selection of a person designated by the court to conduct alternative dispute resolution proceedings.

**MARYLAND RULES OF PROCEDURE
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**MARYLAND RULES OF PROCEDURE
TITLE 12 - PROPERTY ACTIONS
CHAPTER 700 - SEVERED MINERAL INTERESTS**

ADD new Rule 12-701, as follows:

Rule 12-701. DEFINITIONS

In this Chapter, the terms "mineral," "mineral interest," "severed mineral interest," "surface estate," "surface owner," and "unknown or missing owner" have the meanings set forth in Code, Environment Article, §15-1201. A "dormant mineral interest" is a mineral interest

that satisfies the criteria set forth in Code, Environment Article, §15-1203 (a)(2).

Source: This Rule is new.

REPORTER'S NOTE

Chapter 269, Laws of 2010 (HB 320) authorizes the owner of surface real property subject to a mineral interest such as oil, metallic ores, or coal, to file an action to terminate a dormant mineral interest or, if the owner of a severed mineral interest is unknown or missing, to have the mineral interest placed in trust. If the unknown or missing owner cannot be ascertained or located, the trustee later petitions for termination of the trust. Because these procedures involve property, the Rules administering the statute have been placed in Title 12.

Proposed new Title 12, Chapter 700 is based on the statute and comprises four Rules:

- Rule 12-701, containing definitions;

- Rule 12-702, containing the scope of the Chapter;

- Rule 12-703, containing procedures to establish and administer a trust for unknown or missing persons with a legal interest in a severed mineral interest and to terminate that trust; and

- Rule 12-704, containing procedures to terminate a dormant mineral interest.

The statute provides that an action to terminate a dormant mineral interest requires the same notice as an action to quiet title set forth in Code, Real Property Article, §14-108, in rem notice. However, the statute does not provide a method for notice of an action to establish the trust or to terminate the trust. The recommendation is to provide for in rem notice to persons who are unknown or missing, since (1) it is the method used in an action to terminate the dormant mineral interest, and (2) Rule 10-602 provides for notice to persons with an interest in a fiduciary estate whose identity or whereabouts are unknown in the manner provided by Rule 2-122, which is in rem notice.

The Committee discussed a Constitutional equal protection concern as to which the statute is silent – whether the known owner of a severed mineral interest and the unknown or missing owner of a severed mineral interest receive equal protection under the law. Under the statute, the interest of a known owner is subject to termination after the expiration of a 20-year period of dormancy; whereas, the interest of an unknown or missing owner is subject to termination after only five years of dormancy. The Committee requested from the Office of the Attorney General additional information concerning the constitutionality of the statute. Having considered the information received, the Committee approved Rules that incorporate the time periods set forth in the statute. However, if a policy determination is made that no interest should be subject to termination until after the expiration of a 20-year period of dormancy, this can be effected by the addition of the language, "and the severed mineral interest has become a dormant mineral interest," to Rule 12-703 (f)(2)(A) and (E).

**MARYLAND RULES OF PROCEDURE
TITLE 12 - PROPERTY ACTIONS
CHAPTER 700 - SEVERED MINERAL INTERESTS**

ADD new Rule 12-702, as follows:

Rule 12-702. SCOPE

This Chapter does not apply to a mineral interest:

(a) held by the United State or a Native American tribe, except to the extent permitted by federal law; or

(b) held by the State or an agency or political subdivision of the State, except to the extent permitted by State law.

Source: This Rule is derived from Code, Environment Article, §15-1202 (a)(2).

REPORTER'S NOTE

See the Reporter's note to Rule 12-701.

**MARYLAND RULES OF PROCEDURE
TITLE 12 - PROPERTY ACTIONS
CHAPTER 700 - SEVERED MINERAL INTERESTS**

ADD new Rule 12-703, as follows:

Rule 12-703. TRUST FOR UNKNOWN OR MISSING OWNER OF SEVERED MINERAL INTEREST

(a) Petition to Create Trust

(1) Generally

An owner in fee simple of a surface estate subject to a severed mineral interest that is vested, in whole or in part, in an unknown or missing owner may file a petition to place the mineral interest of the unknown or missing owner in trust. The petition shall be filed in the circuit court of any county in which the surface estate is located.

Cross reference: Code, Environment Article, §§15-1201 through 15-1206.

(2) Contents

The petition shall be captioned "In the Matter of ..." stating the location of the surface estate subject to the severed mineral interest. It shall be signed and verified by the petitioner and shall contain at least the following information:

- (A) the petitioner's name, address, and telephone number;
- (B) the name and address of all other surface owners;
- (C) the reason for seeking the assumption of jurisdiction by the court and a statement of the relief sought;
- (D) a legal description of the severed mineral interest;
- (E) the name, address, telephone number, and nature of the interest of all persons with a legal interest in the severed mineral interest, including any unknown or missing owners, and their heirs, successors, or assignees;
- (F) an affidavit of the petitioner stating that the identity or whereabouts of one or more owners are unknown and describing the reasonable efforts made in good faith to identify and locate each unknown or missing owner who is the subject of the petition;
- (G) the nature of the interest of the petitioner;
- (H) the nature and location of the surface estate subject to the severed mineral interest; and
- (I) an affidavit of the petitioner, affirming fee simple ownership of the surface estate and including a reference to each recorded document establishing such ownership. If any person whose name is required information under this subsection is unknown, that fact shall be stated. If any person is the unknown heir of a decedent, that person shall be described as the unknown heir of _____, deceased.

(b) Service

The proceeding shall be deemed in rem or quasi in rem. A copy of the petition and attached documents shall be served on all persons with a legal interest in the severed mineral interest named in the petition and all surface owners who have not joined in the petition. Service on a person alleged to be unknown or missing shall be pursuant to Rule 2-122. Otherwise, service shall be pursuant to Rule 2-121.

(c) Hearing

The court shall hold a hearing on the petition.

(d) Order Creating Trust

If the court finds that the title to a severed mineral interest is vested, in whole or in part, in an unknown or missing owner, the court may enter an order:

(1) placing the severed mineral interest of the unknown or missing owner in trust;

(2) appointing a trustee for the unknown or missing owner;

(3) if it is likely that any revenue will accrue to the benefit of the unknown or missing owner, directing the trustee to create a separate trust bank account to manage all trust assets; and

(4) authorizing the trustee to lease the mineral interest to the owner of the surface estate, subject to any conditions the court deems appropriate.

Cross reference: See Rule 1-324 concerning notice of the order sent by the clerk to the parties.

(e) Administration of Trust

A trust created under this Rule shall be administered pursuant to Rules 10-702 to 10-712.

(f) Termination of Trust

(1) Petition by Unknown or Missing Owner

(A) Generally

An unknown or missing owner whose interest in a severed mineral interest has been placed in trust, at any time prior to the filing of a petition under subsection (f)(2) or (f)(3) of this Rule, may file a petition to terminate the trust and convey the interest to the petitioner. The petition shall be signed and verified by the petitioner, filed in the court that created the trust, and name as respondents the trustee, each surface owner, and each other person with a legal interest in the minerals.

(B) Contents

The petition shall be captioned "In the Matter of ..." and shall state:

- (i) the petitioner's name, address, e-mail address, if any, and telephone number;
- (ii) the name, address, e-mail address, if any, and telephone number of the trustee and each surface owner;
- (iii) the nature and extent of the petitioner's legal interest in the severed mineral interest in trust and include a reference to each recorded document establishing that interest and be accompanied by any unrecorded document establishing that interest; and
- (iv) whether, the petitioner has recorded or intends to record a notice of intent to preserve the mineral interest in accordance with Code, Environment Article, §15-1204.

(C) Service

The petition shall be served on each respondent in accordance with the provisions of Rule 1-321 (a).

(D) Response

A respondent shall file a response to the petition within the time prescribed by Rule 2-321.

(E) Hearing

Unless waived in writing by all parties, the court shall hold a hearing on the petition.

(F) Order

If the court finds that the petitioner is the unknown or missing owner whose severed mineral interest was placed in the trust, that the petition is timely and in compliance with this Rule, and that the trust with respect to that mineral interest should be terminated, it shall enter an order (i) terminating the trust as to that mineral interest, (ii) directing the trustee to file a final accounting, convey the mineral interest to the petitioner, and distribute all proceeds in accordance with the accounting, as approved by the court, and (iii) assessing costs as it deems just under the circumstances.

(2) Petition by Trustee

(A) Generally

If the unknown or missing owner of a vested severed mineral interest to whom notice of the petition or order was given does not contest or move to terminate a trust created under this Rule on or before five years after the date that the court issued the order creating the trust, the trustee shall file a petition to terminate the trust and to

convey to the surface owner title to the severed mineral interest. The petition shall name as respondents each surface owner and each person with a legal interest in the minerals, including any unknown or missing owners of the severed mineral interest.

(B) Contents

The petition shall be captioned "In the Matter of ..." stating the location of the surface estate subject to the severed mineral interest. It shall be signed and verified by the petitioner and shall contain at least the following information:

(i) a legal description of the severed mineral interest;
(ii) a description of the putative property interests of each party;

(iii) the last known address of each party;

(iv) an affidavit signed by each surface owner, affirming fee simple ownership of the surface estate and requesting the court to convey title to the severed mineral interest at issue; and

(v) an affidavit signed by the petitioner, affirming that after conducting a diligent inquiry, including a search in each county where the severed mineral interest is located, performed in accordance with generally accepted standards of title examination of the land records of the county, the records of the register of wills of the county, and the records of the circuit court for the county, the trustee cannot locate the unknown or missing owner.

(C) Service

The petition shall be served on each respondent in accordance with the provisions of Rule 1-321.

(D) Hearing

The court shall hold a hearing on the petition.

(E) Order Terminating Trust

The court shall enter an order requiring the trustee to convey the unknown or missing owner's mineral interest to the named surface owner if (i) the petition was filed more than five years after entry of the order creating the trust, (ii) the unknown or missing owner does not appear to contest the petition, and (iii) the court finds that the person named in the petition as surface owner is in fact the fee simple owner of the surface estate. After receiving the final report of the trustee as required by Code, Environment Article, §15-1206, the court shall enter an order (a) terminating the trust as to that mineral interest, (b) directing the trustee to file a final accounting, convey the mineral interest to the surface owner, and distribute all proceeds in accordance with the accounting, as approved by the court, and (c) assessing costs as it deems just under the circumstances.

Committee note: If the mineral interest is located in more than one county, conveyance by the trustee requires recordation in each county in which the surface estate is located.

Cross reference: See Rule 1-324 concerning notice of the order sent by the clerk to the parties.

(3) Petition by Surface Owner or Other Interested Person

If the trustee does not file the petition within the time prescribed in subsection (f)(2) of this Rule, the surface owner or any person with a legal or beneficial interest in the severed mineral interest placed in trust may file a petition to direct the trustee to comply with subsection (f)(2) of this Rule or to appoint a substitute trustee to do so. The petition shall be served on the trustee in accordance with the provisions of Rule 2-121 and further proceedings shall be in accordance with subsection (f)(2) of this Rule.

Cross reference: For duties of the trustee, see Code, Environment Article, §15-1206.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 12-701.

MARYLAND RULES OF PROCEDURE
TITLE 12 - PROPERTY ACTIONS
CHAPTER 700 - SEVERED MINERAL INTERESTS

ADD new Rule 12-704, as follows:

Rule 12-704. TERMINATION OF DORMANT MINERAL INTEREST

(a) Petition

(1) Generally

At any time after October 1, 2011, a surface owner of real property that is subject to a severed mineral interest may initiate an action to terminate a dormant mineral interest by filing a petition in the circuit court of any county in which the surface estate is located, but if a trust created under Rule 12-703 is in existence, then in the county where the trust was created.

(2) Contents

The petition shall be captioned "In the Matter of ...," stating the location of each surface estate subject to the mineral interest. It shall be signed and verified by the petitioner and shall contain at least the following information:

(A) the petitioner's name, address, and telephone number;

(B) the name and address of all other surface owners;

(C) the reason for seeking the assumption of jurisdiction by the court and a statement of the relief sought;

(D) a legal description of the severed mineral interest;

(E) the name, address, telephone number, and nature of the interest of all interested persons, including each person who has previously recorded a notice of intent to preserve the mineral interest or a part of a mineral interest pursuant to Code, Environment Article, §15-1204;

(F) the nature of the interest of the petitioner;

(G) the nature and location of the surface estate or estates subject to a severed mineral interest; and

(H) an affidavit signed by each surface owner affirming fee simple ownership of the surface estate, including a reference to each recorded document establishing such ownership. If any person whose name is required information under this subsection is unknown, that fact shall be stated. If any person is the unknown heir of a decedent, that person shall be described as the unknown heir of _____, deceased.

Cross reference: See Code, Environment Article, §§15-1203 through 15-1205.

(b) Service

The proceeding shall be deemed in rem or quasi in rem. A copy of the petition and attached documents shall be served on all persons with a legal interest in the severed mineral interest named in the petition and all surface owners who have not joined in the petition. Service on a person alleged to be unknown or missing shall be pursuant to Rule 2-122. Otherwise, service shall be pursuant to Rule 2-121.

(c) Late Notice of Intent to Preserve Interest

Unless the mineral interest has been unused for a period of 40 years or more proceeding the commencement of the action, the court shall permit the owner of the mineral interest to record a late notice of intent to preserve the mineral interest and dismiss the action, provided that the owner of the mineral interest pays the litigation expenses incurred by the surface owner of the real property that is subject to the mineral interest.

Cross reference: See Code, Environment Article, §15-1203 (c) for actions constituting use of an entire mineral interest.

(d) Hearing

The court, in its discretion, may hold a hearing on the petition.

(e) Order

The court shall enter an order granting or denying the petition. An order terminating a mineral interest shall describe each tract of

the surface estate overlying the terminated mineral interest into which the mineral interest is merged, and shall describe the proportional shares, if any, of each surface owner in each tract. The clerk shall record a copy of the order of termination in the land records of each county in which the mineral interest is located.

Cross reference: See Code, Environment Article, §15-1203 (d)(2) for the effects of an order terminating a mineral interest.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 12-701.

MARYLAND RULES OF PROCEDURE TITLE 4 - CRIMINAL CAUSES CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-263 (d) to require a certain statement and identification of material by the State if the State seeks a sentence of death, as follows:

Rule 4-263. DISCOVERY IN CIRCUIT COURT

...

(d) Disclosure by the State's Attorney

Without the necessity of a request, the State's Attorney shall provide to the defense:

(1) Statements

All written and all oral statements of the defendant and of any co-defendant that relate to the offense charged and all material and information, including documents and recordings, that relate to the acquisition of such statements;

(2) Criminal Record

Prior criminal convictions, pending charges, and probationary status of the defendant and of any co-defendant;

(3) State's Witnesses

The name and, except as provided under Code, Criminal Procedure Article, §11-205 or Rule 16-1009 (b), the address of each State's witness whom the State's Attorney intends to call to prove the State's case in chief or to rebut alibi testimony, together with all written statements of the person that relate to the offense charged;

(4) Prior Conduct

All evidence of other crimes, wrongs, or acts committed by the defendant that the State's Attorney intends to offer at a hearing or at trial pursuant to Rule 5-404 (b);

(5) Exculpatory Information

All material or information in any form, whether or not admissible, that tends to exculpate the defendant or negate or mitigate the defendant's guilt or punishment as to the offense charged;

(6) Impeachment Information

All material or information in any form, whether or not admissible, that tends to impeach a State's witness, including:

(A) evidence of prior conduct to show the character of the witness for untruthfulness pursuant to Rule 5-608 (b);

(B) a relationship between the State's Attorney and the witness, including the nature and circumstances of any agreement, understanding, or representation that may constitute an inducement for the cooperation or testimony of the witness;

(C) prior criminal convictions, pending charges, or probationary status that may be used to impeach the witness, but the State's Attorney is not required to investigate the criminal record of the witness unless the State's Attorney knows or has reason to believe that the witness has a criminal record;

(D) an oral statement of the witness, not otherwise memorialized, that is materially inconsistent with another statement made by the witness or with a statement made by another witness;

(E) a medical or psychiatric condition or addiction of the witness that may impair the witness's ability to testify truthfully or accurately, but the State's Attorney is not required to inquire into a witness's medical, psychiatric, or addiction history or status unless the State's Attorney has information that reasonably would lead to a belief that an inquiry would result in discovering a condition that may impair the witness's ability to testify truthfully or accurately;

(F) the fact that the witness has taken but did not pass a polygraph examination; and

(G) the failure of the witness to identify the defendant or a co-defendant;

Cross reference: See *Brady v. Maryland*, 373 U.S. 83 (1963); *Kyles v. Whitley*, 514 U.S. 419 (1995); *Giglio v. U.S.*, 405 U.S. 150 (1972); *U.S. v. Agurs*, 427 U.S. 97 (1976); *Thomas v. State*, 372 Md. 342 (2002); *Goldsmith v. State*, 337 Md. 112 (1995); and *Lyba v. State*, 321 Md. 564 (1991).

(7) Searches, Seizures, Surveillance, and Pretrial Identification

All relevant material or information regarding:

(A) specific searches and seizures, eavesdropping, and electronic surveillance including wiretaps; and

(B) pretrial identification of the defendant by a State's witness;

(8) Reports or Statements of Experts

As to each expert consulted by the State's Attorney in connection with the action:

(A) the expert's name and address, the subject matter of the consultation, the substance of the expert's findings and opinions, and a summary of the grounds for each opinion;

(B) the opportunity to inspect and copy all written reports or statements made in connection with the action by the expert, including the results of any physical or mental examination, scientific test, experiment, or comparison; and

(C) the substance of any oral report and conclusion by the expert;

(9) Evidence for Use at Trial

The opportunity to inspect, copy, and photograph all documents, computer-generated evidence as defined in Rule 2-504.3 (a), recordings, photographs, or other tangible things that the State's Attorney intends to use at a hearing or at trial; [and]

(10) Property of the Defendant

The opportunity to inspect, copy, and photograph all items obtained from or belonging to the defendant, whether or not the State's Attorney intends to use the item at a hearing or at trial[.]; and

(11) *Evidentiary Statement and Identification of Materials in Capital Cases*

If the defendant is charged with a first degree murder that is eligible for a sentence of death and the State filed a notice of intention to seek a death sentence pursuant to Code, Criminal Law Article, §2-202 (a), (A) a statement of whether the material disclosed constitutes biological evidence or DNA evidence that links the defendant to the act of murder, a videotaped, voluntary interrogation and confession of the defendant to the murder, or a video recording that conclusively links the defendant to the murder, and, (B) if so, identification of the material that constitutes such evidence.

...

REPORTER'S NOTE

Chapter 186, Laws of 2009 (SB 279), prohibits a sentence of death unless the State presents the court or jury with (1) biological evidence or DNA evidence that links the defendant to the act of murder, (2) a videotaped, voluntary interrogation and confession of the defendant to the murder, or (3) a video recording that conclusively links the defendant to the murder. Code, Criminal Law Article, §2-202 (a) requires that the State give notice of its intention to seek the death penalty at least 30 days before trial. Under Rule 4-263 (d), the State must disclose to the defendant before trial certain material including (1) all written reports of experts and the substance of all oral reports of experts regarding the results of scientific tests, as well as relevant

material regarding searches and seizures, (2) all relevant material regarding electronic surveillance, and (3) all recordings that relate to the acquisition of statements from the defendant. If the State has any of the specific material required by the new statute, that material would have to be disclosed before trial in accordance with Rule 4-263. Proposed new subsection (d)(11) adds to Rule 4-263 a provision applicable if the State has filed a notice of intention to seek a sentence of death. The new provision requires the State to (1) provide a statement as to whether any of the material disclosed makes the defendant eligible for a sentence of death and (2) identify any such material.

**MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
CHAPTER 200 - PRETRIAL PROCEDURES**

ADD new Rule 4-281, as follows:

Rule 4-281. MOTION RELATING TO DEATH PENALTY NOTICE

(a) Motion

Upon completion of discovery, a defendant may move to preclude the State from filing a notice of intention to seek a sentence of death pursuant to Code, Criminal Law Article, §2-301 or to strike a notice already filed on the ground that the State has failed to produce in discovery evidence of an aggravating circumstance listed in Code, Criminal Law Article, §2-303 (g), or one of the following:

(1) biological evidence or DNA evidence that links the defendant to the act of murder;

(2) a video taped voluntary interrogation and confession of the defendant to the murder; or

(3) a video recording that conclusively links the defendant to the murder.

(b) Order

After an opportunity for a hearing, the court shall promptly rule on the motion and enter an order.

(c) Appeal by State

An order granting the motion may be appealed by the State under the collateral order doctrine. Any appeal shall be to the Court of Appeals and shall be filed within 30 days after entry of the order. Trial and all other proceedings in the case that may be affected by the appeal shall be stayed until the appeal is finally concluded. An order denying the motion is not immediately appealable under the collateral order doctrine.

Source: This Rule is new.

REPORTER'S NOTE

In *State v. Manck*, 385 Md. 581 (2005), a 4-3 decision, the Court of Appeals held that the State has no right to appeal from a court's decision to grant a motion to strike a notice of intention to seek the death penalty. Also, there has been some uncertainty as to whether a court has the authority to strike the notice.

To clarify these issues, the Rules Committee recommends the addition of proposed new Rule 4-281, which provides that (1) a defendant may move to strike the notice of intention to seek the death penalty if the State has failed to produce in discovery evidence of an aggravating factor as listed in Code, Criminal Law Article, §2-303 (g) or one of the three factors listed in Code, Criminal Law Article, §2-202, (2) the court promptly shall rule on the motion, and (3) the State may appeal an order granting the motion under the collateral order doctrine.

**MARYLAND RULES OF PROCEDURE
TITLE 1 - GENERAL PROVISIONS
CHAPTER 300 - GENERAL PROVISIONS**

AMEND Rule 1-326 to conform it to revisions of Rules 16-813 and 16-814, as follows:

Rule 1-326. PROCEEDINGS REGARDING VICTIMS AND VICTIMS' REPRESENTATIVES

...

Cross reference: See Maryland Declaration of Rights, Article 47; Rule[s] 16-813, Maryland Code of Judicial Conduct, [Canon 3B (6)(a)] *Rule 2.6 (a)*; and Rule 16-814, Maryland Code of Conduct for Judicial Appointees, [Canon 3B (6)(a)] *Rule 2.6 (a)*. For definitions of "victim" and "victim's representative," see Code, Courts Article, §3-8A-01 and Code, Criminal Procedure Article, Title 11.

Source: This Rule is new.

REPORTER'S NOTE

In light of the revision of Rules 16-813 (Maryland Code of Judicial Conduct) and 16-814 (Maryland Code of Conduct for Judicial Appointees), conforming amendments to Rules 1-326, 1-351, 4-327, 5-605, 16-808, 16-813, 16-815, and 17-105 and Rules 8.2 and 8.4 of the Maryland Lawyers' Rules of Professional Conduct are proposed.

**MARYLAND RULES OF PROCEDURE
TITLE 1 - GENERAL PROVISIONS
CHAPTER 300 - GENERAL PROVISIONS**

AMEND Rule 1-351 to conform it to the revision of Rule 16-813, as follows:

Rule 1-351. ORDER UPON EX PARTE APPLICATION PROHIBITED - EXCEPTIONS

No court shall sign any order or grant any relief in an action upon an ex parte application unless:

(a) an ex parte application is expressly provided for or necessarily implied by these rules or other law, or

(b) the moving party has certified in writing that all parties who will be affected have been given notice of the time and place of presentation of the application to the court or that specified efforts commensurate with the circumstances have been made to give notice.

Source: This Rule is new and is consistent with Rule 16-812 (Maryland Lawyers' Rules of Professional Conduct, Rule 3.5) and Rule 16-813 (Maryland Code of Judicial Conduct, [Canon 3] *Rule 2.9*).

REPORTER'S NOTE

See the Reporter's note to Rule 1-326.

**MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
CHAPTER 300 - TRIAL AND SENTENCING**

AMEND Rule 4-327 to conform it to the revision of Rule 16-813, as follows:

Rule 4-327. VERDICT - JURY

...

Cross reference: See Rule 16-813, Maryland Code of Judicial Conduct, [Canon 3B (1)] *Rule 2.8*, regarding praise or criticism of a jury's verdict.

...

REPORTER'S NOTE

See the Reporter's note to Rule 1-326.

**MARYLAND RULES OF PROCEDURE
TITLE 5 - EVIDENCE
CHAPTER 600 - WITNESSES**

AMEND Rule 5-605 to conform it to the revisions of Rule 16-813, as follows:

Rule 5-605. COMPETENCY OF JUDGE AS WITNESS

The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point.

Cross reference: See Rule 16-813, Maryland Code of Judicial Conduct, [Canon 3D (1)(a) and (d)(iv)] *Rule 2.11 (a)(1) and (a)(2)(D)*.

Source: This Rule is derived from F.R.Ev. 605.

REPORTER'S NOTE

See the Reporter's note to Rule 1-326.

**MARYLAND RULES OF PROCEDURE
TITLE 16 - COURTS, JUDGES, AND ATTORNEYS
CHAPTER 800 - MISCELLANEOUS**

AMEND Rule 16-808 to conform it to the revision of Rule 16-813, as follows:

Rule 16-808. PROCEEDINGS BEFORE COMMISSION

(a) Charges

After considering the report and recommendation of the Board or Investigative Counsel submitted pursuant to Rule 16-805 (j), and upon a finding by the Commission of probable cause to believe that a judge has a disability or has committed sanctionable conduct, the Commission may direct Investigative Counsel to initiate proceedings against the judge by filing with the Commission charges that the judge has a disability or has committed sanctionable conduct. The charges shall (1) state the nature of the alleged disability or sanctionable conduct, including each [Canon of Judicial Conduct] *Rule of the Maryland Code of Judicial Conduct* allegedly violated by the judge, (2) allege the specific facts upon which the charges are based, and (3) state that the judge has the right to file a written response to the charges within 30 days after service of the charges.

...

REPORTER'S NOTE

See the Reporter's note to Rule 1-326.

**MARYLAND RULES OF PROCEDURE
TITLE 16 - COURTS, JUDGE, AND ATTORNEYS
CHAPTER 800 - MISCELLANEOUS**

AMEND Rule 16-813, Rule 3.8 to add the word "former" to the source note, as follows:

Rule 16-813. MARYLAND CODE OF JUDICIAL CONDUCT

...

Rule 3.8. APPOINTMENTS TO FIDUCIARY POSITIONS

(a) A judge shall not accept appointment to serve in a fiduciary position, such as executor, administrator, trustee, guardian, attorney in fact, or other personal representative, except for the estate, trust, or person of a **member of the judge's family**, and then only if such service will not interfere with the proper performance of judicial duties.

(b) A judge shall not serve in a fiduciary position if the judge as **fiduciary** will likely be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves, or one under its appellate jurisdiction.

(c) A judge acting in a **fiduciary** capacity shall be subject to the same restrictions on engaging in financial activities that apply to a judge personally.

(d) If a person who is serving in a **fiduciary** position becomes a judge, he or she must comply with this Rule as soon as reasonably practicable, but in no event later than one year after becoming a judge.

(e) Paragraph (a) of this Rule does not apply to retired judges approved for recall under Maryland Constitution, Article IV, §3A.

COMMENT

[1] A judge should recognize that other restrictions imposed by this Code may conflict with a judge's obligations as a fiduciary; in such circumstances, a judge should resign as fiduciary. For example, serving as a fiduciary might require frequent disqualification of a judge under Rule 2.11 because a judge is deemed to have an economic interest in shares of stock held by a trust if the amount of stock held is more than de minimis.

Source: Paragraphs (a) through (d) of this Rule are derived from Rule 3.8 of the 2007 ABA Code. Paragraph (e) is derived from Canon 6C of the *former* Maryland Code of Judicial Conduct. The Comment is derived from the ABA Comment to Rule 3.8 of the 2007 ABA Code.

REPORTER'S NOTE

See the Reporter's note to Rule 1-326.

**MARYLAND RULES OF PROCEDURE
TITLE 16 - COURTS, JUDGES, AND ATTORNEYS
CHAPTER 800 - MISCELLANEOUS**

AMEND Rule 16-815 to conform it to the revision of Rule 16-813, as follows:

Rule 16-815. FINANCIAL DISCLOSURE STATEMENT

...

h. This rule applies to each judge of a court named in [Canon 6A] *Rule 16-813, Maryland Code of Judicial Conduct, A-109 (General Provisions)* who has resigned or retired in any calendar year, with respect to the portion of that calendar year prior to the judge's resignation or retirement and to each former judge with respect to the previous calendar year.

...

REPORTER'S NOTE

See the Reporter's note to Rule 1-326.

**MARYLAND RULES OF PROCEDURE
TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION
CHAPTER 100 - PROCEEDINGS IN CIRCUIT COURT**

AMEND Rule 17-105 to conform it to revisions of Rules 16-813 and 16-814, as follows:

Rule 17-105. QUALIFICATIONS AND SELECTION OF PERSONS OTHER THAN MEDIATORS AND NEUTRAL EXPERTS

...

Cross reference: Rule 16-813, Maryland Code of Judicial Conduct, [Canon 4F] *Rule 3.9* and Rule 16-814, Maryland Code of Conduct for Judicial Appointees, [Canon 4F] *Rule 3.9*.

...

REPORTER'S NOTE

See the Reporter's note to Rule 1-326.

**MARYLAND RULES OF PROCEDURE
APPENDIX: THE MARYLAND LAWYERS' RULES OF
PROFESSIONAL CONDUCT**

AMEND Rule 8.2 to conform it to the revision of Rule 16-813, as follows:

Rule 8.2. JUDICIAL AND LEGAL OFFICIALS

...
(b) [Canon 5C (4)] *Rule 4.1 (c)(2)(D)* of the Maryland Code of Judicial Conduct, set forth in Rule 16-813, provides that a lawyer becomes a candidate for a judicial office when the lawyer files a certificate of candidacy in accordance with Maryland election laws, but no earlier than two years prior to the general election for that office. A candidate for a judicial office:

(1) shall maintain the dignity appropriate to the office and act in a manner consistent with the impartiality, independence and integrity of the judiciary;

(2) with respect to a case, controversy, or issue that is likely to come before the court, shall not make a commitment, pledge, or promise that is inconsistent with the impartial performance of the adjudicative duties of the office;

Committee note: Rule 8.2 (b)(2) does not prohibit a candidate from making a commitment, pledge, or promise respecting improvements in court administration or the faithful and impartial performance of the duties of the office.

(3) shall not knowingly misrepresent his or her identity or qualifications, the identity or qualifications of an opponent, or any other fact;

(4) shall not allow any other person to do for the candidate what the candidate is prohibited from doing; and

(5) may respond to a personal attack or an attack on the candidate's record as long as the response does not otherwise violate this Rule.

COMMENT

[1] Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office and to public legal offices, such as attorney general, prosecuting attorney and public defender. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.

[2] To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized.

...

REPORTER'S NOTE

See the Reporter's note to Rule 1-326.

**MARYLAND RULES OF PROCEDURE
APPENDIX: THE MARYLAND LAWYERS' RULES OF
PROFESSIONAL CONDUCT**

AMEND Rule 8.4 to conform it to the revision of Rule 16-813, as follows:

Rule 8.4. MISCONDUCT

...

COMMENT

...

[4] Paragraph (e) reflects the premise that a commitment to equal justice under the law lies at the very heart of the legal system. As a result, even when not otherwise unlawful, a lawyer who, while acting in a professional capacity, engages in the conduct described in paragraph (e) and by so doing prejudices the administration of justice commits a particularly egregious type of discrimination. Such conduct manifests a lack of character required of members of the legal profession. A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this rule. A judge, however, must require lawyers to refrain from the conduct described in paragraph (e). See Md. Rule 16-813, Maryland Code of Judicial Conduct, [Canon 3 B (11)] *Rule 2.3*.

...

REPORTER'S NOTE

See the Reporter's note to Rule 1-326.

**MARYLAND RULES OF PROCEDURE
TITLE 15 - OTHER SPECIAL PROCEEDINGS
CHAPTER 300 - HABEAS CORPUS**

AMEND Rule 15-306 to allow certain confined or restrained individuals to participate in habeas corpus proceedings by electronic means under certain circumstances, as follows:

Rule 15-306. SERVICE OF WRIT; APPEARANCE BY INDIVIDUAL; AFFIDAVIT

(a) Service

Except as provided in section (c) of this Rule, a writ of habeas corpus and a copy of the petition shall be served by delivering them to the person to whom the writ is directed or by mailing them by first class mail, postage prepaid, as ordered by the court.

Cross reference: See Rules 2-121 and 3-121.

(b) Production of Individual

At the time stated in the writ, which, unless the court orders otherwise, shall not be later than three days after service of the writ, the person to whom the writ is directed shall cause the individual confined or restrained to be taken before the judge designated in the writ. *If the petition is by or behalf of an individual confined or restrained pursuant to an isolation or quarantine directive or order issued under any federal, State, or local public health law or public emergency law, production of the individual may be by means of a telephonic conference call, live closed circuit television, live internet or satellite video conference transmission, or other available means of communication that reasonably permit the individual to participate in the proceedings.*

Cross reference: For proceedings brought pursuant to Code, Health-General Article, §18-906 and Code, Public Safety Article, §14-3A-05, see the Rules in Title 15, Chapter 1100.

(c) Immediate Appearance

Subject to section (b) of this Rule, [If] if the judge finds probable cause to believe that the person having custody of the individual by or on whose behalf the petition was filed is about to remove the

individual or would evade or disobey the writ, the judge shall include in the writ an order directing the person immediately to appear, together with the individual confined or restrained, before the judge designated in the writ. The sheriff to whom the writ is delivered shall serve the writ immediately, together with a copy of the petition, on the person having custody of the individual confined or restrained and shall bring that person, together with the individual confined or restrained, before the judge designated in the writ.

Cross reference: See Code, Courts Article, §2-305 for the penalty on a sheriff for failure to act as provided in section (b) of this Rule; see Code, Correctional Services Article, §9-611 for the penalty on an officer or other person failing to furnish a copy of a warrant of commitment when demanded. Source: This Rule is derived *in part* from former Rules Z46 and Z47 and is *in part new*.

REPORTER'S NOTE

The constitutionally protected right of an individual to seek habeas corpus relief is in addition to the right of the individual who is confined or restrained pursuant to an isolation or quarantine directive or order to seek relief in accordance with the Rules in Title 15, Chapter 1100. See Rule 15-1101 (a).

Using concepts borrowed from the Rules in Title 15, Chapter 1100, amendments to Rules 15-306 and 15-309 are proposed in order to provide a safe and practical approach to the handling of writs of habeas corpus when the confinement is pursuant to an isolation or quarantine directive or order.

MARYLAND RULES OF PROCEDURE TITLE 15 - OTHER SPECIAL PROCEEDINGS CHAPTER 300 - HABEAS CORPUS

AMEND Rule 15-309 to add a new section (b) pertaining to the conduct of a hearing at which an individual is unable to appear in person due to a certain isolation or quarantine directive or order, as follows:

Rule 15-309. HEARING

(a) Generally

Upon the production of the individual confined or restrained, the judge shall conduct a hearing immediately to inquire into the legality and propriety of the individual's confinement or restraint. The individual confined or restrained for whom the writ is issued may offer evidence to prove the lack of legal justification for the confinement or restraint, and evidence may be offered on behalf of the person having custody to refute the claim.

(b) Conduct of Hearing If Isolation or Quarantine

If, pursuant to an isolation or quarantine directive or order issued under any federal, State, or local public health law or public emergency law, one or more of the parties, their counsel, or witnesses are unable to appear personally at the hearing, and the fair and effective adjudication of the proceedings permits, the court may:

(1) admit documentary evidence submitted or proffered by courier, facsimile, or other electronic means;

(2) if feasible, conduct the proceedings by means of a telephonic conference call, live closed circuit television, live internet or satellite video conference transmission, or other available means of communication that reasonably permits the parties or their authorized representatives to participate in the proceedings; and

(3) decline to require strict application of the rules of evidence other than those relating to the competency of witnesses and lawful privileges.

Source: This Rule is derived as follows:

Section (a) is derived from former Rules Z46 b and Z48.

Section (b) is derived from Rule 15-1104 (d).

REPORTER'S NOTE

New section (b), proposed to be added to Rule 15-309, uses language borrowed from Rule 15-1104 (d), with the addition of the phrase, "pursuant to an isolation or quarantine directive or order issued under any federal, State, or local public health law or public emergency law," and the omission of the phrase "accept pleadings and," which is contained in Rule 15-1104 (d)(1), and the word "fully," which is contained in Rule 15-1104 (d)(2).

MARYLAND RULES OF PROCEDURE TITLE 15 - OTHER SPECIAL PROCEEDINGS CHAPTER 1100 - CATASTROPHIC HEALTH EMERGENCY

AMEND Rule 15-1103 to require that the petition be filed in a circuit court and not with the Clerk of the Court of Appeals and to specify certain actions to be taken by the County Administrative Judge or the judge's designee and by the clerk, as follows:

Rule 15-1103. INITIATION OF PROCEEDING TO CONTEST ISOLATION OR QUARANTINE

(a) Petition for Relief

An individual or group of individuals required to go to or remain in a place of isolation or quarantine by a directive of the Secretary issued pursuant to Code, Health-General Article, §18-906 or Code, Public Safety Article, §14-3A-05, may contest the isolation or quarantine by filing a petition for relief [with the Clerk of the Court of Appeals] *in the circuit court for the county in which the isolation or quarantine is occurring or, if that court is not available, in any other circuit court.*

Committee note: Motions to seal or limit inspection of a case record are governed by Rule 16-1009. The right of a party to proceed anonymously is discussed in *Doe v. Shady Grove Hosp.*, 89 Md. App. 351, 360-66 (1991).

(b) Order Assigning Judge and Setting Hearing

The [Chief Judge of the Court of Appeals] *County Administrative Judge* or that judge's designee shall enter an order (1) assigning the matter to a judge [of any circuit court to hear the action] and (2) setting the date, time, and location of a hearing on the petition or directing [that] the clerk [of the circuit court to which the action has been assigned] *to promptly set the hearing and notify the parties. The [Clerk] clerk [of the Court of Appeals] shall provide a copy of the order to all parties, the State Court Administrator, and the Chief Judge of the Court of Appeals.*

Cross reference: See Code, Health-General Article, §18-906 (b), Code, Public Safety Article, §14-3A-05 (c), and Rule 15-1104 (c) concerning the time within which a hearing is to be conducted.

(c) Notice

No later than the day after the petition was filed, the [Clerk of the Court of Appeals] *clerk* shall provide a copy of the petition and a notice of the date that it was filed to the Secretary or other official designated by the Secretary and to counsel to the Department of Health and Mental Hygiene.

(d) Answer to Petition

The Secretary or other official designated by the Secretary may file an answer to the petition. If an answer is not filed, the allegations of the petition shall be deemed denied.

Source: This Rule is new.

REPORTER'S NOTE

Because a catastrophic health emergency in Annapolis may make the filing of a petition with the Clerk of the Court of Appeals impossible, Rule 15-1103 is proposed to be amended to require that a petition for relief contesting an isolation or quarantine be filed in the circuit court for the county in which the isolation or quarantine is occurring or, if that court is not available, in any other circuit court. To apprise the Chief Judge of the Court of Appeals and the State Court Administrator of filings throughout the State, an amendment to

section (b) requires the clerk to provide each of them with a copy of the order entered by the County Administrative Judge or designee of that Judge.

**MARYLAND RULES OF PROCEDURE
TITLE 1 - GENERAL PROVISIONS
CHAPTER 300 - GENERAL PROVISIONS**

AMEND Rule 1-311 to require pleadings and papers to contain the facsimile number, if any, and e-mail address, if any, of the person signing the pleading or paper, as follows:

Rule 1-311. SIGNING OF PLEADINGS AND OTHER PAPERS

(a) Requirement

Every pleading and paper of a party represented by an attorney shall be signed by at least one attorney who has been admitted to practice law in this State and who complies with Rule 1-312. Every pleading and paper of a party who is not represented by an attorney shall be signed by the party. Every pleading or paper filed shall contain the *signer's* address, [and telephone number, of the person by whom it is signed. It also may contain that person's business electronic mail address and business] facsimile number, *if any, and e-mail address, if any.*

Committee note: The [last sentence of section (a), which allows] *requirement that a pleading [to] contain a [business electronic mail address and a business facsimile number] facsimile number, if any, and e-mail address, if any, does not alter the filing or service rules or time periods triggered by the entry of a judgment. See Blundon v. Taylor, 364 Md. 1 (2001).*

(b) Effect of Signature

The signature of an attorney on a pleading or paper constitutes a certification that the attorney has read the pleading or paper; that to the best of the attorney's knowledge, information, and belief there is good ground to support it; and that it is not interposed for improper purpose or delay.

(c) Sanctions

If a pleading or paper is not signed as required (except inadvertent omission to sign, if promptly corrected) or is signed with intent to defeat the purpose of this Rule, it may be stricken and the action may proceed as though the pleading had not been filed. For a wilful violation of this Rule, an attorney is subject to appropriate disciplinary action.

Source: This Rule is derived as follows:

Section (a) is derived from former Rules 302 a, 301 f, and the 1937 version of Fed. R. Civ. P. 11.

Section (b) is derived from former Rule 302 b and the 1937 version of Fed. R. Civ. P. 11.

Section (c) is derived from the 1937 version of Fed. R. Civ. P. 11.

REPORTER'S NOTE

A Judge of the Circuit Court for Baltimore City requested that the Rules Committee consider requiring counsel to put their fax number on pleadings, because this would make it easier and quicker for judges to communicate with counsel.

The Rules Committee has expanded upon this suggestion, and recommends an amendment to Rule 1-311 (a) that requires not only the facsimile number but also the e-mail address of the person who signs the pleading, regardless of whether that person is an attorney or a *pro se* litigant. Because not everyone has a facsimile number or e-mail address, the words "if any" are added.

A conforming amendment to the Committee note following section (a) also is proposed.

**MARYLAND RULES OF PROCEDURE
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT
CHAPTER 300 - PLEADINGS AND MOTIONS**

AMEND Rule 2-311 by requiring a party requesting a hearing to state the request in the title of the motion or response, as follows:

Rule 2-311. MOTIONS

...

(f) Hearing - Other Motions

A party desiring a hearing on a motion, other than a motion filed pursuant to Rule 2-532, 2-533, or 2-534, shall request the hearing in the motion or response under the heading "Request for Hearing." *The title of the motion or response shall state that a hearing is requested.* Except when a rule expressly provides for a hearing, the court shall determine in each case whether a hearing will be held, but the court may not render a decision that is dispositive of a claim or defense without a hearing if one was requested as provided in this section.

...

REPORTER'S NOTE

A circuit court judge suggested that Rule 2-311 be amended to require parties who file motions to indicate under the caption of the motion if they are requesting a hearing. The judge explained that parties often indicate at the end of the motion, buried within the motion, or in attached exhibits that a hearing is requested. This makes it difficult for judges and clerks to determine quickly whether a hearing is sought.

The Rules Committee recommends amending section (f) to require a party who requests a hearing on a motion to state in the title of the motion or response that a hearing is requested.

**MARYLAND RULES OF PROCEDURE
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT
CHAPTER 300 - PLEADINGS AND MOTIONS**

AMEND Rule 2-331 (c) to delete the word "previously," as follows:

Rule 2-331. COUNTERCLAIM AND CROSS-CLAIM

...

(c) Joinder of Additional Parties

A person not [previously] a party to the action may be made a party to a counterclaim or cross-claim and shall be served as a defendant in an original action. When served with process, the person being added shall also be served with a copy of all pleadings, scheduling notices, court orders, and other papers previously filed in the action.

...

REPORTER'S NOTE

An attorney raised the issue of the meaning of the phrase "not previously a party." He had been involved in a multi-party case in which a potential third-party defendant had been in the action, but the initial claim involving that person had been dismissed without prejudice. The attorney who wished to file the third-party claim later was not allowed to do so pursuant to Rule 2-332 (a), because the potential third-party defendant was not "not previously a party." The question is whether the phrase "not previously a party" means the potential party had never been a party before, or the potential party is not a party at the time the current claim is filed. To clarify this ambiguity, the Process, Parties, and Pleading Subcommittee recommends deleting the word "previously" from Rules 2-331 (c), 2-332 (a), 3-331 (c), and 3-332 (a).

**MARYLAND RULES OF PROCEDURE
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT
CHAPTER 300 - PLEADINGS AND MOTIONS**

AMEND Rule 2-332 (a) to delete the word “previously,” as follows:

Rule 2-332. THIRD-PARTY PRACTICE

(a) Defendant’s Claim Against Third Party

A defendant, as a third-party plaintiff, may cause a summons and complaint, together with a copy of all pleadings, scheduling notices, court orders, and other papers previously filed in the action, to be served upon a person not [previously] a party to the action who is or may be liable to the defendant for all or part of a plaintiff’s claim against the defendant. A person so served becomes a third-party defendant.

...

REPORTER’S NOTE

See the Reporter’s note to Rule 2-331.

**MARYLAND RULES OF PROCEDURE
TITLE 3 - CIVIL PROCEDURE -- DISTRICT COURT
CHAPTER 300 - PLEADINGS AND MOTIONS**

AMEND Rule 3-331 (c) to delete the word “previously,” as follows:

Rule 3-331. COUNTERCLAIM AND CROSS-CLAIM

...

(c) Joinder of Additional Parties

A person not [previously] a party to the action may be made a party to a counterclaim or cross-claim and shall be served as a defendant in an original action. When served with process, the person being added shall also be served with a copy of all pleadings, scheduling notices, court orders, and other papers previously filed in the action.

...

REPORTER’S NOTE

See the Reporter’s note to Rule 2-331.

**MARYLAND RULES OF PROCEDURE
TITLE 3 - CIVIL PROCEDURE -- DISTRICT COURT
CHAPTER 300 - PLEADINGS AND MOTIONS**

AMEND Rule 3-332 (a) to delete the word “previously,” as follows:

Rule 3-332. THIRD-PARTY PRACTICE

(a) Defendant’s Claim Against Third Party

A defendant, as a third-party plaintiff, may cause a summons and complaint, together with a copy of all pleadings, scheduling notices, court orders, and other papers previously filed in the action, to be served upon a person not [previously] a party to the action who is or may be liable to the defendant for all or part of a plaintiff’s claim against the defendant. A person so served becomes a third-party defendant.

...

REPORTER’S NOTE

See the Reporter’s note to Rule 2-331.

**MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
CHAPTER 400 - POST CONVICTION PROCEDURE**

AMEND Rule 4-403 to correct an obsolete reference to a certain division of the Office of the Public Defender, as follows:

Rule 4-403. NOTICE OF PETITION

Upon receipt of a post conviction petition, the clerk shall promptly notify the county administrative judge and the State’s Attorney. When the petition relates to an action tried in that court, it shall be filed in the action. If the petition alleges that the petitioner is indigent, the clerk shall promptly notify the [Public Defender’s Inmate Services Division] *Office of the Public Defender* by forwarding a copy of the petition.

Cross reference: Code, Article 27A, §4.

Source: This Rule is derived from former Rule BK41 e.

REPORTER’S NOTE

Proposed amendments to Rules 4-403, 4-705, and 4-706 replace an obsolete reference to the “Public Defender’s Inmate Services Division” with a reference to the “Office of the Public Defender,” which remains applicable regardless of the internal organization of that Office.

**MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
CHAPTER 700 - POST CONVICTION DNA TESTING**

AMEND Rule 4-705 to correct an obsolete reference to a certain division of the Office of the Public Defender, as follows:

Rule 4-705. NOTICE OF PETITION

(a) To State’s Attorney

Upon receipt of a petition, the clerk promptly shall forward a copy of it to the State’s Attorney and the county administrative judge. If the petition seeks a search of the DNA database or log of an identified law enforcement agency, the State’s Attorney shall send a copy of the petition to that law enforcement agency.

(b) To Public Defender

If the petition alleges that the petitioner is unable to pay the costs of testing or to employ counsel, the clerk shall promptly forward a copy of the petition to the [Public Defender’s Inmate Services Division] *Office of the Public Defender*.

Source: This Rule is new.

REPORTER’S NOTE

See the Reporter’s note to Rule 4-403.

**MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
CHAPTER 700 - POST CONVICTION DNA TESTING**

AMEND Rule 4-706 to correct an obsolete reference to a certain division of the Office of the Public Defender, as follows:

Rule 4-706. ANSWER; MOTION TO TRANSFER

...

(d) Service

The State’s Attorney shall serve a copy of the answer or motion to transfer on the petitioner and, if the petitioner alleges an inability to pay the costs of testing or to employ counsel, on the [Public Defender’s Inmate Services Division] *Office of the Public Defender*.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 4-403.

MARYLAND RULES OF PROCEDURE
TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES
CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-411 (c) to change the word "granted" to the word "filed" and to change the word "extended" to the words "before the expiration of any period extended," as follows:

Rule 6-411. ELECTION TO TAKE STATUTORY SHARE

(c) Extension of Time for Making Election

Within the period for making an election, the surviving spouse may file with the court a petition for an extension of time. The petitioner shall deliver or mail a copy of the petition to the personal representative. For good cause shown, the court may grant extensions not to exceed three months at a time, provided each petition for extension is [granted] filed before the expiration of the period originally prescribed or [extended] before the expiration of any period extended by a previous order. The court may rule on the petition without a hearing or, if time permits, with a hearing.

If an extension is granted without a hearing, the register shall serve notice on the personal representative and such other persons as the court may direct. The notice shall be in the following form:

[CAPTION]
NOTICE OF EXTENSION OF TIME
TO ELECT STATUTORY SHARE

On the _____ day of _____, _____, an extension
(month) (year)
of time to elect a statutory share of the estate was granted to
_____, the
decendent's surviving spouse. The extension expires on the
_____ day of _____, _____.
(month) (year)

If you believe there is good cause to object to the extension, within
20 days after service of this notice you may file with the court, in
writing, a petition to shorten the time for filing an election. A copy
of the petition shall be served on the surviving spouse.

Register of Wills

REPORTER'S NOTE

Chapter 146, Laws of 2010 (HB 329) authorizes a surviving
spouse, within the period of time provided for making an election to
take an elective share of the deceased spouse's estate, to file with the
court a petition for a extension of time. To conform Rule 6-411 to
the statute, the Rule Committee recommends amending the Rule by
changing the word "granted" to the word "filed" in section (c).

The Committee also suggests changing the word "extended" to the
words "before the expiration of any period extended" to clarify that
there may be more than one extension of the period of time for
making an election to take a statutory share.

MARYLAND RULES OF PROCEDURE
TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES
CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-416 (b) to modify the "Consent to Compensation
for Personal Representative and/or Attorney" form, as follows:

Rule 6-416. ATTORNEY'S FEES OR PERSONAL
REPRESENTATIVE'S COMMISSIONS

- (b) Consent in Lieu of Court Approval
(1) Conditions for Payment

Payment of attorney's fees and personal representative's
commissions may be made without court approval if:

(A) the combined sum of all payments of attorney's fees and
personal representative's commissions does not exceed the amounts
provided in Code, Estates and Trusts Article, §7-601; and

(B) a written consent stating the amounts of the payments signed
by (i) each creditor who has filed a claim that is still open and (ii) all
interested persons, is filed with the register in the following form:

BEFORE THE REGISTER OF WILLS FOR
_____, MARYLAND
IN THE ESTATE OF:
_____ Estate No. _____

CONSENT TO COMPENSATION FOR
PERSONAL REPRESENTATIVE AND/OR ATTORNEY

[I consent to the following payments of compensation to the
personal representative and/or attorney and acknowledge that, if
consented to by all unpaid creditors who have filed claims and all
interested persons, these payments will not be subject to review or
approval by the Court. I also understand that the total compensation
does not exceed the amounts provided in Estates and Trusts Article,
§7-601 which are 9% of the first \$20,000 of the gross estate plus
3.6% of the excess over \$20,000.]

I understand that the law, Estates and Trusts Article, §7-601,
provides a formula to establish the maximum total compensation to
be paid for personal representative's commissions and/or attorney's
fees without order of court. If the total compensation being requested
falls within the maximum allowable amount, and the request is
consented to by all unpaid creditors who have filed claims and all
interested persons, this payment need not be subject to review or
approval by the Court.

A creditor or an interested party may, but is not required to,
consent to these fees.

The formula sets total compensation at 9% of the first \$20,000 of
the gross estate PLUS 3.6% of the excess over \$20,000.

Based on this formula, the total allowable statutory maximum
based on the gross estate known at this time is _____,
LESS any personal representative's commissions and/or attorney's
fees previously approved as required by law and paid. To date,
\$_____ in personal representative's
commissions and \$_____ in attorney's fees have
been paid.

Cross reference: See 90 Op. Att'y. Gen. 145 (2005).

Total combined fees being requested are \$ _____, to be paid as follows:

Amount	To	Name of Personal Representative/Attorney
_____	_____	_____
_____	_____	_____
_____	_____	_____

[Consented to by:] I have read this entire form and I hereby consent to the payment of personal representative and/or attorney's fees in the above amount.

Date	Signature	Name (Typed or Printed)
_____	_____	_____
_____	_____	_____
_____	_____	_____

_____	_____	Personal Representative
Address	_____	Personal Representative
Address	_____	
Telephone Number	_____	

Committee note: Nothing in this Rule is intended to relax requirements for approval and authorization of previous payments.

(2) Designation of Payment

When rendering an account pursuant to Rule 6-417 or a final report under modified administration pursuant to Rule 6-455, the personal representative shall designate any payment made under this section as an expense.

Cross reference: Code, Estates and Trusts Article, §§7-502, 7-601, 7-602 and 7-604.

REPORTER'S NOTE

The Conference of Orphans' Court Judges has suggested that the form in Rule 6-416 entitled "Consent to Compensation for Personal Representative and/or Attorney" be modified to ensure that lay persons who sign the form are giving informed consent. The Rules Committee recommends an amendment to the form, which has been developed with the assistance of the Conference, representatives of the Registers of Wills, and members of the Bar.

MARYLAND RULES OF PROCEDURE TITLE 13 - RECEIVERS AND ASSIGNEES CHAPTER 200 - NOTICE AND SCHEDULES

AMEND Rule 13-201 to add clarifying language to three forms, as follows:

Rule 13-201. PUBLICATION OF NOTICE TO CREDITORS

(a) Notice by Receiver or Assignee

Promptly but in no event later than 5 days after the court appoints a receiver or assumes jurisdiction over the estate of an assignee, the receiver or assignee shall file a form of Notice to Creditors with the clerk, who shall issue the Notice. The receiver or assignee shall cause the Notice to be published.

(b) Form of Notice

The Notice to Creditors shall be substantially in one of the following three forms, as applicable:

[CAPTION] NOTICE TO CREDITORS BY RECEIVER

TO ALL PERSONS INTERESTED IN THE ESTATE OF _____, DEBTOR

Notice is given with respect to _____, (Name in bold type) whose business address is _____ and whose business is _____, that this Court has appointed _____, (Name in bold type) whose address is _____ as Receiver.

All persons having claims against the Debtor should file them, under oath, with the Clerk of the Circuit Court at the address below not later than 120 days from the date this Notice was issued.

_____	_____
Date Notice Issued	Clerk of the Circuit Court for
_____	_____
_____	(County or Baltimore City)
_____	Address
Receiver	_____
_____	Attorney for Receiver
Address	_____
_____	Address
Telephone Number	_____
_____	Telephone Number

[CAPTION] NOTICE TO CREDITORS BY ASSIGNEE

TO ALL PERSONS INTERESTED IN THE ESTATE OF _____, DEBTOR

Notice is given with respect to _____, (Name in bold type) whose business address is _____ and whose business is _____, that the Debtor has executed an Assignment for the Benefit of Creditors and that _____, (Name in bold type) whose address is _____ has been designated as Assignee.

The deed of assignment [] does [] does not contain a provision requiring creditors to release their claims against the debtor as a condition to (1) sharing in the distribution under the deed or (2) being accorded a preferred status over other creditors.

All persons having claims against the Debtor should file them, under oath, with the Clerk of the Circuit Court at the address below not later than 120 days from the date this Notice was issued.

Form with fields: Date Notice Issued, Clerk of the Circuit Court for (County or Baltimore City), Address, Assignee, Attorney for Assignee, Address, Telephone Number, Telephone Number

[CAPTION]
NOTICE TO CREDITORS OF BULK TRANSFER

TO ALL PERSONS INTERESTED IN THE ESTATE OF _____, BULK TRANSFEROR

Notice is given with respect to _____, (Name in bold type), whose business address is _____

and _____ whose business _____ is _____, that the

Transferor has effected a bulk transfer of property to _____, (Name in bold type)

transferee, whose address is _____

and that _____ (Name in bold type)

whose _____ address _____ is _____

has been appointed as Receiver pursuant to Code, Commercial Law Article, §6-106.

All persons having claims against the Transferor should file them, under oath, with the Clerk of the Circuit Court at the address below not later than 120 days from the date this Notice was issued.

Form with fields: Date Notice Issued, Clerk of the Circuit Court for (County or Baltimore City), Address, Receiver, Attorney for Receiver, Address, Telephone Number, Telephone Number

(c) Where Published; Frequency

A copy of the Notice to Creditors shall be published in a newspaper of general circulation in the county where the court is located. The Notice shall be published at least once a week in each of three successive weeks, and the last publication shall occur not less than ninety days before the date specified in the Notice as the last day for filing claims.

(d) Certificate of Publication

On or before the last day for filing claims, the receiver or assignee shall file a certificate that publication has been made pursuant to this Rule.

Source: This Rule is derived from former Rule BP4 a 1.

REPORTER'S NOTE

The Clerk of a circuit court observed that occasionally the forms contained in the Rule, when completed, do not contain the address of the Clerk of the circuit court. Because claims are to be filed with the Clerk, each of the three forms in the Rule is proposed to be amended by adding "(County or Baltimore City)" under the first line following "Circuit Court for" and by adding "Address" under the second line following "Circuit Court for."

MARYLAND RULES OF PROCEDURE
TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES
CHAPTER 700 - FIDUCIARY ESTATES INCLUDING GUARDIANSHIPS OF THE PROPERTY

AMEND Rule 10-710 to add a Committee note after section (f), as follows:

Rule 10-710. TERMINATION OF A FIDUCIARY ESTATE - FINAL DISTRIBUTION

...
(f) Final Accounting

If the petitioner is the fiduciary, the petitioner shall file with the petition a final accounting containing the same information required in annual accountings by Rule 10-708, together with the proposed final distribution of any remaining assets of the estate. The accounting shall cover any period of the fiduciary's administration of the estate which has not been covered by annual accountings previously filed in the proceedings. If the petitioner is not the fiduciary, the fiduciary shall file an accounting as directed by the court.

Committee note: For the right of a guardian to pay from the guardianship estate all commissions, fees, and expenses of the guardianship before the balance of the guardianship estate is paid out to the personal representative or other person entitled to it, see Code, Estates and Trusts Article, §13-214, which abrogates the ruling in Battley v. Banks, 177 Md. App. 638 (2007).

REPORTER'S NOTE

Chapter 544, Laws of 2010 (SB 339) in response to Battley v. Banks, 177 Md. App. 638 (2007) specifically grants to a guardian the right to pay from a decedent's estate the commissions, fees, and expenses of the guardianship before the balance of the estate is paid out to the personal representative or other person entitled to it. The Rules Committee recommends adding a Committee note after section (f) of Rule 10-710 to draw attention to the new law and to indicate that the ruling in Battley was abrogated.

MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-247 (a) to modify the notice procedures for the clerk to follow when a charge has been nol prossed, as follows:

Rule 4-247. NOLLE PROSEQUI

(a) Disposition by Nolle Prosequi

The State's Attorney may terminate a prosecution on a charge and dismiss the charge by entering a nolle prosequi on the record in open court. The defendant need not be present in court when the nolle prosequi is entered, but [in that event] if neither the defendant nor the

defendant's attorney is present, the clerk shall send notice to the defendant, if the defendant's whereabouts are known, and to the defendant's attorney of record. *Notice shall not be sent if either the defendant or the defendant's attorney was present in court when the nolle prosequi was entered. If notice is required, the clerk may send one notice that lists all of the charges that were dismissed.*

(b) Effect of Nolle Prosequi

When a nolle prosequi has been entered on a charge, any conditions of pretrial release on that charge are terminated, and any bail bond posted for the defendant on that charge shall be released. The clerk shall take the action necessary to recall or revoke any outstanding warrant or detainer that could lead to the arrest or detention of the defendant because of that charge.

Cross reference: For provisions relating to expungement of the records after a case has been dismissed by entering a nolle prosequi, see Rule 4-329. For provisions relating to a nolle prosequi with the requirement of drug or alcohol treatment in non-violent crimes, see Code, Criminal Procedure Article, §6-229.

Source: This Rule is derived from former Rule 782 a and b and M.D.R. 782 a and b.

REPORTER'S NOTE

Chapter 160, Laws of 2010 (HB 698) sets out certain notice procedures for a clerk in the District Court to follow when a criminal action is nol prossed or stetted. Some of these procedures already are in Rules 4-247 and 4-248; others are not. To conform to the legislation and to make the nol pros and stet notice procedures applicable in the circuit courts, as well as in the District Court, the Rules Committee recommends amending Rules 4-247 and 4-248 to provide that notice of a nol pros or stet is sent by the clerk only if neither the defendant nor the defendant's attorney is present in court when the nol pros or stet is entered. A comparable amendment, pertaining to a notice of dismissal of a District Court action pursuant to Rule 4-251 (c)(1), is added to that Rule. The Committee declined to recommend extending the procedure to dismissals of an action on a motion filed in the circuit court.

The Committee also recommends adding to the Rules a provision that allows the clerk to send one notice that lists all of the charges that have been dismissed or stetted, rather than sending a separate notice for each count of the charging document, as many courts do now. Consolidating the notice into one mailing would be a more efficient use of judicial resources.

**MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
CHAPTER 200 - PRETRIAL PROCEDURES**

AMEND Rule 4-248 (a) to modify the notice procedures for the clerk to follow when a charge has been stetted and to make a stylistic change to the language of the cross reference at the end of the Rule, as follows:

Rule 4-248. STET

(a) Disposition by Stet

On motion of the State's Attorney, the court may indefinitely postpone trial of a charge by marking the charge "stet" on the docket. The defendant need not be present when a charge is stetted but [in that event] *if neither the defendant nor the defendant's attorney is present*, the clerk shall send notice of the stet to the defendant, if the defendant's whereabouts are known, and to the defendant's attorney of record. *Notice shall not be sent if either the defendant or the defendant's attorney was present in court when the charge was stetted. If notice is required, the clerk may send one notice that lists all of the charges that were stetted.* A charge may not be stetted over the objection of the defendant. A stetted charge may be rescheduled

for trial at the request of either party within one year and thereafter only by order of court for good cause shown.

(b) Effect of Stet

When a charge is stetted, the clerk shall take the action necessary to recall or revoke any outstanding warrant or detainer that could lead to the arrest or detention of the defendant because of the charge, unless the court orders that any warrant or detainer shall remain outstanding.

Committee note: For provisions relating to bail or recognizance when criminal charges are stetted, see Code, Criminal Procedure Article, §5-208.

Cross reference: For provisions relating to expungement of the records after a [case] stet has been [dismissed by entering a stet] *entered in a case*, see Rule 4-329. For provisions relating to a stet with the requirement of drug or alcohol treatment in non-violent crimes, see Code, Criminal Procedure Article, §6-229.

Source: This Rule is derived from former Rule 782 c and d and M.D.R. 782 c and d.

REPORTER'S NOTE

For section (a), see the Reporter's note to Rule 4-247.

Also, the language of the cross reference at the end of Rule 4-248 is revised because a stet is an indefinite continuance of a case; it is not a dismissal.

**MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
CHAPTER 200 - PRETRIAL PROCEDURES**

AMEND Rule 4-251 (c) by adding language pertaining to sending of a notice of dismissal, as follows:

Rule 4-251. MOTIONS IN DISTRICT COURT

(a) Content

A motion filed before trial in District Court shall be in writing unless the court otherwise directs, shall state the grounds upon which it is made, and shall set forth the relief sought. A motion alleging an illegal source of information as the basis for probable cause must be supported by precise and specific factual averments.

(b) When Made; Determination

(1) A motion asserting a defect in the charging document other than its failure to show jurisdiction in the court or its failure to charge an offense shall be made and determined before the first witness is sworn and before evidence is received on the merits.

(2) A motion filed before trial to suppress evidence or to exclude evidence by reason of any objection or defense shall be determined at trial.

(3) A motion requesting that a child be held in a juvenile facility pending a transfer determination shall be heard and determined not later than the next court day after it is filed unless the court sets a later date for good cause shown.

(4) A motion to transfer jurisdiction of an action to the juvenile court shall be determined within 10 days after the hearing on the motion.

(5) Other motions may be determined at any appropriate time.

(c) Effect of Determination Before Trial

(1) Generally

The court may grant the relief it deems appropriate, including the dismissal of the charging document with or without prejudice. *The defendant need not be present in court when a dismissal is entered, but if neither the defendant nor the defendant's attorney is present, the clerk shall send notice to the defendant, if the defendant's whereabouts are known, and to the defendant's attorney of record. Notice shall not be sent if either the defendant or the defendant's attorney was present when the charging document was dismissed. If notice is required, the clerk may send one notice that lists all of the charges that were dismissed.*

(2) Transfer of Jurisdiction to Juvenile Court

If the court grants a motion to transfer jurisdiction of an action to the juvenile court, the court shall enter a written order waiving its jurisdiction and ordering that the defendant be subject to the jurisdiction and procedures of the juvenile court. In its order the court shall (A) release or continue the pretrial release of the defendant, subject to appropriate conditions reasonably necessary to ensure the appearance of the defendant in the juvenile court or (B) place the defendant in detention or shelter care pursuant to Code, Courts Article, §3-8A-15. Until a juvenile petition is filed, the charging document shall be considered a juvenile petition for the purpose of imposition and enforcement of conditions of release or placement of the defendant in detention or shelter care.

Cross reference: Code, Criminal Procedure Article, §4-202.

Source: This Rule is derived from former M.D.R. 736.

REPORTER'S NOTE

See the Reporter's note to Rule 4-247.

MARYLAND RULES OF PROCEDURE
TITLE 16 - COURTS, JUDGES, AND ATTORNEYS
CHAPTER 100 - COURT ADMINISTRATIVE STRUCTURE,
JUDICIAL DUTIES, ETC.

AMEND Rule 16-110 by deleting subsection (d)(2), as follows:

Rule 16-110. CELL PHONES; OTHER ELECTRONIC DEVICES; CAMERAS

(a) Definitions

In this Rule the following definitions apply:

(1) Court Facility

"Court facility" means the building in which a circuit court or the District Court is located, but if the court is in a building that is also occupied by county or State executive agencies having no substantial connection with the court, then only that part of the building occupied by the court.

(2) Electronic Device

"Electronic device" means (A) a cell phone, a computer, and any other device that is capable of transmitting, receiving, or recording messages, images, sounds, data, or other information by electronic means or that, in appearance, purports to be a cell phone, computer, or such other device; and (B) a camera, regardless of whether it operates electronically, mechanically, or otherwise and regardless of whether images are recorded by using digital technology, film, light-sensitive plates, or other means.

(3) Local Administrative Judge

"Local administrative judge" means the county administrative judge in a circuit court and the district administrative judge in the District Court.

(b) Possession and Use of Electronic Devices

(1) Generally

Subject to inspection by court security personnel and the restrictions and prohibitions set forth in this section, a person may (A) bring an electronic device into a court facility and (B) use the electronic device for the purpose of sending and receiving phone calls and electronic messages and for any other lawful purpose not otherwise prohibited.

(2) Restrictions and Prohibitions

(A) Rule 5-615 Order

An electronic device may not be used to facilitate or achieve a violation of an order entered pursuant to Rule 5-615 (d).

(B) Photographs and Video

Except as permitted in accordance with this Rule, Rule 16-109, Rule 16-405, or Rule 16-504 or as expressly permitted by the local administrative judge, a person may not (i) take or record a

photograph, video, or other visual image in a court facility, or (ii) transmit a photograph, video, or other visual image from or within a court facility.

Committee note: The prohibition set forth in subsection (b)(2)(B) of this Rule includes still photography and moving visual images. It is anticipated that permission will be granted for the taking of photographs at ceremonial functions.

(C) Interference with Court Proceedings or Work

An electronic device shall not be used in a manner that interferes with court proceedings or the work of court personnel.

Committee note: An example of a use prohibited by subsection (b)(2)(C) is a loud conversation on a cell phone near a court employee's work station or in a hallway near the door to a courtroom.

(D) Jury Deliberation Room

An electronic device may not be brought into a jury deliberation room.

(E) Courtroom

(i) Except with the express permission of the presiding judge or as otherwise permitted by this Rule, Rule 16-109, Rule 16-405, or Rule 16-504, all electronic devices inside a courtroom shall remain off and no electronic device may be used to receive, transmit, or record sound, visual images, data, or other information.

(ii) Subject to subsection (b)(2)(F), the court shall liberally allow the attorneys in a proceeding currently being heard, their employees, and agents to make reasonable and lawful use of an electronic device in connection with the proceeding.

(F) Security or Privacy Issues in a Particular Case

Upon a finding that the circumstances of a particular case raise special security or privacy issues that justify a restriction on the possession of electronic devices, the local administrative judge or the presiding judge may enter an order limiting or prohibiting the possession of electronic devices in a courtroom or other designated areas of the court facility. The order shall provide for notice of the designated areas and for the collection of the devices and their return when the individual who possessed the device leaves the courtroom or other area. No liability shall accrue to the security personnel or any other court official or employee for any loss or misplacement of or damage to the device.

(c) Violation of Rule

(1) Security personnel or other court personnel may confiscate and retain an electronic device that is used in violation of this Rule, subject to further order of the court or until the owner leaves the building. No liability shall accrue to the security personnel or any other court official or employee for any loss or misplacement of or damage to the device.

(2) An individual who willfully violates this Rule or any reasonable limitation imposed by the local administrative judge or the presiding judge may be found in contempt of court and sanctioned in accordance with the Rules in Title 15, Chapter 200.

(d) Notice

[(1)] Notice of the provisions of sections (b) and (c) of this Rule shall be:

(A) posted prominently at the court facility;

(B) included on the main judiciary website and the website of each court; and

(C) disseminated to the public by any other means approved in an administrative order of the Chief Judge of the Court of Appeals.

[(2) Notice that the possession and use of cell phones and other electronic devices may be limited or prohibited in designated areas of the court facility shall be included prominently on all summonses and notices of court proceedings.]

Source: This Rule is new.

REPORTER'S NOTE

Subsection (d)(2) had been added to Rule 16-110 when, during development of the Rule, it appeared that cell phones would be banned from court facilities. When the Rule was redrafted to permit cell phones and other electronic devices to be brought into court facilities, subsection (d)(2) became less needed.

Incorporating the information required by subsection (d)(2) into all of the forms of summonses and notices that are generated by the courts has proved problematic. There is no room on many of the forms for any additional language. Court clerks and administrators have observed that printing addenda containing the required information and attaching the addenda to the summonses and notices is time-consuming, costly, and of little benefit to the public.

Rule 16-110, therefore, is proposed to be amended by the deletion of subsection (d)(2).

[11-08-27]

Emergency Action on Regulations

Symbol Key

- Roman type indicates text existing before emergency status was granted.
- *Italic type* indicates new text.
- [Single brackets] indicate deleted text.

Emergency Regulations

Under State Government Article, §10-111(b), Annotated Code of Maryland, an agency may petition the Joint Committee on Administrative, Executive, and Legislative Review (AELR), asking that the usual procedures for adopting regulations be set aside because emergency conditions exist. If the Committee approves the request, the regulations are given emergency status. Emergency status means that the regulations become effective immediately, or at a later time specified by the Committee. After the Committee has granted emergency status, the regulations are published in the next available issue of the Maryland Register. The approval of emergency status may be subject to one or more conditions, including a time limit. During the time the emergency status is in effect, the agency may adopt the regulations through the usual promulgation process. If the agency chooses not to adopt the regulations, the emergency status expires when the time limit on the emergency regulations ends. When emergency status expires, the text of the regulations reverts to its original language.

Title 10

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 24 MARYLAND HEALTH CARE COMMISSION

10.24.05 [Research Waiver Applications: Atlantic C-PORT Study of Non-Primary PCI] Continuation of Non-Primary Research Waivers Through Participation in the Follow- On C-PORT E Registry

Authority: Health-General Article, §§19-101, 19-118, and 19-120, Annotated Code of Maryland

Notice of Emergency Action

[11-109-E]

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to amendments to Regulations .01—.07 under **COMAR 10.24.05 Continuation of Non-Primary Research Waivers through Participation in the Follow-On C-PORT E Registry**.

Emergency status began: March 23, 2011.

Emergency status expires: August 15, 2011.

Editor's Note: The text of this document will not be printed here because it appeared as a Notice of Proposed Action in 38:7 Md. R 438—440 (March 25, 2011), referenced as [11-109-P].

MARILYN MOON, PhD.
Chair
Maryland Health Care Commission

Final Action on Regulations

Symbol Key

- Roman type indicates text already existing at the time of the proposed action.
- *Italic type* indicates new text added at the time of proposed action.
- Single underline, italic indicates new text added at the time of final action.
- Single underline, roman indicates existing text added at the time of final action.
- [[Double brackets]] indicate text deleted at the time of final action.

Title 05 DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Subtitle 10 ASSISTED HOUSING PRESERVATION

Notice of Final Action

[11-045-F]

On March 18, 2011, the Secretary of Housing and Community Development adopted:

(1) New Regulations **.01** and **.02** under a new chapter, **COMAR 05.10.01 Purpose and Definitions**;

(2) New Regulations **.01—05** under a new chapter, **COMAR 05.10.02 Exemptions**;

(3) New Regulations **.01—06** under a new chapter, **COMAR 05.10.03 Notice of Intent to Take Protected Action**;

(4) New Regulations **.01—03** under a new chapter, **COMAR 05.10.04 Owner's Offer of Right of First Purchase**;

(5) New Regulations **.01—05** under a new chapter, **COMAR 05.10.05 Tenant Protection Assistance**; and

(6) New Regulations **.01** and **.02** under a new chapter, **COMAR 05.10.06 Enforcement and Waivers**.

This action, which was proposed for adoption in 38:3 Md. R. 153—158 (January 28, 2011), has been adopted as proposed.

Effective Date: April 18, 2011.

RAYMOND A. SKINNER
Secretary of Housing and Community Development

Title 07 DEPARTMENT OF HUMAN RESOURCES

Subtitle 02 SOCIAL SERVICES ADMINISTRATION

07.02.15 Social Services to Adults

Authority: Human Services Article, §§4-205(a), 4-207, 5-205(a), and 5-207, Annotated Code of Maryland

Notice of Final Action

[10-331-F]

On February 14, 2011, the Interim Secretary of Human Resources adopted amendments to Regulation **.03** under **COMAR 07.02.15 Social**

Services to Adults. This action, which was proposed for adoption in 37:25 Md. R. 1743 (December 3, 2010), has been adopted as proposed.

Effective Date: April 18, 2011.

BRIAN WILBON
Interim Secretary of Human Resources

Subtitle 02 SOCIAL SERVICES ADMINISTRATION

07.02.15 Social Services to Adults

Authority: Human Services Article, §§4-205(a), 4-207, 5-205(a), and 5-207, Annotated Code of Maryland

Notice of Final Action

[10-341-F]

On February 14, 2011, the Interim Secretary of Human Resources adopted the repeal of Regulation **.12** under **COMAR 07.02.15 Social Services to Adults**. This action, which was proposed for adoption in 37:25 Md. R. 1744 (December 3, 2010), has been adopted as proposed.

Effective Date: April 18, 2011.

BRIAN WILBON
Interim Secretary of Human Resources

Title 09 DEPARTMENT OF LABOR, LICENSING, AND REGULATION

Subtitle 11 REAL ESTATE COMMISSION

09.11.06 Continuing Education

Authority: Business Occupations and Professions Article, §§17-208 and 17-315, Annotated Code of Maryland

Notice of Final Action

[10-256-F]

On March 16, 2011, the Real Estate Commission adopted amendments to Regulation **.01**, the repeal of existing Regulations **.02—05**, and new Regulations **.02—10** under **COMAR 09.11.06 Continuing Education**. This action, which was proposed for adoption in 37:18 Md. R. 1230—1233 (August 27, 2010) and repropoed in 38:2 Md. R. 87—88 (January 14, 2011), has been adopted as repropoed.

Effective Date: April 18, 2011.

ANNE S. COOKE
Chairman
Real Estate Commission

**Title 10
DEPARTMENT OF HEALTH
AND MENTAL HYGIENE**

**Subtitle 41 BOARD OF EXAMINERS
FOR AUDIOLOGISTS, HEARING AID
DISPENSERS, AND SPEECH-
LANGUAGE PATHOLOGISTS**

10.41.03 Licensure and Continuing Education

Authority: Health Occupations Article, §§2-302, 2-302.2, 2-305, 2-308, 2-310, and 2-310.2, Annotated Code of Maryland

Notice of Final Action

[11-083-F]

On March 23, 2011, the Secretary of Health and Mental Hygiene adopted amendments to Regulation **.02** under **COMAR 10.41.03 Licensure and Continuing Education**. This action, which was proposed for adoption in 38:3 Md. R. 197 (January 28, 2011), has been adopted as proposed.

Effective Date: April 18, 2011.

JOSHUA M. SHARFSTEIN, M.D.
Secretary of Health and Mental Hygiene

**Subtitle 44 BOARD OF DENTAL
EXAMINERS**

10.44.22 Continuing Education

Authority: Health Occupations Article, §4-205(a)(5), Annotated Code of Maryland

Notice of Final Action

[11-008-F]

On March 18, 2011, the Secretary of Health and Mental Hygiene adopted amendments to Regulations **.02**, **.04**, and **.06**, new Regulation **.07**, amendments to and the recodification of existing Regulations **.07—09** to be Regulations **.08—10**, and the recodification of existing Regulations **.10 — 13** to be Regulations **.11 — 14** under **COMAR 10.44.22 Continuing Education**. This action, which was proposed for adoption in 38:1 Md. R. 32—34 (January 3, 2011), has been adopted as proposed.

Effective Date: April 18, 2011.

JOSHUA M. SHARFSTEIN, M.D.
Secretary of Health and Mental Hygiene

**Title 11
DEPARTMENT OF
TRANSPORTATION**

**Subtitle 04 STATE HIGHWAY
ADMINISTRATION**

11.04.16 Mobile Seafood and Produce Vendors

Authority: Transportation Article, §24-303(c), Annotated Code of Maryland

Notice of Final Action

[11-010-F]

On February 14, 2011, the Administrator of the State Highway Administration adopted new Regulations **.01—06** under **COMAR 11.04.16 Mobile Seafood and Produce Vendors**. This action, which was proposed for adoption in 38:1 Md. R. 34—36 (January 3, 2011), has been adopted as proposed.

Effective Date: April 18, 2011.

NEIL J. PEDERSEN
Administrator
State Highway Administration

**Title 13A
STATE BOARD OF
EDUCATION**

**Subtitle 05 SPECIAL INSTRUCTIONAL
PROGRAMS**

13A.05.11 Juvenile Services Education

Authority: Education Article, §§22-301—22-310, Annotated Code of Maryland

Notice of Final Action

[11-069-F]

On March 22, 2011, the Maryland State Board of Education adopted new Regulations **.01—10** under a new chapter, **COMAR 13A.05.11 Juvenile Services Education**. This action, which was proposed for adoption in 38:3 Md. R. 204—205 (January 28, 2011), has been adopted as proposed.

Effective Date: April 18, 2011.

NANCY S. GRASMICK
State Superintendent of Schools

Title 14 INDEPENDENT AGENCIES

Subtitle 01 STATE LOTTERY AGENCY

14.01.10 Video Lottery Terminals

Authority: State Government Article, Title 9, Subtitle 1A, Annotated Code of Maryland

Notice of Final Action

[11-075-F]

On March 16, 2011, the Maryland State Lottery Agency adopted amendments to Regulation .20 under **COMAR 14.01.10 Video Lottery Terminals**. This action, which was proposed for adoption in 38:3 Md. R. 206—207 (January 28, 2011), has been adopted as proposed.

Effective Date: April 18, 2011.

STEPHEN L. MARTINO
Director
State Lottery Agency

Subtitle 03 COMMISSION ON HUMAN RELATIONS

14.03.02 Anti-Discrimination Relating to Persons with Disabilities

Authority: State Government Article, §§10-111, 10-111.1(b), 10-205, 2-506, and 20-207, Annotated Code of Maryland; 62 Opinions of the Attorney General 36 (1977)

Notice of Final Action

[10-316-F]

On February 15, 2011, the Maryland Commission on Human Relations adopted amendments to Regulations .01, .02, .07, .09, and .14 under **COMAR 14.03.02 Anti-Discrimination Relating to Persons with Disabilities**. This action, which was proposed for adoption in 37:24 Md. R. 1687—1688 (November 19, 2010), has been adopted as proposed.

Effective Date: April 18, 2011.

GLENLORA C. HUGHES
General Counsel

Subtitle 03 COMMISSION ON HUMAN RELATIONS

14.03.03 Penalties

Authority: State Government Article, §§10-204, 20-710(d), 20-1016, 20-1028, 20-1032, 20-1034, and 20-1036, Annotated Code of Maryland

Notice of Final Action

[10-310-F]

On February 15, 2011, the Maryland Commission on Human Relations adopted amendments to the authority line under **COMAR 14.03.03 Penalties**. This action, which was proposed for adoption in

37:23 Md. R. 1622 (November 5, 2011), has been adopted as proposed.

Effective Date: April 18, 2011.

GLENLORA C. HUGHES
General Counsel

Subtitle 03 COMMISSION ON HUMAN RELATIONS

14.03.04 Fair Housing Regulations

Authority: State Government Article, §§10-204, 20-710(d)(1), and 20-1034, Annotated Code of Maryland

Notice of Final Action

[10-318-F]

On February 15, 2011, the Maryland Commission on Human Relations adopted amendments to Regulations .03, .04, and .06—14, new Regulation .15, and amendments to and the recodification of existing Regulations .15—18 to be Regulations .16—19 under **COMAR 14.03.04 Fair Housing Regulations**. This action, which was proposed for adoption in 37:24 Md. R. 1688—1694 (November 19, 2010), has been adopted as proposed.

Effective Date: April 18, 2011.

GLENLORA C. HUGHES
General Counsel

Subtitle 03 COMMISSION ON HUMAN RELATIONS

14.03.05 Commercial Nondiscrimination Policy

Authority: State Finance and Procurement Article, §§19-106—19-110, 19-116, and 19-119; State Government Article, §10-204; Annotated Code of Maryland

Notice of Final Action

[10-311-F]

On February 15, 2011, the Maryland Commission on Human Relations adopted amendments to Regulations .01, .08, .09, .14—16, and .19 under **COMAR 14.03.05 Commercial Nondiscrimination Policy**. This action, which was proposed for adoption in 37:23 Md. R. 1622—1623 (November 5, 2010), has been adopted as proposed.

Effective Date: April 18, 2011.

GLENLORA C. HUGHES
General Counsel

Title 19A STATE ETHICS COMMISSION

Subtitle 04 LOCAL GOVERNMENT ETHICS LAW

Notice of Final Action

[11-074-F]

On March 29, 2011, the State Ethics Commission adopted:

(1) The repeal of existing Regulations **.01—.03** under **COMAR 19A.04.01 Model Laws** and new Regulations **.01—.03** under a new chapter, **COMAR 19A.04.01 General Provisions**;

(2) The repeal of existing Regulations **.01—.07** and new Regulations **.01—.07** under **COMAR 19A.04.02 Review Criteria**;

(3) The repeal of existing Regulations **.01—.04** and new Regulations **.01—.04** under **COMAR 19A.04.03 Review Procedures**;

(4) New Regulations **.01** and **.02** under a new chapter, **COMAR 19A.04.04 Model Laws**; and

(5) The repeal of existing Appendices **A** and **B** and adopt new Appendices **A** and **B** under **COMAR 19A.04 Local Government Ethics Law**.

This action, which was proposed for adoption in 38:3 Md. R. 213—230 (January 28, 2011), has been adopted with the nonsubstantive changes shown below.

Effective Date: April 18, 2011.

Attorney General's Certification

In accordance with State Government Article, §10-113, Annotated Code of Maryland, the General Counsel to the State Ethics Commission and the Attorney General certify that the following changes do not differ substantively from the proposed text. The nature of the changes and the basis for this conclusion are as follows:

COMAR 19A.04.02: The word “exclusions” is substituted for the prior term “provisions” because the Public Ethics Law specifically excludes campaign contributions from the definition of the term “gift.” This change is clarifying and does not affect any right, duty, or obligation of a local government impacted by this subtitle or of the public.

Appendices A and B: Appendices A and B are model ethics laws that a local government may adopt. They are illustrative and examples only. The changes made to these models do not substantially affect the rights, duties, or obligations of a local government or member of the public. In Section 5 of Appendix A and Section 4 of Appendix B, the word “employment” is inserted to clarify that a certain prohibition only applies when a specified person is negotiating employment, rather than engaging in any negotiation. This restriction was included in the proposal; however, some commenters requested the insertion of the word “employment” for clarity. In Section 5 of Appendix B, a cross-reference is corrected. Section 7 of Appendix A addresses financial disclosure requirements for appointed members of boards and commissions. The changes remove an erroneous reference to employees from this section.

19A.04.02 Review Criteria

Authority: State Government Article, §15-206 and Title 5, Subtitle 8, Annotated Code of Maryland

.04 Conflicts of Interest.

A. — G. (proposed text unchanged)

H. Gifts.

(1) — (3) (proposed text unchanged)

(4) *The local law shall define “gift”:*

(a) (proposed text unchanged)

(b) *To exclude regulated campaign contributions similar to the [[provisions]] exclusions of the Public Ethics Law.*

(5) (proposed text unchanged)

I. (proposed text unchanged)

Appendix A — Model Ethics Law A

Authority: State Government Article, §§15-205 and 15-206 and Title 15, Subtitle 8, Annotated Code of Maryland

CHAPTER ____ — ETHICS PROVISIONS

Section 5. Prohibited conduct and interests.

(a) *Participation prohibitions.*

(1) *Except as permitted by Commission regulation or opinion, an official or employee may not participate in:*

(i) (proposed text unchanged)

(ii) *Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision with respect to the matter, any matter in which any of the following is a party:*

(A) — (B) (proposed text unchanged)

(C) *A business entity with which the official or employee or, to the knowledge of the official or employee, a qualified relative is negotiating employment or has any arrangement concerning prospective employment;*

(D) — (F) (proposed text unchanged)

(2) — (3) (proposed text unchanged)

(b) — (h) (proposed text unchanged)

Section 7. Financial disclosure — appointed members of boards and commissions.

(a) (proposed text unchanged)

(b) *Appointed officials [[and employees]] required to file:*
(list of appointed official [[titles and employee]] titles)

(c) (proposed text unchanged)

Appendix B — Model Ethics Law B

Authority: State Government Article, §§15-205 and 15-206 and Title 15, Subtitle 8, Annotated Code of Maryland

CHAPTER ____ — ETHICS PROVISIONS

Section 4. Conflicts of interest.

(a) — (b) (proposed text unchanged)

(c) *Participation prohibitions. Except as permitted by Commission regulation or opinion, an official or employee may not participate in:*

(1) (proposed text unchanged)

(2) *Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision with respect to the matter, any matter in which any of the following is a party:*

(i) — (ii) (proposed text unchanged)

(iii) *A business entity with which the official or employee or, to the knowledge of the official or employee, a qualified relative is negotiating employment or has any arrangement concerning prospective employment.*

(iv) — (vi) (proposed text unchanged)

(3) — (4) (proposed text unchanged)

(d) — (g) (proposed text unchanged)

(h) *Solicitation and acceptance of gifts.*

(1) — (3) (proposed text unchanged)

(4) *[[This paragraph]] Paragraph (5) of this subsection does not apply to a gift:*

- (i) — (iii) (proposed text unchanged)
- (5) (proposed text unchanged)
- (i) — (j) (proposed text unchanged)

ROBERT A. HAHN
Executive Director
State Ethics Commission

Subtitle 05 BOARD OF EDUCATION REGULATIONS

Notice of Final Action

[11-071-F]

On March 29, 2011, the State Ethics Commission adopted:

- (1) The repeal of existing Regulations **.01—.04** and new Regulations **.01—.03** under **COMAR 19A.05.01 General Provisions**;
- (2) The repeal of existing Regulations **.01—.06** and new Regulations **.01—.06** under **COMAR 19A.05.02 Review Criteria**;
- (3) The repeal of existing Regulations **.01—.03** and new Regulations **.01** and **.02** under **COMAR 19A.05.03 Review Procedures**;
- (4) New Regulations **.01** and **.02** under **COMAR 19A.05.04 Model Regulations**; and
- (5) The repeal of existing Appendices **A** and **B** and new Appendices **A** and **B** under **COMAR 19A.05**.

This action, which was proposed for adoption in 38:4 Md. R. 282—296 (February 11, 2011), has been adopted as proposed.

Effective Date: April 18, 2011.

ROBERT A. HAHN
Executive Director
State Ethics Commission

Title 21 STATE PROCUREMENT REGULATIONS

Subtitle 11 SOCIOECONOMIC POLICIES

21.11.11 Prevailing Wage — Contracts for Public Works

Authority: State Finance and Procurement Article, §17-224(a), Annotated Code of Maryland

Notice of Final Action

[11-079-F]

On March 22, 2011, the Commissioner of Labor and Industry adopted new Regulation **.05** under **COMAR 21.11.11 Prevailing Wage — Contracts for Public Works**. This action, which was proposed for adoption in 38:3 Md. R. 230 (January 28, 2011), has been adopted as proposed.

Effective Date: April 18, 2011.

J. RONALD DEJULIIS
Commissioner of Labor and Industry

Proposed Action on Regulations

For information concerning citizen participation in the regulation-making process, see inside front cover.

Symbol Key

- Roman type indicates existing text of regulation.
- *Italic type* indicates proposed new text.
- [Single brackets] indicate text proposed for deletion.

Promulgation of Regulations

An agency wishing to adopt, amend, or repeal regulations must first publish in the Maryland Register a notice of proposed action, a statement of purpose, a comparison to federal standards, an estimate of economic impact, an economic impact on small businesses, a notice giving the public an opportunity to comment on the proposal, and the text of the proposed regulations. The opportunity for public comment must be held open for at least 30 days after the proposal is published in the Maryland Register.

Following publication of the proposal in the Maryland Register, 45 days must pass before the agency may take final action on the proposal. When final action is taken, the agency must publish a notice in the Maryland Register. Final action takes effect 10 days after the notice is published, unless the agency specifies a later date. An agency may make changes in the text of a proposal. If the changes are not substantive, these changes are included in the notice of final action and published in the Maryland Register. If the changes are substantive, the agency must repropose the regulations, showing the changes that were made to the originally proposed text.

Proposed action on regulations may be withdrawn by the proposing agency any time before final action is taken. When an agency proposes action on regulations, but does not take final action within 1 year, the proposal is automatically withdrawn by operation of law, and a notice of withdrawal is published in the Maryland Register.

Title 09

DEPARTMENT OF LABOR, LICENSING, AND REGULATION

Subtitle 12 DIVISION OF LABOR AND INDUSTRY

09.12.26 Crane Safety

Authority: Labor and Employment Article, §§2-106(b)(4), 5-104, and 5-312, Annotated Code of Maryland

Notice of Proposed Action

[11-103-P]

The Commissioner of Labor and Industry proposes to amend Regulations **.02—,04**, repeal existing Regulations **.06—,10, .12**, and **.13**, and adopt new Regulations **.06—,10** under **COMAR 09.12.26 Crane Safety**. These regulations are being amended to adopt, through incorporation by reference, portions of the Cranes and Derricks in Construction; Final Rule (August 9, 2010), as amended.

This action was considered by the Maryland Occupational Safety and Health Advisory Board pursuant to a meeting held on November 3, 2010, notice of which was given in accordance with State Government Article, §10-506(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to amend Maryland's crane safety regulations to include portions of the Occupational Safety and Health Administration's cranes and derricks in construction standard. While Maryland has had a crane safety standard in place since December 2009, the Maryland standard concentrates on the certification and training of crane operators, signal persons, and riggers while also addressing drug testing, special lifts, crane inspections, and tower cranes. With the exception of riggers, drug testing, and special lifts, the federal standard expands on many areas addressed in the

Maryland standard. More specifically, the federal standard addresses ground conditions, assembly/disassembly, power line safety, inspections, safety devices, fall protection, and numerous facets of operations and operational issues. Maryland is incorporating by reference the majority of the federal standard, while maintaining the portions of its standard that address riggers, drug testing, special lifts, and record keeping.

Comparison to Federal Standards

In compliance with Executive Order 01.01.1996.03, this proposed regulation is more restrictive or stringent than corresponding federal standards as follows:

(1) Regulation citation and manner in which it is more restrictive than the applicable federal standard:

29 CFR Part 1926 Cranes and Derricks in Construction. Maryland has had its own crane safety regulations in place since December 2009. Maryland's regulations concentrate on the certification and training of crane operators, signal persons, and riggers, while also addressing drug testing, special lifts, crane inspections, and tower cranes. With the exception of riggers, drug testing and special lifts, the new federal standard set forth in 29 CFR Part 1926 expands on many areas addressed in the Maryland standard. More specifically, the federal standard addresses ground conditions, assembly/disassembly, power line safety, inspections, safety devices, fall protection, and numerous facets of operations and operational issues. Maryland is incorporating by reference the majority of the federal standard while maintaining the portion of its original standard that addresses riggers, drug testing, special lifts, and record keeping.

(2) Benefit to the public health, safety, or welfare, or the environment:

It is assumed that this proposal seeks to prevent accidents that could cause serious injury or death related to the operation of cranes when used in construction and demolition. As such, the impact on the public includes less of a burden on the economy in the form of assistance programs and lost work output.

(3) Analysis of additional burden or cost on the regulated person:

Maryland employers will incur additional work time and/or monetary costs to comply with crane assembly/disassembly, power line

safety, and ground conditions. Current Maryland regulations require crane operators, signal persons, and riggers to be certified. If an employer is not in compliance with this requirement, then that employer will incur the cost of certifying or qualifying their employees.

(4) Justification for the need for more restrictive standards:

As Maryland is a state plan state, Maryland Occupational Safety and Health (MOSH) Program is required to adopt the federal standard or adopt a state standard that is “at least as effective” as the federal standard. As such, Maryland is incorporating by reference the majority of the federal standard while maintaining the portion of its standard that addresses riggers, drug testing, special lifts, and record keeping. Although Maryland employers will incur additional costs, these costs will be offset by the benefits from fewer injuries and fatalities and property damage.

Estimate of Economic Impact

I. Summary of Economic Impact. OSHA has determined that this rule is an economically significant rule as set forth in 75 FR 48078—48130 (August 9, 2010). The cost that employers are expected to incur on a national level to comply with the Crane and Derrick Safety Standard is \$154.1 million per year. OSHA has determined these implementation costs by looking at the cost of the following: crane assembly/disassembly, power line safety, crane inspections, ground conditions, and operator qualification and certification. Since Maryland’s crane safety standard already required crane inspections and operator certification, it is estimated that the costs to implement will be lower for Maryland employers. OSHA has estimated that the total benefits from preventing injuries and fatalities and property damage from prevented tipovers to be \$209.3 million. The estimated net benefit from the federal crane and derrick safety standard is estimated to be \$55.2 million per year.

II. Types of Economic Impact.

	Revenue (R+/R-)	
	Expenditure (E+/E-)	Magnitude
A. On issuing agency:	NONE	
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	(+)	Unquantifiable
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	NONE	

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

D. Regulated industries will incur costs related to implementation of the additional requirements related to crane assembly/disassembly, power line safety, ground conditions, and for those employers who do not already employ certified crane operators, the cost of operator certification or qualification. However, these costs will be offset by the benefits from fewer injuries and fatalities and property damage.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Debbie Stone, Regulations Coordinator, Department of Labor, Licensing, and Regulation, Division of Labor and Industry, 1100 N. Eutaw Street, Room 606, Baltimore, Maryland 21201, or call 410-767-2225, or email to dstone@dllr.state.md.us, or fax to 410-767-2986. Comments will be accepted through May 9, 2011. A public hearing has not been scheduled.

.02 Scope.

A. Except as provided in [§B] §C of this regulation, this chapter applies to [all cranes and crane operators, signal persons, riggers, and crane operator trainees, and to the erection, operation, and dismantling of cranes used in construction and demolition] *power operated equipment, when used in construction and demolition, that can hoist, lower, and horizontally move a suspended load.*

B. This chapter [does not apply to:] *applies to all crane operators, signal persons, riggers, and crane operator trainees, and to the erection, operation, and dismantling of cranes used in construction and demolition.*

C. *This chapter does not apply to the following equipment:*

(1) [Power shovels, excavators, wheel loaders, backhoes, loader backhoes, and track loaders, when used with or without chains, slings, or other rigging to lift suspended loads;] *Machinery included in §A of this regulation while it has been converted or adapted for a non-hoisting/lifting use, and when used with chains, slings, or other rigging to lift suspended loads. Such conversions/adaptations include, but are not limited to, power shovels, excavators, and concrete pumps;*

(2) (text unchanged)

(3) [Service trucks with mobile lifting devices designed specifically for use in the power line and electric service industries, such as digger derricks, when used in the power line and electric service industries for auguring holes to set power and utility poles, or handling associated materials to be installed or removed from utility poles;] *Digger derricks:*

(a) *Used for auguring holes for poles carrying electric and telecommunication lines, placing and removing the poles, and for handling associated materials to be installed on or removed from the poles;*

(b) *Used in electric power generation, transmission, and distribution work subject to 29 CFR Part 1926, Subpart V, which shall comply with 29 CFR §1926.950; and*

(c) *Used in construction work for telecommunication service, as defined at 29 CFR §1910.268(s)(40), which shall comply with 29 CFR §1910.268;*

(4) [Equipment] *Machinery originally designed as vehicle-mounted aerial devices such as the type used for lifting personnel and self-propelled elevating work platforms;*

(5) *Powered industrial trucks, such as forklifts, except when configured to hoist and lower by means of a winch or hook and horizontally move a suspended load;*

(6) (text unchanged)

(7) [Equipment] *Machinery that hoists by using a come-along or chainfall; [and]*

(8) [A crane while it has been converted or adapted for a nonhoisting or nonlifting use, including, but not limited to, use as a power shovel, an excavator, or a concrete pump.] *Telescopic/hydraulic gantry systems;*

- (9) *Stacker cranes;*
- (10) *Dedicated drilling rigs;*
- (11) *Gin poles when used for the erection of communication towers;*
- (12) *Tree trimming and tree removal work; and*
- (13) *Except as provided in §D of this regulation, articulating/knuckle-boom truck cranes when:*

(a) *Delivering material to a construction site when used to transfer materials from the truck crane to the ground, without arranging the materials in a particular sequence for hoisting; and*

(b) *Delivering material to a construction site when the crane is used to transfer building supply sheet goods, including sheets of sheetrock, plywood, and roofing shingles, or building supply packaged materials, including bags of cement, packages of roofing shingles, and rolls of roofing felt, from the truck crane onto a structure using a fork/cradle at the end of the boom, but only when the truck crane is equipped with a properly functioning automatic overload prevention device.*

D. *This chapter applies to articulating/knuckle-boom truck cranes when:*

(1) *The articulating/knuckle-boom crane is used to hold, support, or stabilize the material to facilitate a construction activity, such as holding material in place while it is attached to the structure;*

(2) *The material being handled by the articulating/knuckle-boom crane is a prefabricated component including, but not limited to, precast concrete members or panels, roof trusses such as wooden, cold-formed metal, steel, or other material, prefabricated building sections such as, but not limited to, floor panels, wall panels, roof panels, roof structures, or similar items;*

(3) *The material being handled by the articulating/knuckle-boom crane is a structural steel member such as steel joists, beams, columns, steel decking, bundled or unbundled, or a component of a systems-engineered metal building as defined in 29 CFR Part 1926, Subpart R; or*

(4) *The activity is not specifically excluded under COMAR 09.12.26.02C(13)(a)(i) and (ii).*

E. *This chapter applies to the equipment covered by this standard unless specified otherwise.*

F. *The duties of controlling entities under this chapter include, but are not limited to, the duties specified in 29 CFR §1926.1402(c) and (e) and 29 CFR §1926.1424(b).*

G. *Where provisions of this chapter direct an operator, crewmember, or other employee to take certain actions, the employer shall establish, effectively communicate to the relevant persons, and enforce work rules to ensure compliance with such provisions.*

H. *For work covered by 29 CFR §1926.950, compliance with 29 CFR §1910.269(p) is deemed compliance with 29 CFR §§1926.1407—1926.1411.*

.03 Definitions.

A. [In this chapter, the following terms have the meanings indicated.] *The definitions set forth in 29 CFR §1926.1401 apply to this chapter.*

B. [Terms Defined.] *For the purpose of this chapter, the following terms have the meanings indicated.*

(1)—(4) (text unchanged)

(5) [“Competent person” means one who is capable of identifying existing and predictable hazards in the surroundings, or working conditions that are unsanitary, hazardous, or dangerous to employees, and who has the authority to take prompt corrective measures to eliminate them.] *“Crane” includes all equipment covered by this regulation.*

(6) [“Crane” means a machine for lifting and lowering a load and moving it horizontally, which has a hoisting mechanism that is an

integral part of the machine.] *“Crane operator” means a person who operates powered equipment covered by this regulation.*

(7) [“Crane operator” means an individual who operates a crane.] *“Crane operator trainee” means a person who is engaged in a structured training program under the direct supervision of a crane operator who meets the requirements of this chapter.*

(8) [“Crane operator trainee” means an individual who is engaged in a structured training program under the direct supervision of a crane operator who meets the requirements of this chapter.] *“Crew member” means one or more employees of an employer who performs work in a given operation.*

(9)—(14) (text unchanged)

(15) *“Qualified rigging evaluator” means a person employed by the rigger’s employer who has demonstrated that he or she is competent in accurately assessing whether individuals meet the qualification requirements of this chapter for riggers.*

[(15)] (16)—[(19)] (20)

(21) *“Third party qualified rigging evaluator” means an entity that, due to its independence and expertise, has demonstrated that it is competent in accurately assessing whether individuals meet the qualification requirements of this chapter for riggers.*

[(20)] (22) *“Tower crane” means a [power-operated hoisting machine in which a boom or structural member is mounted upon a vertical mast or tower structure with the function of hoisting, lowering, and swinging loads at various radii but does not include a conventional lattice boom, including mobile and track] type of lifting structure which utilizes a vertical mast or tower to support a working boom (jib) in an elevated position. Loads are suspended from the working boom. While the working boom may be of a fixed type, horizontal or angled, or have luffing capability, it can always rotate to swing loads, either by rotating on the top of the tower such as top slewing or by the rotation of the tower such as bottom slewing. The tower base may be fixed in one location or ballasted and moveable between locations. Mobile cranes that are configured with luffing jib or tower attachments, or both, are not considered tower cranes under this section.*

.04 Incorporation by Reference.

A. (text unchanged)

B. Documents Incorporated.

(1) 29 CFR §1926.1402, except (f);

(2) 29 CFR §1926.1403;

(3) 29 CFR §1926.1404, except substitute “master/lead rigger” for “A/D Director” and in (r)(1) substitute “level II rigger” for “qualified rigger”;

(4) 29 CFR §§1926.1405 and 1926.1406;

(5) 29 CFR §1926.1407, except in (b)(1) substitute “master/lead rigger” for “A/D Director”;

(6) 29 CFR §§1926.1408—1926.1411;

(7) 29 CFR §1926.1412, except delete second sentence of (d)(1)(x) that provides, “This paragraph does not apply to the inspection of ground conditions for railroad tracks and their underlying support when the railroad tracks are part of the general railroad system of transportation that is regulated pursuant to the Federal Railroad Administration under 49 CFR Part 213”;

(8) 29 CFR §1926.1412(e)(3)(ii), except delete “3 months” and substitute “1 year”;

(9) 29 CFR §1926.1412, except in (f)(7) delete “12 months” and substitute “3 years”;

(10) 29 CFR §§1926.1413—1926.1426;

(11) 29 CFR §1926.1427(f)(1), (f)(2), and (f)(3)(i), (iii), and (iv), and (j)(1) and (2);

(12) 29 CFR §§1926.1428—1926.1430, except (c)(2);

(13) 29 CFR §1926.1431;

(14) 29 CFR §1926.1432, except in (b)(1) delete “person who meets the criteria for both a competent person and a qualified person, or by a competent person who is assisted by one or more qualified persons (lift director)” and substitute “master/lead rigger” and in (b)(2) delete “lift director” and substitute “master/lead rigger”;

(15) 29 CFR §§1926.1433 and 1926.1434;

(16) 29 CFR §1926.1435, except in (b)(4) substitute “master/lead rigger” for “A/D Director” and in (b)(5) insert after qualified person “who will document in writing compliance with the manufacturer’s tolerance and maintain the documentation for 3 years”;

(17) 29 CFR §1926.1436, except in (n) substitute “master/lead rigger” for “A/D Director”;

(18) 29 CFR §1926.1437, except in (a) delete “unless specified otherwise” and insert “on non-navigable waters, lakes and streams”;

(19) 29 CFR §§1926.1438—1926.1441;

(20) Appendix A to Subpart CC of Part 1926—Standard Hand Signals;

(21) Appendix B to Subpart CC of Part 1926—Assembly/Disassembly—Sample Procedures for Minimizing the Risk of Unintended Dangerous Boom Movement; and

(22) Appendix C to Subpart CC of Part 1926—Operator Certification—Written Examination—Technical Knowledge Criteria;

[(1)] (23) ASME B30.3-2004 Safety Standard for Cableways, Cranes, Derricks, Hoists, Hooks, Jacks, and Slings—Construction Tower Cranes[.];

[(2)] (24) ASME B30.5-2007 Safety Standard for Cableways, Cranes, Derricks, Hoists, Hooks, Jacks, and Slings—Mobile and Locomotive Cranes[.];

[(3)] (25) ASME B30.6-2003 Safety Standard for Cableways, Cranes, Derricks, Hoists, Hooks, Jacks, and Slings—Derricks[.];

[(4)] (26) ANSI/ASSE A10.42-2000 Safety Requirements for Rigging Qualifications and Responsibilities—American National Standard for Construction and Demolition Operations[.]; and

[(5)] (27) (text unchanged)

.06 Crane Operator Requirements.

A. Except as provided in §B of this regulation, an employer shall ensure that prior to operating equipment under this chapter, a person is qualified or certified in accordance with this regulation.

B. The crane operator qualification or certification requirements do not apply to operators of equipment with a maximum manufacturer-rated hoisting/lifting capacity of 2,000 pounds or less.

C. An employer is required to provide the training and qualification or certification at no cost to the employee consistent with §D or E of this regulation.

D. Requirements for Certification Through an Accredited Crane Operator Testing Organization.

(1) An employer can provide certification through an accredited crane operator testing organization.

(2) For a testing organization to be considered accredited to certify crane operators under this regulation, it shall:

(a) Be accredited by a nationally recognized accrediting agency based on that agency’s determination that industry recognized criteria for written testing materials, physical examinations, test administration, grading, facilities/equipment, and personnel have been met;

(b) Administer written and practical tests that:

(i) Assess the crane operator applicant regarding, at a minimum, the knowledge and skills listed in 29 CFR §1926.1427(j)(1) and (2);

(ii) Provide different levels of certification based on equipment capacity and type;

(iii) Have procedures for crane operators to reapply and be retested in the event a crane operator applicant fails a test or is decertified; and

(iv) Have testing procedures for recertification designed to ensure that the crane operator continues to meet the technical knowledge and skill requirements in 29 CFR §1926.1427(j)(1) and (2); and

(c) Have its accreditation reviewed by the nationally recognized accrediting agency at least every 3 years.

(3) A crane operator shall be deemed qualified to operate a particular piece of equipment if:

(a) The crane operator is certified under this section for that type and capacity of equipment or for higher-capacity equipment of that type; or

(b) When no accredited testing agency offers certification examinations for a particular type or capacity of equipment, or both:

(i) The operator has been certified for equipment that is most similar;

(ii) A certification examination is available for the most similar equipment; and

(iii) Where applicable, the operator’s certificate states the type or capacity of equipment, or both, for which the operator is certified.

(4) A certification issued under this section:

(a) Is portable;

(b) Meets the requirements of §A of this regulation; and

(c) Is valid for 5 years.

E. Audited Employer Program.

(1) An employer can provide qualification through an audited employer program.

(2) Requirements for Qualification.

(a) The written and practical tests shall be either:

(i) Developed by an accredited crane operator testing organization which is accredited by a nationally recognized accrediting agency based on that agency’s determination that industry recognized criteria for written testing materials, practical examinations, test administration, grading, facilities/equipment, and personnel have been met; or

(ii) Approved by an auditor who is certified to evaluate such tests by an accredited crane operator testing organization consistent with this regulation.

(b) If approved by an auditor as provided in §E(2)(a)(ii) of this regulation, the auditor’s approval process shall be based on the following:

(i) The auditor shall determine whether the written and practical tests meet nationally recognized test development criteria that are valid and reliable in assessing the crane operator applicants regarding, at a minimum, the knowledge and skills listed in 29 CFR §1926.1427(j)(1) and (2) of this regulation; and

(ii) The audit shall be conducted in accordance with nationally recognized auditing standards.

(c) Administration of Tests.

(i) The written and practical tests shall be administered under circumstances approved by the auditor as meeting nationally recognized test administration standards.

(ii) The auditor shall be certified to evaluate the administration of the written and practical tests by an accredited crane operator testing organization consistent with this regulation.

(iii) The auditor may not be an employee of the employer.

(iv) The audit shall be conducted in accordance with nationally recognized auditing standards.

(3) The employer program must be audited within 3 months of the beginning of the program and at least every 3 years thereafter.

(4) *Requalification Testing Procedures.*

(a) *The employer program shall have testing procedures for requalification designed to ensure that the crane operator continues to meet the technical knowledge and skills requirements in 29 CFR §1926.1427(j)(1) and (2) and this section.*

(b) *The requalification procedures shall be audited in accordance with nationally recognized auditing standards and this section.*

(c) *Within 3 months of the beginning of the employer program, the requalification procedures shall be audited.*

(d) *The audit process shall be conducted at least every 3 years thereafter.*

(5) *If the auditor determines that there is a significant deficiency in the program, the employer shall ensure that:*

(a) *No crane operator is qualified until the auditor confirms that the significant deficiency has been corrected;*

(b) *The program is audited again within 180 days of the confirmation that the significant deficiency was corrected;*

(c) *The auditor files a documented report of the significant deficiency with the Maryland Occupational Safety and Health program of the Division of Labor and Industry within 15 days of the auditor's determination that there is a deficiency; and*

(d) *Records of the audits of the employer's program are maintained by the auditor for 3 years and are made available by the auditor to the Commissioner or the Commissioner's designated representative upon request.*

(6) *A qualification under this paragraph:*

(a) *Is not portable;*

(b) *Is valid for the crane operator while the operator is employed by the employer that issued the qualification;*

(c) *Is valid for 5 years; and*

(d) *Meets the requirements of §A of this regulation.*

F. *A testing entity is permitted to provide training as well as testing services if the criteria of an accrediting crane operator testing organization set forth in §D(2) of this regulation are met.*

G. *Language and Literacy Requirements.*

(1) *Tests under this section may be administered verbally, with answers given verbally, if the crane operator candidate:*

(a) *Passes a written demonstration of literacy relevant to the work; and*

(b) *Demonstrates the ability to use the type of written manufacturer procedures applicable to the class/type of equipment for which the crane operator is seeking certification.*

(2) *Tests under this section may be administered in any language the crane operator candidate understands, and the crane operator's certificate shall note the language in which the test was given.*

(3) *The crane operator is qualified under §A of this regulation to operate equipment that is furnished with materials required by this chapter and 29 CFR §1926.1407 et seq. that are written in the language of the certification. The crane operator may only operate equipment furnished with such materials.*

H. *Certification Criteria. Qualifications and certifications shall be based, at a minimum, on the following:*

(1) *A determination through a written test that the person has the knowledge necessary for safe operation of the specific type of equipment the individual will operate, including all of the following:*

(a) *Operational characteristics and controls, limitations and use, rated load capacities, and special hazards, including characteristic and performance questions appropriate to the crane type for which qualification is sought;*

(b) *Emergency control skills, such as a response to fire, power line contact, loss of stability, or control malfunction;*

(c) *Demonstrated ability to use arithmetic and load capacity charts to calculate load capacity information on a variety of configurations necessary for safe crane operation;*

(d) *The ability to read and comprehend the crane manufacturer's operation and maintenance instruction materials, including load capacity charts, for the crane for which qualification or certification is sought;*

(e) *Depending upon the type of crane the operator intends to operate:*

(i) *Knowledge of Chapter 3-3 of the ASME B30.3-2004 Safety Standard for Cableways, Cranes, Derricks, Hoists, Hooks, Jacks, and Slings—Construction Tower Cranes;*

(ii) *Knowledge of Chapters 5-0—5-3 of the ASME B30.5-2007 Safety Standard for Cableways, Cranes, Derricks, Hoists, Hooks, Jacks, and Slings—Mobile and Locomotive Cranes; or*

(iii) *Knowledge of Chapters 6-0—6-3 of the ASME B30.6-2003 Safety Standard for Cableways, Cranes, Derricks, Hoists, Hooks, Jacks, and Slings—Derricks;*

(f) *Technical knowledge applicable to:*

(i) *Operating the specific type of crane;*

(ii) *Pre-start and post-start inspection, maneuvering skills, shutdowns, and securing procedures;*

(iii) *Voice and radio communication methods;*

(iv) *Site hazards and personal fall protection methods;*

(v) *The suitability of the supporting ground, surface, or structure to handle expected load;*

(vi) *The hazards and restrictions associated with working adjacent to overhead electric lines and equipment;*

(vii) *The procedures for preventing and responding to fire, power line contact, loss of stability, or control malfunction; and*

(viii) *This regulation, including technical knowledge criteria contained in Appendix C to Subpart CC of Part 1926—Operator Certification—Written Examination—Technical Knowledge Criteria; and*

(g) *The ability to read and locate relevant information in the equipment manual and other materials containing information relative to safe operation; and*

(2) *A determination through a practical test that the individual has the skills necessary for safe operation of the equipment, including the following:*

(a) *Ability to recognize, from visual and auditory observation, the items listed in 29 CFR §1926.1412(d);*

(b) *Operational and maneuvering skills;*

(c) *Application of load chart information; and*

(d) *Application of safe shut-down and securing procedures.*

I. *Every 2 years, an employer shall ensure that a crane operator provides the employer with the following current medical documentation:*

(1) *Proof of successful completion of a physical examination conducted by a licensed physician that includes, at a minimum, the examination criteria specified in Paragraph 3.1.2 of the ASME B30.5-2007 Safety Standard for Cableways, Cranes, Derricks, Hoists, Hooks, Jacks, and Slings—Mobile and Locomotive Cranes; or*

(2) *A certificate of medical examination as required for a commercial driver's license that would be acceptable to the U.S. Department of Transportation, unless the employee provides documentation from a licensed physician that the failure to meet these qualifications will not affect the individual's operation of a crane.*

(J) *The individual has successfully passed a substance abuse test pursuant to the employer's drug and alcohol free workplace and substance abuse policy.*

.07 Crane Operator Trainee Requirements.

A. An employee who is not qualified or certified under Regulation .06 of this chapter is permitted to operate a crane as a crane operator trainee only where the requirements of this section are met.

B. An employer shall ensure compliance with the following:

(1) The crane operator trainee is familiar with and understands 29 CFR §1926.1427(f)(1), (f)(2), and (f)(3)(i), (iii), and (iv);

(2) The crane operator trainer is qualified or certified under Regulation .06 of this chapter and is familiar with the proper use of the equipment's controls; and

(3) The crane operator trainee is directly supervised by the crane operator trainer at all times.

C. The employer shall provide each crane operator trainee with sufficient training prior to operating the equipment to enable the crane operator trainee to operate the equipment safely under limitations established by this section, including direct supervision, and ensure that the crane operator trainee has a basic understanding of:

(1) Crane limitations;

(2) Standard hand signals as defined in ASME B30.5-2007 Safety Standard for Cableways, Cranes, Derricks, Hoists, Hooks, Jacks, and Slings—Mobile and Locomotive Cranes;

(3) Voice and radio communications;

(4) Crane dynamics involved in swinging, controlling, and stopping loads;

(5) Boom deflection from hoisting loads;

(6) Personal fall protection methods; and

(7) Hazards and restrictions associated with working adjacent to overhead electric lines and equipment.

D. In lieu of compliance with §C of this regulation, an employer may accept proof of completion of training through an operating engineer apprenticeship program that has been approved by the Maryland Apprenticeship and Training Council.

E. The crane operator trainee shall not operate the equipment under any of the following circumstances:

(1) If any part of the equipment, load line or load, including rigging and lifting accessories, is operated up to the equipment's maximum working radius in the work zone so that the load line or load could get within 20 feet of a power line that is up to 350 kV, or within 50 feet of a power line that is over 350 kV;

(2) If the equipment is used to hoist personnel;

(3) In lifts where 75 percent of the crane's capacity may be exceeded;

(4) If the equipment is used over a shaft or cofferdam or in a tank farm; and

(5) Special-lift rigging operations, except where the crane operator trainer determines that the crane operator trainee skills are sufficient for this high-skill work.

F. Every 2 years, an employer shall ensure that a crane operator trainee provides the employer with the following current medical documentation:

(1) Proof of successful completion of a physical examination conducted by a licensed physician that includes, at a minimum, the examination criteria specified in Paragraph 3.1.2 of the ASME B30.5-2007 Safety Standard for Cableways, Cranes, Derricks, Hoists, Hooks, Jacks, and Slings—Mobile and Locomotive Cranes; or

(2) A certificate of medical examination as required for a commercial driver's license that would be acceptable to the U.S. Department of Transportation, unless the employee provides documentation from a licensed physician that the failure to meet these qualifications will not affect the individual's operation of a crane.

G. The employer shall require that each crane operator trainee has successfully passed a substance abuse test pursuant to the employer's drug and alcohol free workplace and substance abuse policy.

.08 Rigger and Rigging Requirements.

A. An employer shall ensure that all rigging has been inspected and is used in accordance with the rigging manufacturer's limitations and requirements.

B. An employer shall ensure the following:

(1) That each rigger is trained and meets the qualification requirements of §G, H, or I of this regulation depending upon the work to be performed; and

(2) That the rigger is trained to satisfy the qualification requirements of this section at no cost to the employee.

C. Ensuring Compliance.

(1) Except as provided in §C(2) of this regulation, an employer shall ensure compliance with the qualification requirements of this section by using either a third-party qualified rigging evaluator or a qualified rigging evaluator.

(2) An employer may ensure compliance with the qualification requirements for §D of this regulation with written proof of an employee's successful completion of training through an apprenticeship program for riggers that has been approved by the Maryland Apprenticeship and Training Council.

D. A third-party qualified rigging evaluator or a qualified rigging evaluator shall:

(1) Provide written documentation of his or her determination that the individual has been trained and meets the qualification requirements for the work to be performed; and

(2) Provide in the written documentation the level of qualification of the employee.

E. A determination by a qualified rigging evaluator is not portable.

F. A determination by a third-party qualified rigging evaluator is portable.

G. The qualification requirements for a level I rigger are:

(1) Basic understanding of the equipment operation and limitations, including the dynamics related to equipment movement when swinging and stopping loads and crane boom deflection when hoisting loads;

(2) Basic understanding related to the use and inspection of rigging hardware and equipment applicable to work that is performed, including common load configurations and positioning, and the use of taglines to control loads;

(3) Knowledge and understanding of and competence in the application of the Standard Method for Hand Signals as outlined in ANSI/ASSE A10.42-2000 Safety Requirements for Rigging Qualifications and Responsibilities—American National Standard for Construction and Demolition Operations;

(4) Knowledge and understanding of the emergency procedures to address fire, power line contact, loss of stability, or control malfunction;

(5) Knowledge and understanding of the relevant requirements of 29 CFR §§1926.1419—1926.1422;

(6) Knowledge and understanding of the personal fall protection requirements contained in 29 CFR §1926.1423;

(7) Knowledge and understanding of the hazards and restrictions associated with working adjacent to overhead electric lines, including 29 CFR §§1926.1407—1926.1411, and the Maryland High Voltage Line Act;

(8) Demonstration of the requirements of this subsection through an oral or written test and through a practical test.

H. In addition to the qualification requirements of §G of this regulation, a level II rigger shall:

(1) Have working knowledge of the equipment operation and limitations, including the dynamics related to equipment movement when swinging and stopping loads and crane boom deflection when hoisting loads;

(2) Have working knowledge related to the use and inspection of rigging hardware and equipment applicable to work that is performed, including common load configurations and positioning, and the use of taglines to control loads; and

(3) Have completed training in the safe application, use, and limitations of rigging equipment, as applicable to the work performed, including:

(a) Knowledge and understanding of the implementation methods for blind hoists and lifts;

(b) Knowledge and understanding of a wide range of rigging hitches and knots;

(c) Knowledge and understanding of the effective and safe use of anchor points;

(d) Knowledge and understanding of the effective and safe use of synthetic ropes in rigging applications;

(e) Knowledge and understanding of and the ability to apply the requirements of 29 CFR §§1926.1402—1926.1406 as they relate to ground conditions and crane and equipment assembly and disassembly;

(f) Knowledge and understanding of and the ability to apply the requirements of 29 CFR §§1926.1424—1926.1426 as they relate to hazards that may be created by crane and equipment operations; and

(g) Knowledge and understanding of and the ability to apply and provide direction in the use and limitation of rigging equipment outlined in ANSI/ASSE A10.42-2000 Safety Requirements for Rigging Qualifications and Responsibilities—American National Standard for Construction and Demolition Operations that may be applicable to the work performed.

I. In addition to the qualification requirements of §§G and H of this regulation, a master/lead rigger shall have completed training in safe application, use, and limitations of rigging as applicable to the work performed, including:

(1) The hazards associated with cranes and equipment traveling with a suspended load;

(2) The requirements of 29 CFR §1926.1431 as they relate to hazards that may be created by hoisting and lifting of personnel;

(3) Specific criteria from the manufacturer or equipment representative in the safe and appropriate methods of erection, dismantling, jumping, and reconfiguring of cranes and the relevant requirements of 29 CFR §1926.1435;

(4) Specific criteria for lifting a single load with multiple cranes and the relevant requirements of 29 CFR §1926.1432;

(5) The use and limitations of load indicating devices and the relevant requirements of 29 CFR §1926.1415;

(6) The hazards that may be created by effects of angles or indirect pulling of loads;

(7) The drum/diameter (D/d) ratios; and

(8) Vectors and angles.

J. If the work performance of a level 1, level 2, or master/lead rigger indicates that the employee does not meet the qualification requirements of this section, the employer may not allow the employee to continue to work as a rigger until retraining is provided and there is a reassessment that confirms the employee's qualifications.

K. All riggers shall successfully pass a substance abuse test pursuant to the employer's drug and alcohol free workplace and substance abuse policy.

.09 Record Keeping.

A. An employer shall maintain a written record of the training for each crane operator, signal person, rigger, and crane operator trainee.

B. Training Records.

(1) All training records shall be maintained for 3 years after the end of the individual's employment in the employer's principal office of the business in Maryland.

(2) An employer shall make the training records available to the Commissioner of Labor and Industry or the Commissioner's representative for examination and copying upon request.

.10 Special Lifts.

A. An employer shall ensure that each time a special lift occurs it is under the direct supervision of a master/lead rigger.

B. An employer shall ensure that, prior to the commencement of work, all rigging used in special lifts is inspected for compliance with all requirements by the master/lead rigger.

C. Forty-eight hours prior to the commencement of any special lift, an employer shall notify the Commissioner of Labor and Industry by e-mail to speciallift@dllr.state.md.us, or fax to 410-767-2986, with the following information:

- (1) Name of employer;
- (2) General or managing contractor;
- (3) Type of special lift;
- (4) Site location;
- (5) Specific site of special lift within the location;
- (6) Site contact person and phone number;
- (7) Equipment involved; and
- (8) Scheduled time of special lift.

D. If an employer is unable to provide 48 hours notice to the Commissioner of Labor and Industry prior to the commencement of any special lift, the employer shall provide the Commissioner with notice as soon as practical and a written explanation why 48 hours notice was not provided along with the required information in §C(1)—(8) of this regulation, not later than 24 hours after the special lift.

J. RONALD DEJULIIS
Commissioner of Labor and Industry

**Subtitle 23 BOARD FOR
PROFESSIONAL ENGINEERS**

09.23.04 Fees

Authority: Business Regulation Article, §§2-106.1 and 2-106.2; Business Occupations and Professions Article, §§14-101, 14-207—14-209, 14-306, 14-310—14-312, 14-314—14-316, and 14-320; Annotated Code of Maryland

Notice of Proposed Action

[11-114-P]

The Board for Professional Engineers proposes to amend Regulation .03 under **COMAR 09.23.04 Fees**. This action was considered by the Board for Professional Engineers at an open meeting held on December 9, 2010, notice of which was given by publication in 37:24 Md. R. 1703 (November 19, 2010), pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to increase the examination administration service fee from the current \$60 to \$110. The examination administration service fee is the fee the candidate pays to cover the costs of the exam administration. The Board recently awarded a contract for the exam administration to a professional

examination administration company and the fee proposed by the exam company is \$110 per candidate. The fee will be paid by the applicant directly to the exam administration company.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. Exam candidates will expend \$50 more to take the exam. Approximately 1,500 candidates take the engineering exam each year. The exam administration company will receive \$110 from each candidate. Since the Board will no longer administer the exam and receive testing service fees, the Board's revenues will decrease by approximately \$90,000.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency: Board for Professional Engineers	(R-)	\$90,000
B. On other State agencies: Comptroller of the Treasury	(R+)	\$3,000
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups: Exam candidates	(-)	\$50 per candidate
E. On other industries or trade groups: Exam administration company	(+)	\$165,000
F. Direct and indirect effects on public:	NONE	

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

A. The Board's annual revenue will decrease by approximately \$90,000. This is based on an assumption of 1,500 candidates who paid \$60 each to the Board for exam administration fees.

B. The exam administration company estimates that by virtue of doing business in the State of Maryland, \$3,000 in tax revenue will be generated annually.

D. Currently, each exam candidate pays a \$60 exam administration fee to the Board. The exam administration company proposes a fee of \$110 to cover exam administration costs. Therefore, each exam candidate would pay an additional \$50 to take the exam.

E. Based on the assumption that 1,500 exam candidates will pay \$110 each to the exam administration company, it will receive approximately \$165,000 in revenue annually from Maryland exam candidates.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Pamela J. Edwards, Assistant Executive Director, Board for Professional Engineers, 500 N. Calvert Street, Room 308, Baltimore, MD 21202, or call 410-230-6263, or email to pamedwards@dlr.state.md.us, or fax to 410-333-0021. Comments will be accepted through June 9, 2011. A public hearing has not been scheduled.

Open Meeting

Final action on the proposal will be considered by the Board for Professional Engineers during a public meeting to be held on June 9, 2011 at 9 a.m., at 500 N. Calvert Street, Third Floor Conference Room, Baltimore, MD 21202.

.03 Fees and Costs.

A.—B. (text unchanged)

C. An applicant approved by the Board to take the appropriate licensing examination, and [for] to whom the Board [ordered appropriate examination materials,] or the Board's designee sent an applicable admission notice, is not entitled to a refund of applicable fees paid under §B of this regulation.

D. An applicant who notifies the Board or the Board's designee of the applicant's election not to take the appropriate licensing examination before the Board [orders appropriate examination materials] or the Board's designee sends to the applicant an applicable admission notice is entitled to a refund of applicable fees under §B of this regulation.

E. An applicant for the appropriate licensing examination shall pay to the Board or its designee a testing service fee of [\$60] \$110 in connection with the testing services.

HOWARD C. HARCLERODE
Chairman
Board for Professional Engineers

Subtitle 23 BOARD FOR PROFESSIONAL ENGINEERS

09.23.06 Continuing Professional Competency Requirements

Authority: Business Occupations and Professions Article, §14-314, Annotated Code of Maryland

Notice of Proposed Action

[11-117-P]

The Board for Professional Engineers proposes to adopt new Regulations .01—.17 under a new chapter, **COMAR 09.23.06 Continuing Professional Competency Requirements**. This action was considered by the Board for Professional Engineers at an open meeting held on February 10, 2011, notice of which was published in 38:3 Md. R. 236 (January 28, 2011), pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to ensure that those individuals licensed by the State Board for Professional Engineers comply with the continuing professional competency (CPC) requirements as a condition of license renewal. Compliance with the CPC requirements is imperative in achieving the enhanced and contemporary knowledge level of those individuals who offer professional engineering services and serves a vital role in assuring the protection of health and safety

of the members of the general public who utilize the services of Maryland professional engineers.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. Licensees may have to pay for some or all CPC courses in order to accumulate the 24 units required to renew a license on a bi-annual basis. Various public and private agencies, as well as other approved providers, that sponsor CPC activities can benefit by receiving additional revenues from the professional engineers who attend the courses.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency: Board for Professional Engineers	NONE	
B. On other State agencies: Local colleges and universities	(R+)	Indeterminable
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups: Licensees	(-)	\$0—\$500 (per licensee every 2 years)
E. On other industries or trade groups: Continuing Education Providers	(+)	Indeterminable
F. Direct and indirect effects on public: Consumers of engineering services	NONE	Indeterminable

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

A. The agency has sufficient monies to cover changes and updates to electronic licensing programs, if needed.

B. Local colleges and universities are preapproved providers of continuing professional competency and will benefit from additional revenues.

D. For some licensees there may be no additional cost or minimal costs because they will be able to accumulate the required number of CPC units by attending approved courses which are part of conferences sponsored by the organization/association of which they are members, or in-house seminars sponsored by their employer. Some licensees hold active licenses in other states that require CPC and will already have taken courses to meet the renewal requirements. These licensees will be minimally impacted. Inquiries to informed sources reveal that the approximate cost for 24 hours of continuing education credits is \$500. Therefore, the costs to a licensee who obtains CPC solely from sources for which they must

pay would be a maximum of \$500 and a minimum of \$0 for a licensee who obtains the required number of CPC hours from sources where no cost is incurred.

E. The beneficiaries of additional revenues will be the approved providers that will consist of small businesses and trade organizations as well as colleges and universities.

F. Consumers will benefit by having better trained and educated licensees performing engineering services.

Economic Impact on Small Businesses

The proposed action has a meaningful economic impact on small business. An analysis of this economic impact follows.

Professional societies and other continuing education providers, some of whom qualify under the definition of “small business”, will benefit by the promulgation of the regulation. The regulations require that the 18,000 engineers licensed in Maryland must obtain continuing education in order to renew their licenses. The professional societies and other providers will benefit from additional revenues.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Pamela J. Edwards, Assistant Executive Director, Board for Professional Engineers, 500 N. Calvert Street, Room 308, Baltimore, MD 21202, or call 410-230-6263, or email to pe@dllr.state.md.us, or fax to 410-333-0021. Comments will be accepted through June 9, 2011. A public hearing will be held on May 12, 2011, 11 a.m., at 500 N. Calvert Street, Third Floor Conference Room, Baltimore, MD 21202. Please send an email to pe@dllr.state.md.us if you plan to attend and/or testify.

Open Meeting

Final action on the proposal will be considered by the Board for Professional Engineers during a public meeting to be held on June 9, 2011, at 500 N. Calvert Street, Third Floor Conference Room, Baltimore, MD 21202.

.01 Purpose.

The public interest requires that professional engineers provide competent services in all areas of practice. The State legislature has determined that it is in the best interest of the public to require professional engineers to comply with the continuing professional competency requirements as a prerequisite to the renewal of a license.

.02 Definitions.

A. In this chapter, the following terms have the meaning indicated.

B. Terms Defined.

(1) “Activity” means attending and completing any qualifying courses, seminars, workshops, technical presentations, and other qualifying programs with a clear purpose and objective that will maintain, improve, or expand the skills and knowledge relevant to the licensee’s field of practice. Regular duties in the course of employment are not considered qualified activities.

(2) “Authorized provider” means an organization or individual reviewed and approved by the Board.

(3) “Board” means the State Board for Professional Engineers.

(4) “Category A/Category B programs” means the types of programs set forth in Regulation .04 of this chapter.

(5) “College unit/semester/quarter hour” means the credit for a course described in §B(1) of this regulation, offered by a university, college, or community college.

(6) “Continuing education unit (CEU)” means a unit of credit customarily used for continuing education courses. One continuing

education unit equals 10 hours of class time in an approved continuing education course.

(7) "Dual Licensee" means a person who is licensed as both a professional engineer and a professional land or property line surveyor.

(8) "NCEES" means the National Council of Examiners for Engineering and Surveying.

(9) "Professional Development Hour (PDH)" means a contact hour (nominal) of instruction or presentation and is the common denominator for other units of credit.

(10) "Qualifying program" means any course, seminar, workshop, technical presentation, or other qualifying offering that meets the criteria set forth in Regulation .04 of this chapter.

(11) "Reporting period" means a 2-year licensing period immediately preceding a current individual licensing term.

(12) "Self-directed activity" means an activity that does not involve a face-to-face direct learning experience. The self-directed activity may include, but is not limited to, correspondence courses, online courses, and televised, videotaped, or audiotaped presentations and shall provide for, in addition to the requirements in Regulation .04 of this chapter, clear outcome measures in the form of a narrative, test, report, study, research paper, or any other appropriate form or method.

(13) "Seminar" means a meeting or meetings of experienced participants or experts with an expert leader who conducts a discussion on a specific topic.

(14) "Workshop" means a meeting or meetings of general sessions and individual groups.

.03 Requirements.

A. A licensee shall complete at least 24 PDH units during each reporting period with a:

(1) Minimum of 18 PDH units in Category A programs, including a minimum of 1 PDH unit in content areas related to the standards of practice or care, laws and regulations applicable to the practice of engineering in Maryland, or professional engineering ethics; and

(2) Maximum of 6 PDH units in Category B programs.

B. A maximum of 12 PDH units earned in excess of 24 PDH units that are required for a license renewal during the licensing term can be carried forward to apply as credit toward the next individual licensing term.

.04 Programs.

A. Programs shall meet at least the following criteria in order to be considered qualifying programs:

(1) Maintain and enhance professional competency of professional engineers;

(2) Foster improvement, advancement, and extension of professional skills and knowledge related to the practice of engineering;

(3) Be offered by providers as described in Regulation .08 of this chapter;

(4) Have a stated purpose and defined content area;

(5) Be presented by presenters who are qualified in the defined content area; and

(6) Have a clearly stated duration.

B. Qualifying programs may fall into one or more of the following categories:

(1) Category A programs shall have content areas that focus on the following issues:

(a) Technical, research, analytical, or design aspects of engineering;

(b) Laws and regulations applicable to the practice of engineering in Maryland;

(c) Engineering-related computer hardware and software topics;

(d) Standards of practice or care;

(e) Professional engineering ethics;

(f) Project management, risk assessment and management, or emergency and disaster management; or

(g) Similar topics aimed to maintain, improve, or expand the skills and knowledge relevant to the licensee's field of practice; or

(2) Category B programs shall have content areas that focus on the following issues:

(a) Business or government administration; or

(b) Development of traits, skills, or behavioral patterns geared towards improved communications skills, oral and written skills, personal management skills, or other similar programs which contain a clear purpose of improving a licensee's methods of practice or operations or advancing professionally related skills and practices as applicable to the practice of engineering.

C. Qualifying programs shall be formally organized and classified as:

(1) University, college, and community college courses;

(2) Professional workshops;

(3) Seminars;

(4) Self-directed; or

(5) Technical presentations.

D. Qualifying programs may be presented by the following methods:

(1) Live;

(2) Televised;

(3) Videotaped;

(4) Audiotaped;

(5) Online; or

(6) Through other appropriate formats approved by the Board.

.05 Sources of Credit.

A. A licensee may earn PDH units by the following methods:

(1) Attendance and successful completion of the programs described in Regulation .04 of this chapter;

(2) Publishing a paper or article on an engineering subject as identified in Regulation .04 of this chapter;

(3) Publishing a book on an engineering subject;

(4) Subject to limitations set forth in Regulation .07 of this chapter, active participation in an engineering professional or technical society;

(5) Obtaining a patent;

(6) Teaching of an engineering subject as identified in Regulation .04B(1) of this chapter;

(7) Developing examination questions accepted for use on NCEES examinations; or

(8) Other appropriate methods.

B. A licensee may not earn credits for such activities as:

(1) Regular employment as a professional engineer or expert witness;

(2) Marketing or business development or sales;

(3) Equipment demonstrations or trade show displays;

(4) Time management techniques and strategies;

(5) Computer-aided drafting;

(6) Repetitive attendance of the same course or activity without substantial modifications or updates;

(7) Attending committee meetings or general business meetings of any organization;

(8) Conversational language courses for personal use;

(9) Executive coaching;

(10) Basic computer software, including, but not limited to, Excel, Word, Outlook, and similar basic computer software; or

(11) Any other topics not relevant to the practice of engineering.

.06 Determination of the Value of a Unit.

The conversion of other units of credit to PDH units is as follows:

- A. 1 college or unit semester hour—45 PDH units;
- B. 1 college or unit quarter hour—30 PDH units; and
- C. 1 continuing education unit—10 PDH units.

.07 Determination of Credits.

A. A licensee is eligible to earn PDH units only upon attendance and successful completion of the appropriate program. The number of PDH units earned is per each individual licensing term.

B. Credit for university, college, or community college courses shall be given when taken for credit and will be based upon the course credit value established by the institution of higher education. An audited class is not acceptable for purposes of receiving a credit.

C. Each published paper or article on an engineering subject as identified in Regulation .04 of this chapter is equal to 5 PDH units.

D. Each published book on an engineering subject is equal to 24 PDH units.

E. Except for full-time faculty, teaching of engineering and related subjects is subject to the following limitations:

(1) For the first-time presentation, a presenter may claim credit for the program that is equivalent to two times the number of PDH units awarded by the Board for the program; and

(2) Unless a presentation has been substantially modified and updated for a subsequent presentation, a presenter may not claim credit for repeat presentations of the same material.

F. Credit for participation in engineering, professional, or technical societies as an officer or an active participant in a committee of the organization is equal to 1 PDH unit. The credit is not considered earned until the end of each year of service is completed and is limited to 1 PDH unit regardless of the number of engineering, professional, or technical societies that a licensee may be serving at one time.

G. Work related to the development and submission of examination questions subject to the following limitations:

(1) Questions accepted for use on NCEES examinations—2 PHD units per accepted question, up to 6 PDH units per year.

(2) Attendance and participation in exam development committee meetings—up to 8 PDH units per year.

H. Obtaining a patent is equal to 10 PDH units.

I. The final determinations of value, appropriate category, and other matters related to the PDH units are the responsibility of the licensee, subject to review and approval by the Board.

.08 Authorizations of Providers/Other Presenters.

A. The Board will review and if appropriate, approve the providers of the CPC credits and PDH units.

B. Providers' Eligibility/Other Presenters.

(1) The following providers are considered to be preauthorized providers without any further action by the Board:

- (a) National (ABET/EAC), regional, or State accredited academic institutions;
- (b) National, State, or regional engineering professional or technical societies or organizations;
- (c) National Council of Examiners for Engineering and Surveying;
- (d) American Council of Engineering Companies;
- (e) International Association for Continuing Education and Training; and
- (f) Other entities that may from time to time become preapproved by the Board.

(2) The Board may allow appropriate credits for the attendance and participation in a technical activity or presentation by companies or organizations, whether or not approved by the Board under this regulation, if:

- (a) The activity or presentation is consistent with Regulation .04B(1) of this chapter; and
 - (b) A licensee maintains required documentation in accordance with Regulation .09 of this chapter, including a test, narrative, or other appropriate outcome measure.
- (3) Approval of Providers.

(a) The individuals or entities that are not considered to be pre-approved providers, including, but not limited to, professional firms conducting in-house presentations, may be approved by the Board to become authorized providers upon application and approval by the Board.

(b) During the application process, the Board will evaluate the suitability of the provider to serve as an approved provider.

(c) The provider shall submit general information that will enable the Board to evaluate the provider's qualifications. At a minimum, the Board requires the following information to be submitted with each application for approval:

- (i) The types and descriptions of proposed or existing courses intended to be offered;
- (ii) The number of PDH units to be awarded for each course;
- (iii) The identity and qualifications of the course instructors;
- (iv) The explanation and sample of outcome measures for any self-directed programs that may be offered; and
- (v) The sample course outlines detailing the content of activity to be offered.

(d) The Board may suspend or revoke authorization as a provider if, in the judgment of the Board, the intent of Business Occupations and Professions Article, §14-314(f), Annotated Code of Maryland, is no longer served.

(e) An individual or organization whose provider's privilege has been suspended or revoked may appeal to the Board for a hearing, within 30 days after notification of the action by the Board.

(f) The Board may require approved providers to document the CPC activities for audit by the Board at any time within the 6-year period after the first presentation of the programs. Documentation shall include registration and attendance records, stated purpose, content, presentation, time and length of the activity, and participant evaluations.

C. The Board shall maintain and make available to licensees, as often as it considers appropriate, a roster of approved providers.

.09 Record Keeping.

A. Responsibility to Maintain Records.

(1) The responsibility of maintaining records to be used to support the continuing professional competency credit claim is the responsibility of each licensee.

(2) A licensee shall maintain the records for a period of at least 4 years from the date of completion of the qualifying program.

B. Documentation referred to in §A(2) of this regulation, includes, but is not limited to, the following:

- (1) Certificates of participation;
- (2) Transcripts, if appropriate;
- (3) Reprints of publications;
- (4) Proof of presentations;
- (5) Title and description of the activity;
- (6) Dates attended;
- (7) Presenter's name;
- (8) Other appropriate information, such as a narrative describing the knowledge gained; and

(9) Materials required for self-directed continuing education programs.

.10 Reporting Requirements for License Renewal.

A. A licensee shall attest on the license renewal form to the fact that the licensee has completed all applicable CPC requirements set forth in this chapter by the last day of the month preceding the month in which the licensee's individual license is to be renewed for the following 2-year licensing term.

B. The Board at its discretion may audit randomly selected licensees to ascertain compliance with CPC requirements.

C. Licensees who are audited shall provide any additional documentation required by the Board to complete the audit.

.11 Extenuating Circumstances/Exceptions.

A. Notwithstanding other requirements set forth in this chapter, a licensee who is granted an initial license may renew a license for the next full term without complying with the CPC requirements.

B. A licensee who, due to physical disability, illness, military duty, or other extenuating circumstances, is unable to comply with the CPC requirements prior to the license expiration date shall to the extent feasible so notify the Board prior to the license expiration date. If at a later date a licensee whose license lapsed due to noncompliance with the CPC requirements wishes to reinstate the license, the licensee shall fulfill all past due CPC requirements for the previous CPC reporting periods, subject to the maximum amount of required credits as set forth in Regulation .13. The Board may consider waiving, if the extenuating circumstances so warrant, all or part of applicable reinstatement fees and a portion of the required number of PDH units.

.12 Failure to Meet the CPC Requirements.

In the event a licensee fails to comply with the CPC requirements set forth in this chapter, the Board, subject to the hearing provisions of Business Occupations and Professions Article, §14-319, Annotated Code of Maryland, may take any and all available disciplinary actions under Business Occupations and Professions Article, §14-317, Annotated Code of Maryland.

.13 Reinstatement of License.

A licensee who wishes to reinstate a license after failing to complete the CPC requirements shall fulfill past due CPC requirements for the previous CPC reporting periods up to 48 PDH units and pay all applicable fees.

.14 Retired Status.

An individual who elected to receive retired status license shall be exempt from the compliance with the CPC requirements. In the event such individual elects to have the license reactivated, the individual shall fulfill past due CPC requirements up to 48 PDH units.

.15 Dual Licensees.

A licensee who maintains current licenses in the State of Maryland both as a professional engineer and as a professional land or property line surveyor shall comply with the CPC requirements set forth in COMAR 09.13.08 applicable to licensed professional land or property line surveyors, except that a minimum of 1/3 of the units earned shall be gained from the qualifying programs on an engineering subject as set forth in Regulation .04 of this chapter.

.16 PDH Units Earned in Other States.

The Board will accept PDH units earned for activities completed in other jurisdictions, provided that the activities and programs are consistent with and comply with the requisite criteria set forth in this chapter and the licensee otherwise fulfills all other applicable license renewal requirements of this chapter.

.17 Effective Dates.

The following phase-in provisions apply to the respective license renewal dates:

A. If a license expires on or before September 30, 2012, a licensee is not required to fulfill the CPC requirements.

B. If a license expires between October 1, 2012, and September 30, 2013, a licensee is required to fulfill 50 percent of the CPC requirements as provided in this chapter.

C. If a license expires on or after October 1, 2013, a licensee is required to fulfill the full CPC requirements as provided in this chapter.

D. The Board may consider, for the purposes of compliance with the CPC requirements of this chapter, PDH units or CEUs earned on or after October 1, 2010.

HOWARD C. HARCLERODE
Chairman
Board for Professional Engineers

Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Notice of Proposed Action

[11-115-P]

The Secretary of Health and Mental Hygiene proposes to amend:

- (1) Regulation .02 under COMAR 10.01.17 Fees for Community Health Programs; and
- (2) Regulations .08, .14, and .27 under COMAR 10.16.06 Certification for Youth Camps.

Statement of Purpose

The purpose of this action is to increase the certification fees for day and residential camps under COMAR 10.01.17.02, to clarify the new fee structure and grounds to deny an application for a certificate or a letter of compliance if a camp operator fails to file an annual report or pay a fee difference, and to modify immunization documentation for 5-day residential campers under COMAR 10.16.06.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. The following analysis explains the impact on DHMH and camp operators due to the fee increase in COMAR 10.01.17. The total revenue added to General Funds will be \$304,675. This is the amount that will be paid by camp operators and collected by DHMH as application fees. The actions to COMAR 10.16.06 do not have an economic impact.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	(R+)	\$304,075
B. On other State agencies:	NONE	
C. On local governments:	NONE	

PROPOSED ACTION ON REGULATIONS

	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	(-)	\$304,075
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	NONE	

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

A. and D.:

1. A typical day camp operates 40 days/ year (8 weeks x 5 days/week) and a typical residential camp operates 56 days/ year (8 weeks x 7 days/week).

2. Camper days are counted the same whether a camp operates a full or partial day.

3. Total camper days = cumulative daily number of campers enrolled x authorized number of days a camp operates during a camping season.

4. Calculation:

600 certified camps x 87% day camps = 522 day camps
 522 day camps
~~28~~ day camps with alternative accreditation (no fee charged)
 494 day camps charged a fee; current fee \$75

600 certified camps x 13% residential camps = 78 residential camps
 78 residential camps (includes travel and trip camps)
~~20~~ residential camps with alternative accreditation (no fee charged)
 58 residential camps charged a fee; current fee \$100

Total Camper Days	No. of Camps	Fee Increase	Additional Revenue
Day camps:			
1 to 500	75	\$125	\$9,375
501 to 2,000	273	\$450	\$122,850
2,001 to 5,000	99	\$625	\$61,875
More than 5,000	47	\$825	\$38,775
Subtotal	494		\$232,875
Residential camps:			
1 to 700	7	\$400	\$2,800
701 to 5,000	21	\$900	\$18,900
5,001 to 16,000	15	\$1,400	\$21,000
Greater than 16,000	15	\$1,900	\$28,500
Subtotal	58		\$71,200
Total	552		\$304,075

Notes:

1. Total number of certified camps is based upon fiscal year 2012 estimate.

2. Percentage breakdown of day and residential camps and number of camps with alternative accreditation is based upon calendar year 2009 data reported by camps.

The above calculations show \$304,075 in total estimated additional fee revenue to be collected by DHMH and the corresponding total additional cost for camp operators.

Economic Impact on Small Businesses

The proposed action has a meaningful economic impact on small businesses. An analysis of this economic impact follows.

10.01.17: These amendments will have a meaningful impact on small businesses because the annual certification fees for day, residential, travel, and trip camps are being increased. See Estimate of Economic Impact for details.

10.16.06: These amendments have no economic impact because the amendments don't put any additional financial burden on the Department, local governments, or regulated entities.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Michele A. Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499, TTY: 800-735-2258, or email to regs@dhhm.state.md.us, or fax to 410-767-6483. Comments will be accepted through May 9, 2011. A public hearing has not been scheduled.

Subtitle 01 PROCEDURES

10.01.17 Fees for Community Health Programs

Authority: Health-General Article, §§2-104 and 14-403, Annotated Code of Maryland

.02 Fees.

The following fees are established by the Secretary:

A. (text unchanged)

B. [Annual certification] *A certificate or letter of compliance application fee, based on camper days, that is, the estimated cumulative number of campers enrolled each day multiplied by the number of days a camp may operate during a camping season, for:*

- (1) Day camp — \$75;
- (2) Residential camp — \$100;
- (3) Travel camp — \$100; and
- (4) Trip camp — \$100;]
- (1) *Day camp:*
 - (a) 1 to 500 camper days — \$200;
 - (b) 501 to 2,000 camper days — \$525;
 - (c) 2,001 to 5,000 camper days — \$700; and
 - (d) Greater than 5,000 camper days — \$900; and
- (2) *Residential camp:*
 - (a) 1 to 700 camper days — \$500;
 - (b) 701 to 5,000 camper days — \$1,000;
 - (c) 5,001 to 16,000 camper days — \$1,500; and
 - (d) Greater than 16,000 camper days— \$2,000.

C.—D. (text unchanged)

Subtitle 16 HOUSING

10.16.06 Certification for Youth Camps

Authority: Health-General Article, §§2-104, 14-402(d), and 14-403,

Annotated Code of Maryland

.08 Application Procedures and Fees.

A. For a camp that [is] was not [currently certified or] issued a *certificate* or a letter of compliance by the Department *in the previous calendar year*, an operator shall:

- (1) (text unchanged)

(2) Except as provided in §§D and E of this regulation, pay to the Department the [following] fee *as set forth in COMAR 10.01.17.02* at the time of application[:

- (a) \$75 for a day camp;
- (b) \$100 for a residential camp;
- (c) \$100 for a travel camp; and
- (d) \$100 for a trip camp]; and

(3) (text unchanged)

B. For a camp that [is currently certified or] *was* issued a *certificate or* a letter of compliance by the Department *in the previous calendar year* and wishes to renew its [certification] *certificate or* letter of compliance for another year, an operator shall:

(1) (text unchanged)

(2) Except as provided in §§D and E of this regulation, pay to the Department the [following] fee *as set forth in COMAR 10.01.17.02* at the time of application[:

- (a) \$75 for a day camp;
- (b) \$100 for a residential camp;
- (c) \$100 for a travel camp; and
- (d) \$100 for a trip camp]; and

(3) (text unchanged)

C.—E. (text unchanged)

F. An operator of a camp that [is] *was* not [currently certified or] issued a *certificate or* a letter of compliance by the Department *in the previous calendar year* shall, at least 60 days before the proposed opening date:

(1)—(3) (text unchanged)

G. An operator of a camp that [is currently certified or] *was* issued a *certificate or* a letter of compliance *by the Department in the previous calendar year* shall, at least 30 days before the [start of the first camp session of the season] *proposed opening date*:

(1) (text unchanged)

(2) Except as provided in §E of this regulation, pay the required fee; [and]

(3) *Pay any fee owed in accordance with §H of this regulation; and*

[(3)] (4) (text unchanged)

H. *Payment of Fee Difference Owed.*

(1) *The Department shall:*

(a) *Calculate a fee difference, that is, the difference between the fee paid at the time of application and the fee owed, based on information reported by a camp operator in the annual report for the past calendar year as required by Regulation .06 of this chapter; and*

(b) *Notify a camp operator of any fee owed to the Department.*

(2) *Within 2 weeks following receipt of the notice from the Department, the camp operator shall pay the fee owed to the Department.*

.14 Denial of a Certificate or Letter of Compliance.

A. The Department may deny an application for a certificate or a letter of compliance, setting forth in writing the reason or reasons for the denial, if the operator:

(1) Fails to:

(a)—(b) (text unchanged)

(c) Correct immediately a violation that the Department has indicated is an imminent and substantial danger to a camper; [or]

(d) Correct an outstanding violation from a previous certification or letter of compliance period;

(e) *File an annual report in accordance with Regulation .06 of this chapter; or*

(f) *Pay a fee owed as set forth in Regulation .08H of this chapter.*

B.—D. (text unchanged)

.27 Camper's Health Record.

An operator shall ensure that each camper has on file at the time of admission to a youth camp a written personal health record that includes:

A.—D. (text unchanged)

E. Documentation of:

(1) (text unchanged)

(2) For a day camper *or a camper attending a 5-day residential camp*, enrollment in a Maryland school; and

F. (text unchanged)

JOSHUA M. SHARFSTEIN, M.D.
Secretary of Health and Mental Hygiene

**Title 13A
STATE BOARD OF
EDUCATION**

Subtitle 03 GENERAL

13A.03.02 Graduation Requirements for Public High Schools in Maryland

Authority: Education Article, §§2-205, 4-111, 7-205, [7-205.1, 7-206.] and 8-404, Annotated Code of Maryland

Notice of Proposed Action

[11-016-R]

The Maryland State Board of Education proposes to amend Regulation .04 under **COMAR 13A.03.02 Graduation Requirements for Public High Schools in Maryland**. Because substantive changes have been made to the original proposal as published in 38:1 Md. R. 50—51 (January 3, 2011), this action is being repropose at this time. This action was considered at the Maryland State Board of Education meeting on February 22, 2011.

Statement of Purpose

The purpose of this action is to align COMAR 13A.03.02 with COMAR 13A.04.17.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Mary Thurlow, Science Coordinator, Division of Instruction, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, MD 21201, or call 410-767-0329, or email to mthurlow@msde.state.md.us, or fax to 410-333-1146. Comments will be accepted through May 9, 2011. A public hearing has not been scheduled.

Open Meeting

Final action on the proposal will be considered by the Maryland State Board of Education during a public meeting to be held on June 21—22, 2011, at 200 West Baltimore Street, Baltimore, MD 21201.

Ed. Note: Pursuant to State Government Article, §10-113, Annotated Code of Maryland, if a promulgating agency substantively alters the text of regulations that have been previously proposed in the Maryland Register, the altered text must be published in the Maryland Register as though it were initially proposed. The text of regulations appearing immediately below has been altered substantively from the initially proposed text.

Symbols: Roman type indicates existing text of regulations. *Italic* type indicates initially proposed new text. **Helvetica Bold Italic** type indicates new text that substantively alters the text as initially proposed. [Single brackets] indicate existing text proposed for repeal. [[[Triple brackets]]] indicate text proposed for deletion which substantively alters the originally proposed text.

.04 Credit Requirements.

A. — B. (originally proposed text unchanged)

C. *Beginning with students entering [[[ninth grade]]] high school in 2011—2012, all students must complete [[[the]]] a locally designed high school program of environmental literacy [[[requirement]]] as set forth in COMAR 13A.04.17 that is approved by the State Superintendent of Schools. [[[Including but not limited to the ways set forth below, a student may meet this requirement by the successful completion of:*

(1) *The science and social studies credits required for graduation as set forth in this regulation;*

(2) *An AP environmental science course or the on-line AP environmental science course offered through the Maryland Virtual Learning Opportunities Program; or*

(3) *A locally developed environmental science course.]]]*

NANCY S. GRASMICK
State Superintendent of Schools

Title 14

INDEPENDENT AGENCIES

Subtitle 01 STATE LOTTERY AGENCY

Notice of Proposed Action

[11-116-P]

The Maryland State Lottery Agency proposes to amend:

(1) Regulation **.05** under **COMAR 14.01.14 Video Lottery Facility Minimum Internal Control Standards;**

(2) Regulation **.09** under **COMAR 14.01.16 Voluntary Exclusion and Responsible Gaming;** and

(3) Regulation **.09** under **COMAR 14.01.17 Mandatory Exclusion.**

This action was considered at the Maryland State Lottery Commission open meeting held on February 24, 2011, notice of which was given pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to update regulations to incorporate provisions required for the implementation and operation of the State's new Video Lottery Terminal program and for the VLT Facilities which are now open.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Robert W. Howells, Regulations Coordinator, Maryland State Lottery Agency, 1800 Washington Boulevard, Suite 330, Baltimore, MD 21230, or call 410-230-8789, or email to rhowells@msla.state.md.us, or fax to 410-230-8727. Comments will be accepted through May 9, 2011. A public hearing has not been scheduled.

14.01.14 Video Lottery Facility Minimum Internal Control Standards

Authority: State Government Article, Title 9, Subtitle 1A, Annotated Code of Maryland

.05 Review of Internal Controls.

A. At least [30] 60 days before video lottery terminal operations are to commence, a facility operator shall submit its internal controls to the Commission for review and written approval.

B. — G. (text unchanged)

14.01.16 Voluntary Exclusion and Responsible Gaming

Authority: State Government Article, Title 9, Subtitle 1A-24(e), Annotated Code of Maryland

.09 Responsible Gaming Plan.

A. (text unchanged)

B. A facility operator shall submit to the Commission the responsible gaming plan required under §A of this regulation at least [45] 60 days before video lottery terminal operations are to commence.

C. — D. (text unchanged)

14.01.17 Mandatory Exclusion

Authority: State Government Article, Title 9, Subtitle 1A, Annotated Code of Maryland

.09 Facility Exclusion Plan.

A. — B. (text unchanged)

C. A facility operator shall submit to the Commission for its approval:

(1) The exclusion plan required under §A of this regulation at least [45] 60 days before video lottery terminal operations are to commence;

(2) — (3) (text unchanged)

STEPHEN L. MARTINO
Director
State Lottery Agency

Title 19A STATE ETHICS COMMISSION

Notice of Proposed Action

[11-118-P]

The State Ethics Commission proposes to:

(1) Amend Regulations **.02** and **.04** under **COMAR 19A.01.01 General Provisions**;

(2) Amend Regulation **.04** under **COMAR 19A.01.02 Advisory Opinions**; and

(3) Adopt new Regulations **.01** and **.02** under **COMAR 19A.03.03 Disclosure by Public Officials, State Officials, and Candidates to Be State Officials**.

This action was considered at the State Ethics Commission open meeting held on January 20, 2011, notice of which was provided pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to codify existing practice by specifying the information that may be disclosed in ranges on an annual financial disclosure statement filed using the State Ethics Commission's electronic filing system. The proposed action updates information related to the Commission's copying hours, removes references to an obsolete Commission address, updates the definition of "public official" to conform with the definition in the Public Ethics Law, and makes general stylistic and clarifying changes.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Robert A. Hahn, Executive Director, State Ethics Commission, 45 Calvert Street, 3rd Floor, Annapolis, Maryland 21401, or call 410-260-7770, or email to rhahn@gov.state.md.us, or fax to 410-260-7747. Comments will be accepted through May 9, 2011. A public hearing has not been scheduled.

Subtitle 01 PROCEDURES

19A.01.01 General Provisions

Authority: State Government Article, §15-206, Annotated Code of Maryland

.02 Definitions.

In this title, the following terms have the meanings indicated:

A. — V. (text unchanged)

W. "Public official" [means:

(1) Any individual in an executive agency, including an individual employed on a full-time contractual basis for more than 6 months, who:

(a) Is a classified employee at grade level 18 or above, or, if not a classified employee, receives a rate of compensation equal thereto, or is appointed to a board or commission; and

(b) As determined by the Ethics Commission who is charged, individually or as a member of an executive agency, with decision making authority or acts as a principal advisor to one with such authority:

(i) In making State policy in an executive agency; or

(ii) In exercising quasi-judicial, regulatory, licensing, inspecting, or auditing functions; and

(iii) Whose duties are not essentially administrative and ministerial; and

(iv) Is not a full-time or part-time faculty member at a State institution of higher education, unless the individual is also employed in another State position which does fall under this definition or unless the individual also directly procures, directly influences, or otherwise directly affects the formation or execution of any State contract, purchase or sale as established by guidelines of the State Ethics Commission; provided such guidelines are promulgated as regulations and approved by the AELR Committee;

(2) Any individual in the legislative branch other than a State official, who receives a rate of compensation equal to or above grade level 18 who is so designated by order of the presiding officers of the General Assembly;

(3) Any individual in the judicial branch of government, including an individual employed in the office of a clerk of court, or paid by a political subdivision to perform services in any orphans' court, a circuit court for a county, the Supreme Bench of Baltimore City or one of its courts, and any individual employed by the Attorney Grievance Commission, the State Board of Law Examiners, or the Standing Committee on Rules who:

(a) Is classified or compensated at State grade level 18 or above; and

(b) Is not a judge, master, commissioner, examiner, auditor, or referee;

(4) Except for any full-time or part-time faculty member at a State institution of higher education, any individual in an executive agency who, as determined by the Ethics Commission, is charged, individually or as a member of the executive agency, with decision making authority or acts as a principal advisor to one with such authority in drafting specifications for, negotiating, or executing contracts which commit the State or any executive agency to expend in excess of \$10,000 per annum.] *has the meaning stated in State Government Article, §15-102(ff), Annotated Code of Maryland.*

X. — Z. (text unchanged)

.04 Information Provisions.

A. (text unchanged)

B. The records of the Commission shall be maintained at the Commission's offices [at 300 East Joppa Road, Suite 301, Towson, Maryland 21204]. Records available for public inspection and copying shall be available during normal business hours, Monday through Friday (except State holidays), [8:30 a.m. to 5 p.m.] 9:00 a.m. to 3:00 p.m.

C. — G. (text unchanged)

19A.01.02 Advisory Opinions

Authority: State Government Article, §15-206, Annotated Code of Maryland

.04 Form.

All requests for advisory opinions shall be in writing addressed to the State Ethics Commission at [300 East Joppa Road, Suite 301, Towson, Maryland 21204] *the Commission's offices*. The request shall include the signature, address, and telephone number of the requestor and shall set forth the facts and circumstances giving rise to the request.

Subtitle 03 FINANCIAL DISCLOSURE

19A.03.03 Disclosure by Public Officials, State Officials, and Candidates to Be State Officials

Authority: State Government Article, §§15-206 and 15-602, Annotated Code of Maryland

.01 Applicability.

A. This chapter applies to an official or a candidate to be a State official who is required to file a financial disclosure statement under State Government Article, §§15-601(a) and (e), 15-603, 15-604, or 15-605, Annotated Code of Maryland.

B. This chapter does not apply to an individual who is a public official solely because of the individual's service on a State board, commission, or task force.

.02 Disclosure Requirements.

A. An individual shall file the financial disclosure statement required by State Government Article, Title 15, Subtitle 6, Annotated Code of Maryland, on a form or the electronic filing system provided by the Commission.

B. An individual who files a financial disclosure statement using the electronic filing system of the Commission may disclose the following information in the ranges specified in the electronic filing system:

(1) For a real property interest:

(a) If the interest is held jointly with other persons, the percentage of interest held by each owner;

(b) The consideration paid when the interest was acquired, the fair market value if acquired other than by purchase, or the annual rent if the individual rents the property; and

(c) If any portion of the interest was transferred in the reporting period, the percentage of interest that was transferred and the amount of consideration received for the interest;

(2) For an interest in a corporation:

(a) The number of shares held or the value of the shares;

(b) If the interest is held jointly with other persons, the percentage of interest held by each owner;

(c) If an interest was acquired during the reporting period in a manner other than by dividend or dividend reinvestment or over \$500 was acquired by dividend or dividend reinvestment, the dollar amount paid or, if acquired in a manner other than by purchase, the fair market value at the time of acquisition; and

(d) If an interest was transferred during the reporting period, the percentage of interest transferred and the amount of consideration received for the interest;

(3) For an interest in a noncorporate business entity doing business with the State:

(a) If the interest is jointly held with other persons, the percentage of interest held by each owner;

(b) The value of the interest held by the individual;

(c) If the interest was acquired during the reporting period, the consideration paid or the fair market value if acquired other than by purchase; and

(d) If an interest was transferred during the reporting period, the percentage of interest transferred and the amount of consideration received for the interest; and

(4) For a debt owed to an entity doing business with the State:

(a) The interest rate;

(b) The amount of the debt at the end of the reporting period; and

(c) The amount by which the debt increased or decreased during the reporting period.

ROBERT A. HAHN
Executive Director
State Ethics Commission

Subtitle 01 PROCEDURES

19A.01.03 Enforcement Procedures

Authority: State Government Article, §§15-206, [and] 15-401 — 15-408, and 15-901 — 15-904, Annotated Code of Maryland

Notice of Proposed Action

[11-119-P]

The State Ethics Commission proposes to amend Regulation .11 under COMAR 19A.01.03 Enforcement Procedures. This action was considered at the State Ethics Commission open meeting held on January 20, 2011, notice of which was provided pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to specify factors that the Commission may consider in determining sanctions to impose on a regulated lobbyist that the Commission finds to have violated the lobbying provisions of the Public Ethics Law. The proposed regulations also expand the actions the Commission may take upon a finding of a violation of the Public Ethics Law to include all actions currently authorized by the Public Ethics Law. In addition, the proposed regulations clarify that the Commission is only required to issue written findings of fact and conclusions of law if the Commission finds that a respondent has violated the Public Ethics Law after a hearing. Finally, the proposed action makes stylistic and clarifying changes.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Robert A. Hahn, Executive Director, State Ethics Commission, 45 Calvert Street, 3rd Floor, Annapolis, Maryland 21401, or call 410-260-7770, or email to rhahn@gov.state.md.us, or fax to 410-260-7747. Comments will be accepted through May 9, 2011. A public hearing has not been scheduled.

.11 Commission Decision.

A. (text unchanged)

B. [A final Commission decision following a hearing shall be reflected in a written report setting forth findings of fact and conclusions of law with respect to each of the alleged violations. The final report shall dispose of all disputed issues included in the hearing notice.] *If, after a hearing, the Commission finds that a respondent has violated State Government Article, Title 15, Annotated Code of Maryland, the Commission shall issue a written report that:*

(1) *Includes findings of facts and conclusions of law for each of the violations alleged in the hearing notice; and*

(2) *Disposes of all disputed issues referenced in the hearing notice.*

C. If the Commission [concludes] *finds* that the respondent has not violated any of the provisions of State Government Article, Title 15, Annotated Code of Maryland, *as alleged in the hearing notice*, the Commission shall [enter an order dismissing the complaint and shall advise the complainant and respondent.]:

(1) *Issue an order dismissing the complaint; and*

(2) *Promptly send a copy of the order to the complainant and the respondent.*

D. *Sanctions.*

(1) If the Commission [concludes] *finds* that the respondent has violated any of the provisions of State Government Article, Title 15, Annotated Code of Maryland, the Commission may take any [of the following actions:

(1) Issue an order of compliance to cease and desist from the violation;

(2) Issue a reprimand;

(3) Recommend to the appropriate authority, if provided by law, the censure, removal, or other appropriate disciplining of the respondent; or

(4) Issue an order suspending receipt of payment of salary or other compensation pending full compliance with an order of the Commission in connection with the proceeding.] *action authorized in State Government Article, §15-405 or Title 15, Subtitle 9, Annotated Code of Maryland.*

(2) *In determining the sanctions to impose in a matter involving a finding of a violation of State Government Article, Title 15, Subtitle 7, Annotated Code of Maryland, the Commission may consider all relevant factors, including:*

(a) *The extent to which the respondent derived financial benefit from the prohibited conduct;*

(b) *The willfulness of the prohibited conduct;*

(c) *Any history of violations of the Public Ethics Law by the respondent;*

(d) *The severity of the violation;*

(e) *The cost of investigating and prosecuting the case against the respondent;*

(f) *The necessity to protect the public interest and the integrity of the governmental process; and*

(g) *Any conviction of the individual regulated lobbyist of bribery, theft, or other crime involving moral turpitude based on acts arising from lobbying activities.*

E. If the Commission [concludes] *finds* that the respondent has violated the financial disclosure or lobbying *reporting* provisions of State Government Article, Title 15, Subtitles 6 and 7, Annotated Code of Maryland, the Commission shall impose late fees as set forth in State Government Article, §15-405, Annotated Code of Maryland.

F. — H. (text unchanged)

ROBERT A. HAHN
Executive Director
State Ethics Commission

Errata

COMAR 10.20.01

At 38:7 Md. R. 431 (March 25, 2011), col. 2, line 4 from the bottom:

For: **Effective Date: April 4, 2012.**

Read: **Effective Date: April 4, 2011.**

[11-08-47]

COMAR 10.20.01.07

At 38:2 Md. R. 92 (January 14, 2011), column 2, lines 18 and 19 from the top:

For: [L.] *H.*—[M.] *N.* (text unchanged)

[N.] *O.* Program reimbursement for pharmacy services is

as

Read: [L.] *H.*—[M.] *L.* (text unchanged)

[N.] *M.* (text unchanged)

At 38:2 Md. R. 92 (January 14, 2011), column 2, line 22 from the bottom:

For: *O.* — *R.* (text unchanged)

Read: [O.] *N.*—[R.] *Q.* (text unchanged)

[11-08-50]

COMAR 13B.01.01

At 38:7 Md. R. 432 (March 25, 2011), column 2, lines 1 and 2 from the bottom:

For: JAMES E. LYONS

Secretary of Higher Education

Read: ELISABETH A. SACHS

Interim Secretary of Higher Education

At 38:7 Md. R. 447 (March 25, 2011), column 1, lines 2 and 3 from the top:

For: JAMES E. LYONS

Secretary of Higher Education

Read: ELISABETH A. SACHS

Interim Secretary of Higher Education

COMAR 13B.03.01

At 38:7 Md. R. 447 (March 25, 2011), column 2, lines 1 and 2 from the bottom:

For: JAMES E. LYONS

Secretary of Higher Education

Read: ELISABETH A. SACHS

Interim Secretary of Higher Education

[11-08-49]

Special Documents

DEPARTMENT OF THE ENVIRONMENT

WATER MANAGEMENT ADMINISTRATION

Notice of Final Determination on General Permit for Discharges from the Application of Pesticides

The Department is proposing to issue **General Discharge Permit No. 11PE (federal NPDES Permit No. MDG87)** for discharges to waters of the State from the application of (1) biological pesticides or (2) chemical pesticides that leave a residue (hereinafter collectively "pesticides"), when the pesticide application is for one of the following pesticide use patterns: mosquito and other flying insect pest control; aquatic weed and algae control; aquatic nuisance animal control; and forest canopy pest control. This general permit is for operators that apply pesticides in or near water. The permit regulates discharges from pesticides applied directly to surface waters to control pests, or applied to control pests that are present in or over, including near, surface waters.

The permit establishes narrative technology-based limitations based on minimizing excess pesticides and implementing integrated pest management practices; establishes narrative water quality based limitations; establishes narrative monitoring requirements, including visual monitoring; and requires development of a pesticide management plan, if operating over a certain threshold. Operators are also required to comply with reporting and record keeping requirements beginning no later than three months after the permit effective date.

The general permit is needed to comply with court-ordered requirements for the federal Environmental Protection Agency (EPA) and states to issue national pollutant discharge elimination system (NPDES) permits for both chemical pesticide applications that leave a residue or excess in water and all biological pesticide applications that are made in or over, including near, waters of the United States. EPA has proposed a draft NPDES pesticides general permit to be issued by EPA in states and areas where EPA is the NPDES permitting authority and for use as guidance by Maryland and other states delegated by EPA to issue NPDES permits. Maryland's proposed permit closely follows EPA's proposed pesticide general permit. However, Maryland has made some adjustments to the EPA proposed general permit which allow for transition to the new requirements and provide clarifications for use of the permit in Maryland.

The Department published a tentative permit determination in the Maryland Register on January 3, 2011 and in newspapers across the State during the first two weeks of January regarding the proposed draft permit. The Department held a public hearing concerning the tentative determination on February 8, 2010 at MDE. After considering all comments received, and considering discussions with USEPA regarding public comments on the EPA draft permit, the Department has made a final determination to issue the permit with the following changes to the tentative determination:

- **Scope/Eligibility:** In Part I. B.4, changed scope of forest canopy spraying to include ground applications. Removed the word "aquatic" from weed and animal control use patterns, and add pathogen control.
- **Thresholds for Pesticide Management Plan:** In Part I. H, clarified that for flying insect and forest canopy control, each application counts toward the total. But for animal and weed control, each area shall be counted once only. For animal and

weed control, change the threshold from 20 acres to 80 acres. For linear waterways larger than ditches, each side counts separately.

- Part III.A.2: Removed the term "integrated pest management" and substituted with "pest management measures that minimize pesticide discharges to State waters."
- Part III.F.2: Adverse incident reports are due within 30 days rather than five days.
- The permit effective date will correspond to the date required by the federal court for EPA's permit, which at the time of this writing is October 31, 2011.

Nonsubstantive changes to the text have also been made to address typographical errors or to clarify the requirements of the permit. All other proposed terms and conditions of the tentative permit determination remain unchanged.

Any person adversely affected by this final determination may file a petition for judicial review.

Petitions for judicial review of a final determination or permit decision subject to judicial review must be filed in accordance with §1-605 of the Environment Article no later than May 9, 2011 (30 days following publication by the Department of this notice of final determination in the Maryland Register), and must be filed in a circuit court in Maryland. Petitions for judicial review must conform to the applicable Maryland Rules of Civil Procedure. Failure to file a petition for judicial review by May 9, 2011 will constitute a waiver of any right to a judicial review of this final determination.

To view and print the final permit, go to the Department's website address at www.mde.state.md.us/waterpermits/Pages/forms.aspx and select "Discharges from the Application of Pesticides" under Industrial General Discharge Permits.

Any questions regarding this final determination, and permit, should be directed to Edward Gertler at the Maryland Department of the Environment, Water Management Administration, at egertler@mde.state.md.us, or by telephone at 410-537-3323 between the hours of 8 a.m. and 5 p.m., Monday through Friday.

Persons seeking to review the final permit and associated file may do so by contacting Mr. Gertler to make an appointment. Copies of documents may be obtained at a cost of \$0.36 per page.

[11-08-38]

FINAL CALENDAR YEAR 2011 STANDARD PERMIT APPLICATION TURNAROUND TIMES

As required by Section 1-607(A)(2) of the Environment Article, the Maryland Department of the Environment (MDE) has established, in consultation with interested parties, the following standard turnaround times for all types of permit applications.

MDE has made the following changes to the 2010 turnaround times for calendar year 2011:

Tidal Wetland Licenses and Permits – Reduce the turnaround time from 5 months to 90 days. This change is required by updates to Section 16-202 of the Environment Article due to SB 382/HB 987, passed in the 2010 session of the Maryland General Assembly. The law requires the Department to notify the applicant within 45 days of receiving an application whether the application is complete and the wetland delineation is correct. If the Department fails to notify the applicant about the application or delineation within 45 days, the delineation is treated as correct and the application is treated as complete.

The Department has an additional 45 days to make a decision to grant, deny or condition a tidal wetlands license for a minor project

SPECIAL DOCUMENTS

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within 45 days of receiving a complete application. This law therefore reduces the permit turnaround time for minor projects from five months to 90 days. Minor projects are tidal projects which are not subject to public notice and hearing requirements, or do not require action by the Maryland Board of Public Works.

Natural Wood Waste Recycling Facility General Permit – Increase time from 30 days to 60 days to allow time for review of emergency preparedness manual.

Environmental Sanitarian License – Reduce the turnaround time for new applications from 45 days to 30 days. A review of recent performance shows the program has been meeting the 30 day standard for new applications.

Waterworks and Waste Systems Operator Certification – Reduce the turnaround time for new applications from 45 days to 30 days. A review of recent performance shows the program has been meeting the 30 day standard for new applications.

Groundwater Discharge Permits – Increase the turnaround times to more accurately reflect current actual processing times. Increase the turnaround time for new applications from 12 to 18 months, and increase the turnaround time for renewals from 24 to 34 months.

In addition to these changes, MDE may change the turnaround time for the General Permit for Stormwater Associated with

Industrial Activity when the renewal permit is issued. The turnaround time will be adjusted to account for any change in requirements in the permit that could impact processing times. In addition, the volume of potential applicants could exceed 1000 registrations and the turnaround time will need adjustment to address the fact that all applications will be submitted at approximately the same time.

MDE reviews and adjusts these turnaround times annually to give permit applicants current information regarding the processing time.

Please note the following important points about these standard times:

1) These standards refer to the time between MDE’s receipt of a complete permit application and MDE’s issuance or denial of the permit, excluding delays caused by factors beyond MDE’s control. Many applications are incomplete when they first arrive at MDE. The appropriate MDE permit writer can provide guidance on how to ensure that an application is complete when submitted.

2) In most permitting programs, each application has unique characteristics that influence its processing time. For each program listed, the standard time represents the time in which 90% of applications can be processed. Many applications will require less time; a few will require more time due to unusual circumstances.

Program Name	2011 Standard Application Processing Time
Air and Radiation Management Administration	
General Permit to Construct	30 days
Air Quality Permit to Construct	3 months - without expanded public review
	4 months – synthetic minor permits without expanded public review
	6 months - with expanded public review but limited public interest
	11 months - with expanded public review and extensive public interest
New Source Review Approval	10 months
Prevention of Significant [air quality] Deterioration	14 months
Air Quality State Permit to Operate	3 months
Part 70 (Title V) Permit to Operate	36 months for new permits
	12 months for renewals
Asbestos Contractor License	60 days
Asbestos Training Provider Approval	3 months
Incinerator Operator Certification	30 days
Incinerator Training Course Approval	60 days
Fleet Inspection Station License	30 days
Certified Emissions Repair Facility Certification	30 days
Master Certified Emissions Technician Certificate	30 days
Radiation Machine Facility Registration	90 days for dental and veterinary machines
	6 months for all other machines
Certification of Machines Emitting Radiation	6 months
Radioactive Materials License	7 months
	45 days for amendments and terminations
Private Inspector License For Inspecting X-Ray Machines	60 days
Reciprocal Recognition of Out-of-State Radioactive Material Licenses	21 days

Land Management Administration	
Refuse Disposal Permit	7 months for transfer stations
	9 months for processing facilities
	9 months for processing facilities & transfer stations
	12 months for incinerators
	12 months for land-clearing debris landfills
	24 months for industrial landfills
	36 months for rubble landfills
	36 months for municipal landfills
Groundwater Discharge Permit for Rubble Landfill	6 months
Sewage Sludge Utilization Permit	45 days – research project
	4 months – transportation
	5 months – utilization or disposal at a sanitary landfill
	6 months – handling/distribution
	10 months – land application
	23 months – treatment, incineration or storage
	36 months – sewage sludge landfill
	24 months – innovative projects
Concentrated Animal Feeding Operations	180 days
Natural Wood Waste Recycling Facility Permit	9 months
Natural Wood Waste Recycling Facility General Permit	60 days
Scrap Tire Hauler	60 days
Scrap Tire Collection Facilities (General and Secondary)	60 days
Scrap Tire Solid Waste Acceptance Facility	7 months
Scrap Tire TDF/Substitute Fuel Facility	7 months
Scrap Tire Primary Collection Facility	9 months
Scrap Tire Recyclers	9 months
Oil Operations Permit	90 days
Oil Operations Permit for Oil-Contaminated Soils	90 days
Oil Transfer License	30 days
General Permits for Oil Control Program Wastewater Discharge Permit	30 days
Surface Water Discharge Permit for Oil Terminals	180 days
Ground Water Discharge Permit for Oil Terminals	180 days
Underground Storage Tank (UST) Technician and Remover Certification	40 days
Controlled Hazardous Substances Facility Permit	26 months
Hazardous Waste; EPA Identification Number	30 days
Controlled Hazardous Substances Hauler, Vehicle and Driver Certification	30 days
Special Medical Waste (SMW) Hauler and Vehicle Certification	30 days
Coal Mining Permit	12 months
Surface Coal Mining Blaster Certification	immediately on passing exam
Coal Mining Operator License	30 days
Non-Coal Mining Permit	7 months
Non-Coal Mining License	30 days
Oil and Gas Exploration and Production	5 months
Lead Paint Accreditations	30 days
Lead Paint Training Course Approvals	60 days

SPECIAL DOCUMENTS

Lead Paint Instructor Approvals	30 days
Voluntary Cleanup Program	45 days to determine if application is accepted
	75 days to review action plan

Water Management Administration	
General Permit Registration for Industrial Wastewater Discharge	120 days for all general permits
Individual Permit for Wastewater Discharges	12 months for new minor surface facilities
	18 months for new surface major facilities
	24 months for renewal surface discharge facilities
	18 months for new groundwater discharge facilities
	34 months for renewal groundwater discharge facilities
Toxic Materials Permit	45 days
Water and Sewerage Construction Permit	3 months
Water Appropriation and Use Permit	120 days for under 10,000 gallons per day
	24 months for over 10,000 gallons per day
Well Construction Permit	30 days
Drinking Water Laboratory Certification	4 months
Nontidal Wetlands (Nontidal Wetlands and Waterways Permits)	10 months for minor projects
	12 months for major projects
Tidal Wetland Licenses and Permits	90 days for minor projects
	8 months for major projects
Erosion/Sediment Control and Stormwater Management Plan Approvals	6 months
Erosion and Sediment Control - Responsible Personnel Certification	2 weeks
Erosion and Sediment Control - Responsible Personnel Training Program Approval	4 weeks
General Permit for Stormwater Associated with Construction Activity	60 days for projects less than 3 acres
	90 days for projects between 3 and 150 acres
Individual Permit for Stormwater Associated with Construction Activity	6 months
Municipal Separate Storm Sewer Permit	18 months
Dam Safety Permit	6 months
Environmental Sanitarian License	30 days for all licenses
Waterworks and Waste Systems Operator Certification	30 days for all licenses
Well Driller License	6 months for new licenses
	30 days for renewals

[11-08-46]

SUSQUEHANNA RIVER BASIN COMMISSION

Notice of Actions Taken at March 10, 2011, Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of Commission Actions.

SUMMARY: As part of its regular business meeting held on March 10, 2011, in Huntingdon, Pennsylvania, the Commission convened a public hearing, at which took the following actions: 1) approved, tabled and terminated application review of certain water resources

projects; 2) rescinded approval for ten water resources projects; and 3) declined a request for it to reopen Docket No. 20091201 issued to Chesapeake Appalachia, LLC.

DATE: March 10, 2011.

ADDRESSES: Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102-2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238-0423, ext. 306; fax: (717) 238-2436; e-mail: rcairo@srbc.net; or Stephanie L. Richardson, Secretary to the Commission, telephone: (717) 238-0423, ext. 304;

fax: (717) 238-2436; e-mail: srichardson@srbc.net. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: In addition to the public hearing and its related action items identified below, the following items were also presented or acted on at the business meeting: 1) presentation on the Morrison Cove Water Resources Study; 2) hydrologic conditions in the basin; 3) administrative approval of flowback reuse involving diversions policy; 4) approval/ratification of contracts; 5) a demonstration of the Commission's web-based Water Resources Portal; 6) an explanation of the contents and conditions of a typical Commission docket approval; 7) an administrative fee authorization for group transfers of approvals; 8) adoption of a Migratory Fish Management and Restoration Plan for the Susquehanna River Basin; 9) authorization to initiate the National Environmental Policy Act (NEPA) phase of the Cowanesque and Curwensville Lakes Low Flow Operations Change; and 10) revision of the FY-2012 budget along with expansion of the Compliance Reserve Fund and creation of a Capital Reserve Fund. The Commission heard counsel's report on legal matters affecting the Commission. The Commission also convened a public hearing and took the following actions:

Public Hearing – Rescissions of Project Approval

Project Sponsor and Facility: Chief Oil & Gas LLC (Sugar Creek) (Docket No. 20090314), West Burlington Township, Bradford County, Pa.

Project Sponsor and Facility: Range Resources – Appalachia, LLC (Lycoming Creek-1) (Docket No. 20080933), Hepburn Township, Lycoming County, Pa.

Project Sponsor and Facility: Range Resources – Appalachia, LLC (West Branch Susquehanna River) (Docket No. 20080940), Colebrook Township, Clinton County, Pa.

Project Sponsor and Facility: Southwestern Energy Company (Cold Creek) (Docket No. 20090909), Herrick Township, Bradford County, Pa.

Project Sponsor and Facility: Southwestern Energy Company (Mill Creek) (Docket No. 20090910), Stevens Township, Bradford County, Pa.

Project Sponsor and Facility: Southwestern Energy Company (Ross Creek) (Docket No. 20090911), Stevens Township, Bradford County, Pa.

Project Sponsor and Facility: Southwestern Energy Company (Tunkhannock Creek) (Docket No. 20090913), Gibson Township, Susquehanna County, Pa.

Project Sponsor and Facility: Southwestern Energy Company (Wyalusing Creek) (Docket No. 20090915), Wyalusing Township, Bradford County, Pa.

Project Sponsor and Facility: Southwestern Energy Company (Lycoming Creek) (Docket No. 20091208), Lewis Township, Lycoming County, Pa.

Project Sponsor and Facility: SVC Manufacturing, Inc. (Docket No. 19920907), Fairview Township, Luzerne County, Pa.

Public Hearing – Projects Approved

Project Sponsor and Facility: Anadarko E&P Company LP (West Branch Susquehanna River), Colebrook Township, Clinton County, Pa. Surface water withdrawal of up to 1.500 mgd.

Project Sponsor and Facility: Anadarko E&P Company LP (West Branch Susquehanna River-3), Nippenose Township, Lycoming County, Pa. Modification to increase maximum instantaneous pumping rate within approved daily rate.

Project Sponsor and Facility: Cedar Rock Materials Corp., Salem Township, Luzerne County, Pa. Groundwater withdrawal of up to 0.720 mgd and consumptive water use of up to 0.700 mgd from Well PW-1.

Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River), Braintrim Township, Wyoming County, Pa. Surface water withdrawal of up to 3.000 mgd.

Project Sponsor and Facility: Chief Oil & Gas LLC (Martins Creek), Hop Bottom Borough, Susquehanna County, Pa. Surface water withdrawal of up to 0.360 mgd.

Project Sponsor: Dean Dairy Holdings, LLC. Project Facility: Swiss Premium Dairy, Inc., North Cornwall Township, Lebanon County, Pa. Modification to increase consumptive water use of up to 0.200 mgd.

Project Sponsor and Facility: East Donegal Township Municipal Authority, East Donegal Township, Lancaster County, Pa. Groundwater withdrawal of up to 0.260 mgd from Well 1.

Project Sponsor: Hazleton Creek Properties, LLC. Project Facility: Hazleton Mine Reclamation, Hazleton City, Luzerne County, Pa. Groundwater withdrawal of up to 0.055 mgd from Well MP-1 and consumptive water use of up to 0.055 mgd.

Project Sponsor and Facility: J-W Operating Company (Plum Grove Cameron 5 Strip Mine Pond), Shippen Township, Cameron County, Pa. Surface water withdrawal of up to 0.090 mgd.

Project Sponsor and Facility: Novus Operating, LLC (Tioga River), Covington Township, Tioga County, Pa. Surface water withdrawal of up to 1.750 mgd.

Project Sponsor and Facility: Peoples Financial Services Corp. (Tunkhannock Creek), Tunkhannock Township, Wyoming County, Pa. Surface water withdrawal of up to 0.999 mgd.

Project Sponsor and Facility: Range Resources – Appalachia, LLC (West Branch Susquehanna River), Piatt Township, Lycoming County, Pa. Surface water withdrawal of up to 3.000 mgd.

Project Sponsor and Facility: Southwestern Energy Company (Martins Creek), Brooklyn and Harford Townships, Susquehanna County, Pa. Surface water withdrawal of up to 0.997 mgd.

Project Sponsor and Facility: Southwestern Energy Company (Tuscarora Creek), Tuscarora Township, Bradford County, Pa. Surface water withdrawal of up to 0.500 mgd.

Project Sponsor: Texas Eastern Transmission LP (Susquehanna River), East Donegal Township, Lancaster County, Pa. Surface water withdrawal of up to 2.304 mgd.

Project Sponsor and Facility: Victory Energy Corporation (Pine Creek), Pike Township, Potter County, Pa. Surface water withdrawal of up to 0.460 mgd.

Public Hearing – Projects Approved Involving A Diversion

Project Sponsor: Pennsylvania General Energy Company, L.L.C. Project Facility: Scaffold Lick Pond – 1, Liberty Township, McKean County, Pa. Into-basin diversion of up to 0.500 mgd from the Ohio River Basin.

Project Sponsor: Pennsylvania General Energy Company, L.L.C. Project Facility: Scaffold Lick Pond – 2, Liberty Township, McKean County, Pa. Into-basin diversion of up to 0.500 mgd from the Ohio River Basin.

Project Sponsor: Ultra Resources, Inc. Project Facility: Wayne Gravel Products Quarry, Ceres Township, McKean County, Pa. Into-basin diversion of up to 1.170 mgd from the Ohio River Basin.

Public Hearing – Project Tabled

Project Sponsor and Facility: Ephrata Area Joint Authority, Ephrata Borough, Lancaster County, Pa. Application for groundwater withdrawal of up to 1.210 mgd from Well 1.

Public Hearing – Review of Project Application Terminated

Project Sponsor and Facility: Airy View Heights, Inc., Centre Township, Perry County, Pa. Application for groundwater withdrawal of up to 0.465 mgd from Well PW-5

SPECIAL DOCUMENTS

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Public Hearing – Project Withdrawn

Project Sponsor and Facility: ALTA Operating Company, LLC
(DuBois Creek), Great Bend Township, Susquehanna County,
Pa. Application for surface water withdrawal of up to
0.249 mgd.

Public Hearing – Request of Marvin Fetterman to Reopen Docket
No. 20091201

The Commission declined a request of Mr. Marvin Fetterman for it to
reopen Docket No. 20091201 issued to Chesapeake Appalachia,
LLC.

AUTHORITY: Pub. L. 91-575, 84 Stat. 1509 et seq., 18 CFR Parts
806, 807, and 808.

Dated: March 23, 2011.

THOMAS W. BEAUDUY
Deputy Executive Director

[11-08-39]

General Notices

Notice of ADA Compliance

The State of Maryland is committed to ensuring that individuals with disabilities are able to fully participate in public meetings. Anyone planning to attend a meeting announced below who wishes to receive auxiliary aids, services, or accommodations is invited to contact the agency representative at least 48 hours in advance, at the telephone number listed in the notice or through Maryland Relay.

BOARD OF ARCHITECTS

Subject: Public Meeting
Date and Time: April 27, 2011, 10 a.m.
Place: 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD
Contact: Pamela J. Edwards (410) 230-6263

[11-08-45]

ATHLETIC COMMISSION

Subject: Public Meeting
Date and Time: April 21, 2011, 2 — 4:30 p.m.
Place: 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD
Contact: Patrick Pannella (410) 230-6223

[11-08-20]

BOARD OF AUDIOLOGISTS, HEARING AID DISPENSERS, AND SPEECH-LANGUAGE PATHOLOGISTS

Subject: Public Meeting
Date and Time: April 21, 2011, 4 — 6 p.m.
Place: Metro Executive Bldg., 4201 Patterson Ave., Baltimore, MD
Contact: Christopher Kelter (410) 764-4725

[11-08-08]

ADVISORY COUNCIL ON CEMETERY OPERATIONS

Subject: Public Meeting
Date and Time: April 28, 2011, 10 a.m. — 1 p.m.
Place: Dept. of Labor, Licensing, and Regulation, 500 N. Calvert St., 2nd Fl. Conf. Rm., Baltimore, MD
Contact: Benjamin Foster (410) 230-6229

[11-08-15]

BOARD FOR THE CERTIFICATION OF RESIDENTIAL CHILD CARE PROGRAM ADMINISTRATORS

Subject: Public Meeting
Date and Time: May 13, 2011, 9:30 a.m. — 12:30 p.m.
Place: 4201 Patterson Ave., Rms. 100/107, Baltimore, MD
Add'l. Info: June 10, 2011, 9:30 a.m. — 12:30 p.m.

July 8, 2011, 9:30 a.m. — 12:30 p.m.
 Sept. 9, 2011, 9:30 a.m. — 12:30 p.m.

Oct. 14, 2011, 9:30 a.m. — 12:30 p.m.
 Dec. 9, 2011, 9:30 a.m. — 12:30 p.m.
Contact: Carol Johnson (410) 764-5996
 [11-08-21]

BOARD OF CHIROPRACTIC AND MASSAGE THERAPY EXAMINERS

Subject: Public Meeting
Date and Time: April 14, 2011, 10 a.m. — 1 p.m.
Place: Dept. of Health and Mental Hygiene, 4201 Patterson Ave., Rm. 108, Baltimore, MD
Contact: Maria Ware (410) 764-5902

[11-08-14]

COMPTROLLER OF THE TREASURY

Subject: Announcement
Add'l. Info: Administration and Finance, Reduction of Bond Authorization Announcement

Pursuant to State Finance and Procurement Article, §8-128, Annotated Code of Maryland, which provides that if, within 2 years after the date of an authorization of State debt, no part of the project or program for which the enabling act authorized the State debt is under contract and the Board of Public Works has not committed money for any part of the project or program, the authorization terminates unless:

- (1) The enabling act provides otherwise; or
- (2) In an emergency, the Board unanimously grants a temporary exception for a period of 1 year.

Therefore, with Board of Public Works approval of item 7-CGL dated March 23, 2011, we submit for publication the following cancellation of bond authorization in accordance with the above-referenced article:

Historical Freetown Renovation Loan of 2009:

Chapter 485, Acts of 2009; \$8,922.51; authorized the proceeds for the design, construction, repair, and renovation of Freetown Elementary, located in Glen Burnie, Maryland.

Contact: Jim Bilbrough (410) 260-7909

[11-08-37]

BOARD OF COSMETOLOGISTS

Subject: Public Meeting
Date and Time: May 2, 2011, 9:30 a.m. — 4:30 p.m.
Place: 500 N. Calvert St., 2nd Fl., Baltimore, MD
Add'l. Info: Centre St. Entrance
Contact: Robert Wood (410) 230-6195

[11-08-22]

MARYLAND STATE DEPARTMENT OF EDUCATION — OFFICE OF CHILD CARE

Subject: :Public Meeting
Date and Time: May 26, 2011, 9:30 a.m. — 12 p.m.

Place: Maryland State Dept. of Education, 200 W. Baltimore St., Baltimore, MD

Add'l. Info: Child Care and Development Fund State Plan — The Maryland State Department of Education (MSDE) is required to submit a State Plan to the U.S. Department of Health and Human Services, Administration for Children and Families. The Plan describes the ways the Child Care and Development Fund will be used for child care services in Maryland. The Plan must be submitted by June 30, 2011, and will encompass the period of 2011 through 2013. MSDE is soliciting comments and suggestions on the draft plan at one public meeting to be held on Thursday, May 26, 2011, 9:30 a.m. — 12 p.m., at Maryland State Department of Education, 200 W. Baltimore Street, 8th Floor, Conference Room 6, Baltimore, Maryland 21201.

To register and testify, call Jacqueline Blanding, 410-767-7128 or contact her via email at:

Jacqueline.Blanding@msde.state.md.us by May 24, 2011. Anyone presenting testimony must bring ten copies of the testimony to the public hearing. A summary of the draft plan will be available on the following website: http://www.marylandpublicschools.org/MSDE/divisions/child_care/ or can be obtained by calling the Office of Child Care at 410-767-7128. Appropriate accommodations for individuals with disabilities will be provided upon requests made 8 business days prior to the hearing.

Contact: Jacqueline Blanding (410) 767-7128

[11-08-25]

GENERAL NOTICES

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BOARD OF MASTER ELECTRICIANS

Subject: Public Meeting
Date and Time: May 24, 2011, 10 a.m. — 12 p.m.
Place: 500 N. Calvert St., Baltimore, MD
Contact: Gae Herzberger (410) 230-6163
[11-08-28]

ELEVATOR SAFETY REVIEW BOARD

Subject: Public Meeting
Date and Time: April 14, 2011, 1:30 — 3:30 p.m.
Place: 500 N. Calvert St., Baltimore, MD
Contact: Raquel Meyers (410) 230-6379
[11-08-26]

BOARD OF EXAMINING ENGINEERS

Subject: Public Meeting
Date and Time: May 17, 2011, 10 a.m. — 12 p.m.
Place: 500 N. Calvert, Baltimore, MD
Contact: Gae Herzberger (410) 230-6163
[11-08-29]

BOARD OF ENVIRONMENTAL SANITARIANS

Subject: Public Meeting
Date and Time: May 4, 2011, 10 a.m. — 4:30 p.m.
Place: Howard Co. Bureau of Utilities, 8270 Old Montgomery Rd., Columbia, MD
Add'l. Info: A portion of this meeting may be held in closed session.
Contact: Pat Kratochvil (410) 537-3597
[11-08-31]

FIRE PREVENTION COMMISSION

Subject: Public Meeting
Date and Time: April 21, 2011, 9:30 a.m.
Place: Laurel Municipal Bldg., 8103 Sandy Spring Rd., Laurel, MD
Contact: Heidi Ritchie (877) 890-0199
[11-08-23]

DEPARTMENT OF HEALTH AND MENTAL HYGIENE/MARYLAND BOARD OF PHYSICIANS

Subject: Public Meeting
Date and Time: April 27, 2011, 9 — 10 a.m.
Place: 4201 Patterson Ave., Rms. 108/109, Baltimore, MD
Add'l. Info: Appropriate auxiliary aid services provided for qualified individuals upon request. Call Ellen D. Smith at (410) 764-2477
Contact: Tammy Austin (410) 764-4769
[11-08-09]

BOARD OF HEATING, VENTILATION, AIR- CONDITIONING, AND REFRIGERATION CONTRACTORS (HVACR)

Subject: Public Meeting
Date and Time: May 11, 2011, 9:30 a.m. — 12 p.m.
Place: 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD
Contact: Steve Smitson (410) 230-6169
[11-08-05]

DEPARTMENT OF HUMAN RESOURCES

Subject: Public Meeting
Date and Time: May 5, 2011, 1 — 3 p.m.
Place: To be determined; please call contact below.
Contact: Claudia Remington (410) 585-2250
[11-08-13]

MARYLAND STATEWIDE INDEPENDENT LIVING COUNCIL

Subject: Public Meeting
Date and Time: April 15, 2011, 12 — 3 p.m.; Additional Date: December 16, 2011, 12 — 3 p.m.
Place: Workforce & Technology Center, 2301 Argonne Dr., Multipurpose Rm., Baltimore, MD
Contact: Tonya Gilchrist (410) 554-5412
[11-08-12]

BOARD OF CERTIFIED INTERIOR DESIGNERS

Subject: Public Meeting
Date and Time: April 25, 2011, 2 p.m.
Place: 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD
Contact: Pamela J. Edwards (410) 230-6263
[11-08-44]

DIVISION OF LABOR AND INDUSTRY/ADVISORY COUNCIL ON PREVAILING WAGE RATES

Subject: Public Meeting
Date and Time: May 3, 2011, 10 a.m.
Place: 1100 N. Eutaw St., Rm. 600, Baltimore, MD
Add'l. Info: The Advisory Council on Prevailing Wage Rates will be meeting to discuss issues related to prevailing wage rates.
Contact: Deborah Stone (410) 767-2225
[11-08-35]

DIVISION OF LABOR AND INDUSTRY/AMUSEMENT RIDE SAFETY ADVISORY BOARD

Subject: Public Meeting
Date and Time: April 20, 2011, 10 a.m.
Place: 312 Marshall Ave., Ste. 602, Laurel, MD
Add'l. Info: The Amusement Ride Safety Advisory Board will be meeting to discuss issues related to amusement ride safety.
Contact: Deborah Stone (410) 767-2225
[11-08-34]

MARYLAND STATE LOTTERY COMMISSION

Subject: Public Meeting
Date and Time: April 28, 2011, 10 a.m. — 12 p.m.
Place: Montgomery Park Business Center, 1800 Washington Blvd., Ste. 330, Baltimore, MD
Contact: Marie A. Torosino (410) 230-8790
[11-08-40]

MARYLAND HEALTH CARE COMMISSION

Subject: Public Meeting
Date and Time: April 21, 2011, 1 p.m.
Place: Maryland Health Care Commission, 4160 Patterson Ave., Conf. Rm. 100, Baltimore, MD
Add'l. Info: Individuals requiring special accommodations are requested to contact Valerie Wooding at (410) 764-3460, or the Department of Health and Mental Hygiene TTY at (410) 383-7755, not later than 20 days before the meeting to make arrangements.
Contact: Valerie Wooding (410) 764-3460
[11-08-10]

MINORITY BUSINESS ENTERPRISE ADVISORY COMMITTEE

Subject: Public Meeting
Date and Time: April 27, 2011, 8:30 a.m. — 5 p.m.
Place: Harry R Hughes Dept. of Transportation Bldg., 7201 Corporate Center Dr., 1st Fl., Richard Trainor Conf. Rm., Hanover, MD
Contact: Pam Gregory (410) 865-1253
[11-08-04]

DEPARTMENT OF NATURAL RESOURCES/COASTAL MANAGEMENT PROGRAM

Subject: Public Notice of Approval of Proposed Change to the Maryland Coastal Management Program
Add'l. Info: Maryland's Enforceable Coastal Policies

As posted in the November 19, 2010, Maryland Register, the Maryland Department of Natural Resources (DNR) submitted to the Office of the Ocean and Coastal Resource Management (OCRM) of the National Oceanic and Atmospheric Administration (NOAA) program changes to the Maryland Coastal Management Program (CMP). Maryland considered these program changes to be routine and requested OCRM's concurrence in this determination. Pursuant to C.F.R. §923.84(b)(4), the approved enforceable policies are effective today with this publication. A copy of the NOAA approval letter and the approved Routine Program Change, which includes a complete list of the enforceable policies, including any new enforceable policies, is available at http://dnr.maryland.gov/ccp/coastal_policy.asp.

A copy of the approved Routine Program Change may also be obtained by calling Joe Abe at (410) 260-8740.

Questions regarding NOAA's decision and supporting information may be submitted to:

NOAA Contact Name: Mr. John King
NOAA Title and Address: Chief, Coastal Programs Division, OCRM/NOAA (N/ORM3), 1305 East-West Highway, 11th Floor, Silver Spring, MD 20910

If you have any questions regarding this notice, please contact Joe Abe, Coastal Policy and Project Review Specialist, Maryland Department of Natural Resources, at (410) 260-8740.
Contact: Joe Abe (410) 260-8740

[11-08-33]

BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

Subject: Public Meeting
Date and Time: April 13, 2011, 9:30 a.m.
Place: 4201 Patterson Ave., Rm. 110, Baltimore, MD
Contact: Patricia Hannigan (410) 764-4750

[11-08-24]

BOARD OF PLUMBING

Subject: Public Meeting
Date and Time: April 21, 2011, 10:30 a.m. — 12:30 p.m.
Place: 500 N. Calvert St., Rm. 302, Baltimore, MD
Contact: Brenda Clark (410) 230-6164

[11-08-07]

BOARD OF TRUSTEES OF THE PUBLIC DEFENDER SYSTEM FOR THE STATE OF MARYLAND

Subject: Public Meeting
Date and Time: April 15, 2011, 3 p.m.
Place: The Judiciary Education and Conference Center, 2011D Commerce Park Dr., Training Rm., Annapolis, MD
Add'l. Info: This is a joint meeting of the Board of Trustees and the OPD v. State workgroup.
Contact: T. Wray McCurdy (410) 686-2200

[11-08-16]

RETIREMENT AND PENSION SYSTEM — BOARD OF TRUSTEES

Subject: Public Meeting
Date and Time: April 19, 2011, 9 a.m.
Place: SunTrust Bldg., 120 E. Baltimore St., 16th Fl. Board Rm., Baltimore, MD
Add'l. Info: Meeting date and location are subject to change. Anyone interested in attending should contact the Retirement Agency for confirmation. Please note, the meeting may include a closed session. Sign language interpreters and/or appropriate accommodations for qualified individuals with disabilities will be provided upon request. Please call 410-625-5609 or 1-800-735-2258 TTY.
Contact: Patrice Sowah (410) 625-5609

[11-08-06]

MARYLAND TRANSPORTATION AUTHORITY

Subject: Public Meeting
Date and Time: April 28, 2011, 9 — 11 a.m.
Place: Maryland Transportation Authority, Point Breeze Complex, 2310 Broening Hwy., Ste. 160, Baltimore, MD
Add'l. Info: A portion of this meeting may be held in closed session.
Contact: Cindy Taylor (410) 537-1002

[11-08-01]

BOARD OF WATERWORKS AND WASTE SYSTEMS OPERATORS

Subject: Public Meeting
Date and Time: May 4, 2011, 10 a.m. — 4:30 p.m.
Place: Howard Co. Bureau of Utilities, 8270 Old Montgomery Rd., Columbia, MD
Add'l. Info: A portion of this meeting may be held in closed session.
Contact: Pat Kratochvil (410) 537-3167

[11-08-30]

BOARD OF WATERWORKS AND WASTE SYSTEMS OPERATORS

Subject: Public Meeting
Date and Time: May 19, 2011, 10 a.m. — 4 p.m.
Place: Wye Island, NRWA, Queenstown, MD
Add'l. Info: A portion of this meeting may be held in closed session.
Contact: Pat Kratochvil (410) 537-3167
[11-08-03]

BOARD OF WELL DRILLERS

Subject: Public Meeting
Date and Time: May 25, 2011, 9 a.m. — 4 p.m.
Place: MDE, 1800 Washington Blvd., Terra Conf. Rm., Baltimore, MD
Add'l. Info: A portion of this meeting may be held in closed session.
Contact: Willie Everett (410) 537-3644
[11-08-02]

WORKERS' COMPENSATION COMMISSION

Subject: Public Meeting
Date and Time: May 12, 2011, 9 — 11 a.m.
Place: 10 E. Baltimore St., Baltimore, MD
Add'l. Info: Portions of this meeting may be held in closed session.
Contact: Amy Lackington (410) 864-5300
[11-08-11]

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- 01 Procedures
- 02 Division of Reimbursements
- 03 Health Statistics
- 04 Fiscal
- 05 Freestanding Ambulatory Care Facilities
- 06 Diseases
- 07 Hospitals
- 08 Health Facilities Grants

#### Part 2

- 09 Medical Care Programs

#### Part 3

- 10 Laboratories
- 11 Maternal and Child Health
- 12 Adult Health
- 13 Drugs
- 14 Cancer Control
- 15 Food
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- 17 Sanitation
- 18 Human Immunodeficiency Virus (HIV) Infection and  
Acquired Immunodeficiency Syndrome (AIDS)
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- 39 Board of Nursing – Certified Nursing Assistants
- 40 Board of Podiatric Medical Examiners
- 41 Board of Examiners for Audiologists, Hearing Aid  
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- 43 Board of Chiropractic Examiners
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- 52 Preventive Medicine
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- 54 Special Supplemental Nutrition Program for Women,  
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- 55 State Board of Spinal Cord Injury Research
- 56 Board of Dietetic Practice
- 57 Board for Certification of Residential Child Care Program  
Professionals
- 58 Board of Professional Counselors and Therapists
- 59 Catastrophic Health Emergencies

### Title 11

Department of Transportation – Volume & Subtitles

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  - 02 Transportation Service Human Resources System
  - 03 Maryland Aviation Administration
  - 04 State Highway Administration
  - 05 Maryland Port Administration
  - 06 Mass Transit Administration
  - 07 Maryland Transportation Authority
  - 08 Vacant
  - 09 Vacant
  - 10 Vacant
- #### Volume 2 and Volume 3
- 11 Motor Vehicle Administration – Administrative Procedures
  - 12 MVA – Licensing of Businesses and Occupations
  - 13 MVA – Vehicle Equipment
  - 14 MVA – Vehicle Inspections
  - 15 MVA – Vehicle Registration
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  - 18 MVA – Financial Responsibility Requirements
  - 19 MVA – School Vehicles
  - 20 MVA – Motorcycle Safety Program
  - 21 MVA – Commercial Motor Vehicles
  - 22 MVA – Preventive Maintenance Program
  - 23 MVA – Drivers' Schools, Instructors, Driver Education Program

### Title 26

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Planning and Funding
- 04 Regulation of Water Supply, Sewage Disposal, and Solid Waste
- 05 Board of Well Drillers
- 06 Waterworks and Waste Systems Operators
- 07 Board of Environmental Sanitarians

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- 10 Oil Pollution and Tank Management
- 11 Air Quality
- 12 Radiation Management

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- 14 Hazardous Substance Response Plan
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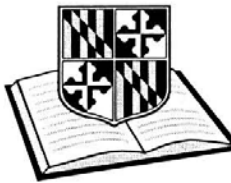
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