

STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

NOTICE OF PROPOSED RULES CHANGES

The Rules Committee has submitted its One Hundred Eighty-Ninth Report to the Court of Appeals, transmitting thereby proposed new Title 15, Chapter 1300 and proposed amendments to Rules 1-101, 2-131, 3-131, 4-342, and 16-1007.

The Committee's One Hundred Eighty-Ninth Report and the proposed Rules changes are set forth below.

Interested persons are asked to consider the Committee's Report and proposed Rules changes and to forward on or before November 16, 2015 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

October 15, 2015

The Honorable Mary Ellen Barbera,
Chief Judge

The Honorable Lynne A. Battaglia
The Honorable Clayton Greene, Jr.
The Honorable Sally D. Adkins
The Honorable Robert N. McDonald,
The Honorable Shirley M. Watts
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 Eighty-Ninth Report, and recommends that the Court adopt the new Rules and amendments to existing Rules set forth in this Report. The Report comprises three categories of proposals.

Category One consists of a new Chapter 1300 to Title 15 of the Maryland Rules (Rules 15-1301 through 15-1307) and amendments to Rules 1-101 and 16-1007. They are intended to provide structure and guidance with respect to proceedings on petitions to approve the transfer of payment rights under structured settlement agreements.

Structured settlements are those in which damages awarded or agreed upon in personal injury or workers' compensation cases take the form, in whole or in part, of payments made over a period of time rather than in one lump sum. Their interrelated functions are (1) to assure that the injured victim receives a stream of continuing income that may be needed to compensate for future increased living expenses or loss of income arising from the effect of his or her injury or disability, and (2) to minimize the risk of a lump sum recovery being improvidently dissipated, leaving the victim to rely on forms of public assistance. Those settlements are ordinarily funded by single-premium annuity contracts purchased by the obligor. In support of those objectives, most structured settlement agreements and accompanying annuity contracts prohibit the assignment or

hypothecation of annuity payments. Given their beneficent purpose, structured settlements have become commonplace in personal injury and workers' compensation cases.

What also has become commonplace, beginning in the 1980s, is the development of a secondary market for structured settlement payments, in which factoring companies, often employing mass marketing techniques to entice requests, enter into agreements with structured settlement recipients (payees) to purchase their right to receive future payments under the settlement agreement and annuity contract. See *Transfers of Structured Settlement Payment Rights*, Daniel W. Hindert and Craig H. Ulman, 44 *Judges' Journal*, Spring 2005, at 19; *It's My Money and I Want It Now, Your Honor*, Kelly McGann, 48 *Md. Bar Journal* 36 (2015); *Construction and Application of State Structured Settlement Protection Acts*, Jay M. Zitter, 27 *A.L.R.* 6th 323 (2007). These transactions proceed despite the anti-assignment provisions in the structured settlement documents because no one with standing to do so raises that defense, and it is therefore regarded as waived.¹

Although the assignment of structured settlement payments can be useful when the payee needs an infusion of capital for such things as purchasing a house or car or paying educational, medical, or other extraordinary expenses, some of the practices employed by some of the factoring companies, as early as the 1990s, began to cause concern and lead State Legislatures and Congress to put some controls on the operation of that market. Most of the States have enacted statutes regulating assignment agreements, as has Congress. The State statutes, though drawn mostly from a model bill, differ in their details, but a common feature in all of them is to require some form of court approval of the assignment.

The Maryland statute, Code, Courts Article, §§ 5-1101 through 5-1105, was one of the earlier ones. It was enacted in 2000. After defining the relevant terms (§5-1101), it prohibits a structured settlement obligor or annuity issuer from making any payment to a transferee of structured settlement rights, directly or indirectly, unless the transfer is authorized in an order of a court based on findings that (1) the transfer is necessary,

¹ Except as provided in Title 10 of the Family Law Article (spousal and child support), Maryland law prohibits the assignment of periodic workers' compensation benefits prior to their receipt by the employee. See Code, Labor and Employment Article, §9-732.

reasonable, or appropriate; (2) the transfer is not expected to subject the payee, the payee's dependents, or both to undue or unreasonable financial hardship in the future; (3) the payee received independent professional advice regarding the legal, tax, and financial implications of the transfer; and (4) the transferee disclosed to the payee the discounted present value of the future payments being assigned (§5-1102).

In 2001, Congress, as part of the Victims of Terrorism Tax Relief Act, enacted §5891 of the Internal Revenue Code. That statute imposes a 40 percent excise tax on any party that acquires payments under a structured settlement factoring transaction unless the transaction is approved in advance by a final order, judgment, or decree of a State court, under the authority of a State statute, in which the court finds that the assignment (1) does not contravene any Federal or State statute or court order and (2) is in the best interest of the payee, taking into account the welfare and support of the payee's dependents.

Unfortunately, there are a number of gaps regarding the procedure to be followed with respect to actions in Maryland to approve the assignment of structured settlement benefits; they are not covered in the statute, and no Rules were ever adopted dealing with those proceedings. That lack has left open the ability of factoring companies to take improper advantage of vulnerable recipients of structured settlement payments, and of courts to routinely approve assignments without the benefit of evidence necessary for them to make the kinds of findings required by both Maryland and Federal law.

The Committee was assured by representatives of the National Association of Settlement Purchasers that most settlement purchasers operate honorably and do not take advantage of their customers, but the Committee had before it evidence that some do and that the absence of any Rules governing the judicial procedure assists in allowing that to happen. The impetus for the Rules proposed in this Report was the exposure of that absence, and the harmful consequences resulting therefrom, in two recent publications - one in the August 25, 2015 edition of the *Washington Post* and one in the earlier June 2015 edition of the *Maryland Bar Journal*.

What was exposed in those articles and, indeed, in earlier ones, some dating back more than a decade, was not just the conduct of a handful of factoring companies or judges but the lack of any clear Rules to govern the judicial proceeding, necessary to assure that the intent and objectives of the General Assembly and Congress are, in fact, implemented. The Rules proposed in this Category One are intended to close those gaps. They deal with three principal things: the petition to approve a

transfer, the hearing that needs to be conducted, and the findings that need to be made by the court in order to approve a transfer.

The Rules Committee proceeded first by collecting as much relevant documentary material as it could find and attempting to locate persons knowledgeable about how factoring companies operate, how the assignment process works, and what other States have done. In the course of a nearly five-hour subcommittee meeting at which several of those persons participated as consultants, a draft of Rules was developed and submitted to the full Rules Committee. The Committee listened to an hour-and-a-half of testimony, mostly from representatives of factoring companies and their trade association, as a result of which amendments were made to some of the subcommittee's recommendations. In summary, the Rules submitted in this Report address the following:

Rule 15-1301 states the scope and applicability of the Rules and adopts by reference the definitions in Courts Article, §5-1101.

Rule 15-1302 deals with the petition - who must file it, where it must be filed (venue), what it must contain, and service on "interested parties" (a defined term under the statute). Section (a) requires the transferee - the factoring company - to file the petition. That is the present practice and is clearly contemplated by the Maryland statute. See Courts Article, §5-1103 (b). Section (b) of the Rule requires that the petition be filed in the payee's county of residence. That is to prevent the kind of forum-shopping that was actually occurring in Maryland and inconvenience to the payee who, under proposed Rule 15-1305, will be required to attend the hearing.

Section (c), dealing with content, requires that the petition contain the kind of information necessary to give the court what it needs to know in order to make the findings required under State and Federal law, especially findings that the transaction is "necessary, reasonable, or appropriate" and that it "is in the best interest of the payee, taking into account the welfare and support of the payee's dependents." Some of that information is sensitive - identifying, financial, and medical information regarding the payee or information that is required in the structured settlement agreement to remain confidential. Section (d) of the Rule requires that exhibits containing that kind of information be filed under seal and, absent a court order, not served on interested parties.

Addressing a concern expressed by some of the factoring companies, the Rule recognizes that, because the structured settlement and prior partial transfers may have occurred years

earlier, some required documents may no longer be available, and it provides, in that situation, that the petitioner state that fact and the efforts made to locate the missing document. That kind of provision appears in other Rules. See Rules 9-103 (d), 10-601 (c) (6), and 15-1001 (c).

Rule 15-1303 specifies a form of Consent by the payee to be attached to the petition. A Consent, rather than an answer, is used because these are not contested cases, at least between the payee and the transferee. The Consent is designed to elicit relevant information about the payee and obligations the payee may have regarding the support of dependents and to document that the payee has been given independent advice regarding the transaction and understands what he or she has, is giving up, and is getting in return.

Rule 15-1304 sets forth the form of affidavit of the independent professional advisor that also must be attached to the petition.

The Maryland statute requires that the payee receive "independent professional advice" from an attorney, certified public accountant, actuary, or other licensed professional advisor. That is a common requirement in the various State statutes. The Maryland statute, in defining "independent professional advice," requires that the advisor be "engaged" by the payee, that he or she not be affiliated with or compensated by the transferee, and that his or her compensation not be affected by whether a transfer occurs.

The Committee received evidence, however, casting significant doubt on how much and what kind of advice the payee actually is getting and on whether the advisor, in truth, is really independent. Many payees do not know any lawyers, accountants, actuaries, or licensed financial advisors and would not be able to afford their fees in any event, and what we heard was that the factoring companies, or at least some of them, supply lists of individuals they have worked with in the past from which the payee can choose. At least some of the factoring companies, we were told, "advance" the fees to the advisor, which they recover as a credit against what is paid for the transfer. In their marketing, some of the factoring companies suggest that *they*, rather than any independent advisor, will assist the payee in determining whether it is in his or her best interest to sell the payment rights.²

² The Committee pulled from the Internet samples of ads that factoring companies use. One offers to "guide you through the complicated legal process," "assess your situation and help you submit the necessary paperwork to schedule a court hearing," and

There are a number of issues with the statute itself regarding the independent professional advisor. If the advisor is not an attorney, he or she should not be giving legal advice to the payee, and it is not clear how many attorneys are competent to give advice regarding the tax or financial implications of a transfer. The Committee has taken the statute as it is, however, and attempted in the affidavit to elicit information about the qualifications of the advisor, what kind of investigation the advisor has made to discover other options that may be available to the payee, and how much and what kind of contact the advisor has had with the payee and with the transferee. The information supplied on the affidavit (and the Consent by the payee) can serve to elicit more detailed examinations at the hearing.

Rule 15-1305 deals with the hearing. Section (a) requires a hearing, and section (b) requires that the payee (unless excused by the court), the independent professional advisor, and a duly authorized officer or employee of the transferee be personally present to answer questions.³

Rule 15-1306 permits the court, in appropriate circumstances, to appoint a guardian *ad litem* for the payee or arrange for an independent mental health evaluation. In Maryland, many of the assignment agreements have involved structured settlements in lead poisoning cases or other cases in which there is evidence of intellectual or cognitive impairment on the part of the payee, not to the extent of requiring a guardian of the person or property but sufficient to cast some doubt on the payee's capacity to understand the nature and consequences of the transaction.

Rule 15-1307 deals with the findings that need to be made.

"help you prove it's in your best interest to sell off your payments." Another offers to "provide you with information to understand your options and alternatives to your insurance payments." Yet another states that it will "help you recognize the financial opportunities you have in reach by listening to your needs, providing personalized options and offering support along the way." One states "[w]e will not only help determine if you should sell your annuity, we can also work with you to determine how many payments you want to sell, [and] how much money you want or need ..." Nothing is said in any of the ads about the need for an independent professional advisor or what that might cost.

³ See *In re: T. Keena*, N.J. Sup. Ct. (No. L-1004-15, 2015) for the kinds of questions a judge may ask of the payee.

The Rule does little more than refer the court to the requirements in the Maryland and Federal statutes. There is some case law interpreting the "best interest" requirement. In addition to *Keena, supra*, n.3, see *In re Transfer of Structured Settlement Rights by Spinelli*, 803 A.2d 172 (N.J. Super. 2002) and *In re Petition of Settlement Capital Corp.*, 774 N.Y.S.635 (N.Y. Super. Ct. 2003).

The major concern of the factoring companies, as expressed in their presentations to the Rules Committee, was that these Rules would create an impossible burden on them and increase significantly the cost to payees of assignments that are in their best interest. That is the same argument that was made to the General Assembly in 2000 - that the bill was unnecessary and would "place an unbelievable burden on our citizens" and would cause personal injury victims to be "tied up in court again for what could be many years." See letter from Evans & Stierhoff to the Chair of the Senate Judicial Proceedings Committee, March 28, 2000 (located in Department of Legislative Services Bill File on House Bill 357). As did the General Assembly in 2000, the Rules Committee believes that this concern is overstated and that the protections afforded by the proposed Rules are necessary to preserve the integrity of the judicial process and prevent the abuses that were actually occurring in Maryland.

The amendment to Rule 1-101 is a conforming one, and the amendment to Rule 16-1007 implements the Committee's recommendation that a payee's address, telephone number, and e-mail address contained in the payee's Consent form be shielded from public inspection.

Category Two consists of adding a cross-reference in Rule 4-342 to a 2015 statute (Chapter 490) that permits judges, in certain drug cases, not to impose legislatively mandated non-parolable sentences if certain findings are made on the record.

Category Three consists of amendments to Rules 2-131 (b) and 3-131 (b), dealing with limited appearances. Under Rule 1.2 (c) of the Maryland Lawyers' Rules of Professional Conduct, as recently amended by the Court, the ability of an attorney and client to enter into an agreement for limited representation is primarily a matter of contract between the two of them. When the limited representation involves a limited appearance in a pending court case, however, the court has an interest in it, and Rules 2-131 and 3-131 were amended to require the attorney to specify in the appearance the scope of the limited representation and for the appearance to be accompanied by an Acknowledgment by the client of that scope.

Even before the amendments took effect, a question arose as

to whether, for its own purposes and for the protection of the client, a court could insist that, where the representation was to accomplish a specific objective, it must include the performance of subsidiary procedural tasks that were essential to the achievement of that objective. One Circuit Court compiled a list of such tasks that it believed were necessary in certain limited representations in family law cases, but that raised the issue of whether such a list, if required, would constitute a local rule - an addition not provided for in Rule 2-131 that could vary from county to county. The Rules Committee, with the approbation of the Conference of Circuit Judges, proposes to deal with the "local rule" issue by amending the two Rules to provide that, unless otherwise ordered by the court, a limited appearance shall include the performance of any procedural task required by law to achieve the objective of the appearance. A Committee note is proposed for Rule 2-131 - the Circuit Court Rule - to give some examples of what is intended.

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

Respectfully submitted,

Alan M. Wilner
Chair

AMW:cdc
cc: Bessie M. Decker, Clerk

MARYLAND RULES OF PROCEDURE
TITLE 15 - OTHER SPECIAL PROCEEDINGS
CHAPTER 1300 - STRUCTURED SETTLEMENT TRANSFERS

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MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1300 - STRUCTURED SETTLEMENT TRANSFERS

Rule 15-1301. APPLICABILITY; DEFINITIONS

This Chapter applies to transfers of structured settlement payment rights governed by Code, Courts Article, Title 5, Subtitle 11. In this Rule, the definitions in Code, Courts Article, §5-1101 shall apply.

Source: This Rule is new.

REPORTER'S NOTE

Proposed new Title 15, Chapter 1300 is designed to close procedural gaps and loopholes in the Maryland statute governing the transfer of structured settlement payment rights, Code, Courts Article, Title 5, Subtitle 1100. The proposed new Rules provide greater specificity as to the filing and contents of a petition for court approval of a transfer, the method service of the petition, the conduct of a hearing on the petition, and the findings a court is required to make in determining whether to grant the petition. Rule 15-1305 requires that a hearing be held in each case, and Rule 15-1306 permits the court, under certain circumstances, to appoint a guardian ad litem for the payee or order an independent mental health examination of the payee. Rule 15-307 supplements the standards set forth in Code, Courts Article, §5-1102 with federal standards set forth in Internal Revenue Code, §5891 (b) (2).

MARYLAND RULES OF PROCEDURE
TITLE 15 - OTHER SPECIAL PROCEEDINGS
CHAPTER 1300 - STRUCTURED SETTLEMENT TRANSFERS

Rule 15-1302. PETITION FOR APPROVAL

(a) Petitioner

A petition for court approval of a transfer of structured settlement payment rights pursuant to Code, Courts Article, Title 5, Subtitle 1100, shall be filed by the proposed transferee of the structured settlement benefits.

(b) Venue

(1) If the payee resides in this State, the petition shall be filed in the circuit court for the county in which the payee resides.

(2) If the payee does not reside in this State and one or more prior petitions for approval of a proposed transfer have been filed in this State, the petition shall be filed in the circuit court for the county in which the most recent of those petitions was filed. If the payee does not reside in this State and no prior petitions for approval of a proposed transfer have been filed in this State, the petition may be filed in any circuit court.

(c) Contents of Petition

In addition to any other necessary averments, the petition shall:

(1) subject to section (d) of this Rule, include as exhibits:

(A) a copy of the structured settlement agreement;

(B) a copy of any order of a court or other governmental authority approving the structured settlement;

(C) a copy of each annuity contract that provides for payments under the structured settlement agreement;

(D) a copy of a document from the annuity issuer or obligor evidencing the payments payable under the annuity policy;

(E) a copy of the transfer agreement;

(F) a copy of any disclosure statement provided to the payee by the transferee;

(G) a written Consent by the payee substantially in the form specified in Rule 15-1303; and

Cross reference: For shielding requirements applicable to identifying information contained in the payee's Consent, see Rule 16-1007 (f).

(H) an affidavit by the independent professional advisor selected by the payee, in conformance with Rule 15-1304;

(2) if the petitioner is not an individual, state (i) the legal status of the petitioner, (ii) whether it is registered to do business in Maryland; and (iii) the name, address, e-mail address, and telephone number of any resident agent in Maryland;

(3) state the names and addresses and, if known, the telephone numbers and e-mail addresses of all interested parties, as defined in Code, Courts Article, §5-1101 (d);

(4) state whether, to the best of the petitioner's knowledge, information, and belief, the structured settlement arose from (A) a claim of lead poisoning, or (B) any other claim in which an

allegation was made in a court record of a mental or cognitive impairment on the part of the payee;

(5) state whether there have been any prior transfers or proposed transfers of any of the payee's structured settlement payment rights, and for each prior transfer or proposed transfer:

(A) state whether the transferee in each transfer agreement was the petitioner, an affiliate or predecessor of the petitioner, or a person unrelated in any way to the petitioner;

(B) identify the court and the number of the case in which the transfer was submitted for approval;

(C) state the disposition of the requested approval; and

(D) include as an exhibit a copy of (i) the transfer agreement, (ii) any disclosure statement provided to the payee by the transferee, and (iii) a copy of any court order approving or declining to approve such transfer or otherwise finally disposing of an application for approval of such transfer.

(6) state the amounts and due dates of the structured settlement payments to be transferred and the aggregate amount of these payments;

(7) state (A) the total amount to be paid under the transfer agreement; (B) the net amount to be received by the payee, after deducting all fees, costs, and amounts chargeable to the payee; and (C) the discounted present value of the payments that would be transferred as determined in accordance with Code, Courts Article, §5-1101 (b); and

(8) contain a calculation and statement in the following

form: "Based on the net amount that the payee will receive from the transferee and the amounts and timing of the structured settlement payments that the payee is transferring to the transferee, the payee will be paying an implied, annual interest rate of ___ percent per year on this transaction, if it were a loan transaction";

(9) state whether there have been any written, oral, or electronic communications between the petitioner and the independent professional advisor selected by the payee with respect to the transfer and, if so, the dates and nature of those communications; and

(10) state whether, to the best of the petitioner's knowledge after making reasonable inquiry, the proposed transfer would not contravene any applicable law, statute, Rule, or the order of any court or other government authority.

(d) Exhibits

If a settlement agreement, court order, or other document contains sensitive personal financial or medical information or information subject to a non-disclosure obligation, it shall be filed under seal. If any document required to be attached as an exhibit is unavailable, the petitioner shall state that fact and any effort made by the petitioner to locate and obtain the document.

(e) Oath

The petition shall be under oath.

(f) Hearing Date and Notice

Upon the filing of a petition under this Rule, the court shall set a hearing date. Unless otherwise ordered by the court, the hearing date shall be no earlier than 40 days after the date of filing. The court shall send to the petitioner a written notice of the date, time, and location of the hearing.

(g) Service on Interested Parties

(1) The petitioner shall serve on each interested party:

(A) subject to subsection (g) (2) of this Rule, a copy of the petition;

(B) a copy of the notice of the hearing issued by the court pursuant to section (f) of this Rule; and

(C) a separate notice substantially in the following form:

[Caption of case]

IMPORTANT COURT NOTICE

_____ has filed the enclosed
(Name of Petitioner)
Petition requesting court approval of a transfer of some or all of the structured settlement payment rights of _____.
(Name of Payee)

You are named as an "interested party" in the petition. As an "interested party," you are entitled to support, oppose, or otherwise respond to the petition, in person or by counsel, by submitting written comments to the court or by participating in the hearing.

Notice of the date, time, and location of the hearing is enclosed.

(2) Unless otherwise ordered by the court, the petitioner shall not serve a copy of any exhibit that was filed under seal.

(h) Method of Service and Proof of Service

The method of service on interested parties required by section (g) of this Rule shall be as provided in Rule 2-121. Proof of service shall be filed in accordance with the method described in Rule 2-126.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 15-1301.

MARYLAND RULES OF PROCEDURE
TITLE 15 - OTHER SPECIAL PROCEEDINGS
CHAPTER 1300 - STRUCTURED SETTLEMENT TRANSFERS

Rule 15-1303. CONSENT BY PAYEE

A Consent by the payee shall be substantially in the following form.

CONSENT TO PETITION FOR APPROVAL OF TRANSFER OF
STRUCTURED SETTLEMENT PAYMENT RIGHTS

Identifying Information

1. My name is _____.
2. I live at _____.
3. My telephone number is _____.
4. My e-mail address is _____.
 I do not have an e-mail address.
5. I do not have a guardian of the person, guardian of the property, or representative payee.
 I do have a guardian of the person, guardian of the property, or representative payee, whose name, address, and telephone number are _____
_____.

Employment

6. I am employed by _____.

I am not currently employed.

Dependents

7. I am married divorced single.

8. I have _____ children under the age of 18 no children under the age of 18.

9. I am under an order of the _____ to
(Name of court(s))
pay a total of \$ _____ per _____ in spousal support
(week/month)

not under a court order to pay spousal support.

10. I am under an order of the _____
(Name of court(s))
to pay a total of \$ _____ per _____ in child support
(week/month)

not under any court order to pay child support.

Structured Settlement Agreement

11. In _____:
(year)

a case was filed by me by my parent or guardian on my behalf in the _____

(Name of court)

The case number is _____.

a claim was made by me by my parent or guardian on my behalf. No court case was filed and

the claim was settled without litigation.

12. I was represented in that case or claim by _____

(Name of attorney)

13. In or as a result of that case or claim, I received a structured settlement pursuant to a structured settlement agreement.

Independent Professional Advisor

14. I have selected _____ as my independent professional advisor to explain the terms and consequences to me of the transfer and advise me regarding whether it is in my best interest to accept those terms.

15. My independent professional advisor has:

met with me in person on _____ occasion(s);

explained the terms and consequences of the proposed transfer agreement;

answered all my questions;

16. I learned about _____
(Name of independent professional advisor)

from:

TV, radio, or other advertising

Personal solicitation by the independent professional advisor

Other: _____ (explain)

17. I have not previously transferred any of my

structured settlement payments.

18. I have made _____ previous transfers of some of my structured settlement payments and I have
- disclosed to my independent professional advisor the details of each such transfer and
- given to my independent professional advisor copies of the transfer agreements from each such transfer.
- I used the money I received from the prior transfer(s) for the following purposes: _____
- _____

19. If the current transfer is approved, I intend to use the money that I receive for the following purposes: _____

_____.

20. I have been advised by my independent professional advisor:

- that I am presently entitled to receive from my structured settlement \$ _____ each month year; and that those payments will continue
- for the rest of my life or
- until _____, 20____.

- that I am entitled to receive lump sum payments due on the dates and in the amounts specified below:
- _____
- _____

- that the payments I now propose to transfer, in exchange for a net purchase price of \$_____,

have a discounted present value of \$ _____, as determined for federal tax purposes, and

[] that the "effective annual interest rate" of the proposed transfer is _____%. Based on the net amount that I will receive and the amounts and timing of the structured settlement payments that I am transferring, I will, in effect, be paying interest at a rate of _____% per year so that I can get money now rather than later.

21. [] I have agreed to pay my independent professional advisor a fee of \$_____ for the services rendered by him/her.

[] My independent professional advisor has told me that he/she will receive no other compensation from anyone with respect to this transaction, except as follows: _____.

My Understanding

22. I understand that, if the proposed transfer is approved:

[] the aggregate amount of the future payments I would be transferring and would no longer be entitled to is \$_____;

[] the discounted present value of the future payments that I would be transferring and would no longer be entitled to receive is \$_____; and

[] as consideration for the transfer, I would receive from the transferee the sum of \$_____; which

is ___% of the discounted present value.

[] From that sum, [] fees and other charges in the amount of \$_____ will be deducted or [] no fees or other charges will be deducted.

23. I understand that the proposed transfer cannot proceed unless approved by the Court and that a petition for Court approval has been or will be filed by the transferee

24. I have received a copy of the petition and

[] have read it.

[] had it read to me by _____.

Consent

WITH THIS KNOWLEDGE, I HEREBY CONFIRM THAT I UNDERSTAND THE PROPOSED TRANSFER AND ITS CONSEQUENCES TO ME, AND I CONSENT TO THE PETITION.

Signature of Transferor

Date

Signature of Witness

Date

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 15-1301.

MARYLAND RULES OF PROCEDURE
TITLE 15 - OTHER SPECIAL PROCEEDINGS
CHAPTER 1300 - STRUCTURED SETTLEMENT TRANSFERS

Rule 15-1304. AFFIDAVIT OF INDEPENDENT PROFESSIONAL ADVISOR

The affidavit of the independent professional advisor shall include an affirmation that the affiant's compensation is not affected by whether the proposed structured settlement transfer occurs and shall state:

(1) The full name, address, e-mail address, and telephone number of the affiant;

(2) The status of the affiant as an attorney, certified public accountant, actuary, or other licensed professional advisor, including:

(A) each state in which the affiant is licensed in that capacity; and

(B) each state in which the affiant has been the subject of any disciplinary proceedings regarding such a license.

(3) The number of times in the past five years that the affiant has acted as an independent professional advisor with respect to a proposed transfer of structured settlement payment rights to the petitioner or to an affiliate or predecessor of the petitioner.

(4) The nature and extent of personal contact by the affiant with the payee regarding the proposed transfer, including the date and place of each such contact and whether the contact was

in-person, by telephone, or by e-mail.

(5) The fee charged by the affiant for the services rendered to the payee and the name, address, e-mail address (if any), and telephone number of each person, other than the payee, from whom any compensation for services rendered with respect to the proposed transfer has been or will be sought.

(6) The amount of any fees, costs, expenses, or other charges that will be deducted from the amount payable to the payee under the transfer agreement and a particularized explanation of the nature of each such fee, cost, expense, or other charge.

(7) Whether there have been any prior transfers or proposed transfers of any of the payee's structured settlement rights and, if so, as to each such transfer or proposed transfer, whether the affiant acted as an independent professional advisor for the payee.

(8) Whether the structured settlement arose from a claim of lead poisoning or a case in which an allegation was made in a court record of a mental or cognitive impairment on the part of the payee, and, if so:

(A) The nature and extent of the affiant's investigation into the ability of the payee to understand the nature and economic consequences of the proposed transfer, including any contact with the payee's attorney in the claim or case leading to the structured settlement;

(B) The basis for the affiant's conclusion that the payee is capable of understanding, and does understand, the nature and

economic consequences of the transfer, and

(C) A list of any documents upon which the advisor relied in reaching that conclusion.

(9) The discounted present value of the payment rights being transferred and the and the applicable federal rate used in determining that value;

(10) The annual interest rate implied in the transfer, treating the net purchase price as the principal amount of a loan, to be repaid in installments corresponding to the transferred payments; and

(11) Whether the affiant investigated and advised the payee about possible alternatives to the proposed transfer, including any option for acceleration of future annuity payments; and

(12) That the advisor has advised the payee concerning the legal, tax, and financial implications of the transfer of settlement payment rights, to the extent permitted by the advisor's professional license.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 15-1301.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1300 - STRUCTURED SETTLEMENT TRANSFER AGREEMENTS

Rule 15-1305. HEARING

(a) Required

The court may not act on a petition under this Chapter without holding a hearing.

(b) Personal Attendance

Personal attendance at the hearing is required by:

(1) the payee, unless, for good cause, the court excuses the payee's personal attendance;

(2) if a person serves as a (A) guardian of the person of the payee, (B) guardian of the property of the payee, or (C) representative payee of the payee, each such person;

(3) the independent professional advisor; and

(4) the petitioner or a duly authorized officer or employee of the petitioner, other than an attorney for the petitioner bound by an attorney-client privilege.

(c) Examination

The court may examine under oath the payee, any guardian of the payee, the independent professional advisor, and the petitioner or representative of the petitioner, and any other witness.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 15-1301.

MARYLAND RULES OF PROCEDURE
TITLE 15 - OTHER SPECIAL PROCEEDINGS
CHAPTER 1300 - STRUCTURED SETTLEMENT TRANSFERS

Rule 15-1306. GUARDIAN AD LITEM; INDEPENDENT EVALUATION

If the structured settlement arose from a claim of lead poisoning or a case in which an allegation was made in a court record of a mental or cognitive impairment on the part of the payee, or if it otherwise appears that the payee may suffer from a mental or cognitive impairment, the court, at the expense of the petitioner, may:

- (1) appoint a guardian *ad litem* for the payee; or
- (2) require the payee to be examined by a qualified and independent mental health specialist designated by the court.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 15-1301.

MARYLAND RULES OF PROCEDURE
TITLE 15 - OTHER SPECIAL PROCEEDINGS
CHAPTER 1300 - STRUCTURED SETTLEMENT TRANSFERS

Rule 15-1307. FINDINGS

In deciding whether to grant the petition, the court shall consider the standards set forth in Code, Courts Article, §5-1102 and Internal Revenue Code, §5891 (b) (2) (A), and make a finding upon a preponderance of the evidence as to each.

Committee note: Internal Revenue Code, §5891 (b) (2) requires that, to avoid imposition of an excise tax on the transfer of structured settlement payment rights, there must be a final order of a court that finds that the transfer (i) does not contravene any federal or state statute or order of any court or responsible administrative authority, and (ii) is in the best interest of the payee, taking into account the welfare and support of the payee's dependents.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 15-1301.

MARYLAND RULES OF PROCEDURE
TITLE 1 - GENERAL PROVISIONS
CHAPTER 100 - APPLICABILITY AND CITATION

AMEND Rule 1-101 (o) by adding references to coram nobis and structured settlement transfers, as follows:

Rule 1-101. APPLICABILITY

. . .

(o) Title 15

Title 15 applies to special proceedings relating to arbitration, catastrophic health emergencies, contempt, coram nobis, habeas corpus, health claims arbitration, injunctions, judicial releases of individuals confined for mental disorders, mandamus, the Maryland Automobile Insurance Fund, name changes, structured settlement transfers, and wrongful death.

. . .

REPORTER'S NOTE

To conform to the addition of new Chapter 1300 (Structured Settlement Transfers) to Title 15, a proposed amendment to Rule 1-101 (o) adds structured settlement transfers to the list of the types of proceedings to which Title 15 applies. Additionally, a reference to coram nobis is added to section (o) to correct the omission of that topic from the list.

MARYLAND RULES OF PROCEDURE
TITLE 16 - COURTS, JUDGES, AND ATTORNEYS
CHAPTER 1000 - ACCESS TO COURT RECORDS

AMEND Rule 16-1007 by adding a new section (f), as follows:

Rule 16-1007. REQUIRED DENIAL OF INSPECTION - SPECIFIC
INFORMATION IN CASE RECORDS

Except as otherwise provided by law, the Rules in this Chapter, or court order, a custodian shall deny inspection of a case record or a part of a case record that would reveal:

(a) The name, address, telephone number, e-mail address, or place of employment of a person who reports the abuse of a vulnerable adult pursuant to Code, Family Law Article, §14-302.

(b) Except as provided in Code, General Provisions Article, §4-331, the home address or telephone number of an employee of the State or a political subdivision of the State.

(c) The address, telephone number, and e-mail address of a victim or victim's representative in a criminal action, juvenile delinquency action, or an action under Code, Family Law Article, Title 4, Subtitle 5, who has requested that such information be shielded. Such a request may be made at any time, including in a victim notification request form filed with the clerk or a request or motion filed under Rule 16-1009.

(d) Any part of the social security or Federal Identification Number of an individual.

(e) Information about a person who has received a copy of a sex offender's or sexual predator's registration statement.

(f) The address, telephone number, and e-mail address of a payee contained in a Consent by the payee filed pursuant to Rule 15-1302 (c) (1) (G).

Cross reference: See Rule 16-1009 (b) (2) concerning information shielded upon a request authorized by Code, Courts Article, Title 3, Subtitle 15 (peace orders) or Code, Family Law Article, Title 4, Subtitle 5 (domestic violence) and in criminal actions.

Source: This Rule is new.

REPORTER'S NOTE

Proposed new Rule 15-1302 (c) (1) (G) requires that a petition for court approval of a transfer of structured settlement payment rights be accompanied by the Consent of the payee substantially in the form specified by Rule 15-1303. On the Consent form, the payee is required to provide certain identifying information, including the payee's address, telephone number, and e-mail address. The Committee recommends that this identifying information be shielded from public inspection. Rule 16-1007 is proposed to be amended to implement this recommendation.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-342 by adding to the cross reference after section (g), as follows:

Rule 4-342. SENTENCING - PROCEDURE IN NON-CAPITAL CASES

. . .

(g) Reasons

The court ordinarily shall state on the record its reasons for the sentence imposed.

Cross reference: For factors related to drug and alcohol abuse treatment to be considered by the court in determining an appropriate sentence, see Code, Criminal Procedure Article, §6-231. For procedures to commit a defendant who has a drug or alcohol dependency to a treatment program in the Department of Health and Mental Hygiene as a condition of release after conviction, see Code, Health General Article, §8-507. For procedures to be followed by the court to depart from a mandatory minimum sentence for certain drug-related offenses, see Code, Criminal Law Article, §5-609.1.

. . .

REPORTER'S NOTE

Chapter 490, Laws of 2015 (HB 121) added a new Section 5-609.1 to the Criminal Law Article, which allows a court to depart from a mandatory minimum sentence for certain drug-related offenses if the court states on the record that, giving due regard to the nature of the crime, the history and character of the defendant, and the defendant's chances of successful rehabilitation, imposition of the mandatory minimum sentence would result in substantial injustice to the defendant, and the mandatory minimum sentence is not necessary for protection of the public. The Rules Committee recommends drawing attention to the new provision to give judges guidance by adding a cross reference to it in the already-existing cross reference after section (g) of Rule 4-342.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 2-131 by replacing the word "representation" with the word "appearance" in subsection (b) (1); by specifying that, except as otherwise ordered by the court, the scope of a limited appearance includes any procedural task required by law to achieve the objective of the appearance; and by adding a Committee note following subsection (b) (1); as follows:

Rule 2-131. APPEARANCE

. . .

(b) Limited Appearance

(1) Notice of Appearance

An attorney, acting pursuant to an agreement with a client for limited representation that complies with Rule 1.2 (c) of the Maryland Lawyers' Rules of Professional Conduct, may enter an appearance limited to participation in a discrete matter or judicial proceeding. The notice of appearance (A) shall be accompanied by an Acknowledgment of Scope of Limited Representation substantially in the form specified in subsection (b) (2) of this Rule and signed by the client, and (B) shall specify the scope of the limited ~~representation~~ appearance, which (i) shall not exceed the scope set forth in the Acknowledgment but (ii) unless otherwise ordered by the court, shall include the performance of any procedural task required by law to achieve the

objective of the appearance.

Committee note: Although the scope of a limited representation is largely a matter of contract between the attorney and the client, if there are procedural requirements necessary to the achievement of the objective agreed upon, a limited appearance, unless otherwise ordered by the court for good cause, must include satisfaction of those requirements, and the Acknowledgment must include that commitment. As examples, (1) if the appearance is limited to filing and pursuing a motion for summary judgment and achievement of that objective requires the filing of affidavits, the attorney is responsible for assuring that the affidavits are prepared, that they are in proper form, and that they are properly filed; (2) if the appearance is limited to obtaining child support for the client, the attorney is responsible for assuring that any financial statements, child support guideline worksheets, and other documents necessary to obtaining the requested order are prepared, are in proper form, and are properly filed.

. . .

REPORTER'S NOTE

Provisions permitting an attorney to enter a limited appearance were added to Rules 2-131 and 3-131, effective July 1, 2015. Interpretation and implementation of the new provisions have varied from county to county, especially in the circuit courts.

The Rules Committee recommends amendments to clarify the two Rules and strike a balance between (1) the principle that the scope of representation is a matter of contract between attorney and client and (2) the authority of the Court of Appeals to regulate the practice of law. The Conference of Circuit Judges has reviewed and approved the proposed amendments to Rule 2-131.

In subsection (b) (1), the change in terminology from "limited representation" to "limited appearance" clarifies that the Rule pertains to the in-court purpose(s) for which the attorney has been retained, rather than any out-of-court purposes for which the attorney may have been retained.

New subsection (b) (1) (B) (ii) regulates duties of the attorney related to the attorney's in-court appearance by requiring that, unless otherwise ordered by the court, all procedural tasks required by law to achieve the objective of the appearance must be performed by the attorney as part of the limited appearance. Examples of such tasks are included in a

Committee note following Rule 2-131 (b) (1) (B) (ii). Because the examples are geared toward circuit court practice, the Committee note is omitted from the proposed amendments to Rule 3-131.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 3-131 by replacing the word "representation" with the word "appearance" in subsection (b)(1) and by specifying that, except as otherwise ordered by the court, the scope of a limited appearance includes any procedural task required by law to achieve the objective of the appearance, as follows:

Rule 3-131. APPEARANCE

. . .

(b) Limited Appearance

(1) Notice of Appearance

An attorney, acting pursuant to an agreement with a client for limited representation that complies with Rule 1.2 (c) of the Maryland Lawyers' Rules of Professional Conduct, may enter an appearance limited to participation in a discrete matter or judicial proceeding. The notice of appearance (A) shall be accompanied by an Acknowledgment of Scope of Limited Representation substantially in the form specified in subsection (b)(2) of this Rule and signed by the client, and (B) shall specify the scope of the limited ~~representation~~ appearance, which (i) shall not exceed the scope set forth in the Acknowledgment but (ii) unless otherwise ordered by the court, shall include the performance of any procedural task required by law to achieve the

objective of the appearance.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 2-131.