

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 100 - APPLICABILITY AND CITATION

AMEND Rule 1-101 (q) to add collaborative law processes to the applicability of Title 17, as follows:

Rule 1-101. APPLICABILITY

. . .

(q) Title 17.

Title 17 applies to alternative dispute resolution proceedings in civil actions in the District Court, a circuit court, and the Court of Special Appeals, except for actions or orders to enforce a contractual agreement to submit a dispute to alternative dispute resolution; Title 17 also applies to collaborative law processes under the Maryland Uniform Collaborative Law Act.

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MARYLAND RULES OF PROCEDURE
TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION
CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 17-101, as follows:

Rule 17-101. APPLICABILITY

(a) General Applicability of Title

Except as provided in sections (b) and (f) of this Rule, the Rules in this Title apply when a court refers all or part of a civil action or proceeding to ADR.

Committee note: The Rules in this Title other than the Rules in Chapter 500 do not apply to an ADR process in which the parties participate without a court order of referral to that process.

(b) Exceptions

Except as otherwise provided by Rule, the Rules in this Title do not apply to:

(1) an action or order to enforce a contractual agreement to submit a dispute to ADR;

(2) an action to foreclose a lien against owner-occupied residential property subject to foreclosure mediation conducted by the Office of Administrative Hearings under Rule 14-209.1;

(3) an action pending in the Health Care Alternative Dispute Resolution Office under Code, Courts Article, Title 3, Subtitle 2A, unless otherwise provided by law; or

(4) a matter referred to a master, examiner, auditor, or parenting coordinator pursuant to Rule 2-541, 2-542, 2-543, or 9-205.2.

(c) Applicability of Chapter 200

The Rules in Chapter 200 apply to actions and proceedings pending in a circuit court.

(d) Applicability of Chapter 300

The Rules in Chapter 300 apply to actions and proceedings pending in the District Court.

(e) Applicability of Chapter 400

The Rules in Chapter 400 apply to civil appeals pending in the Court of Special Appeals.

(f) Applicability of Chapter 500

The Rules in Chapter 500 apply to collaborative law processes under the Maryland Uniform Collaborative Law Act, regardless of whether an action or proceeding is pending in a court.

Source: This Rule is derived from former Rule 17-101 (2011).

MARYLAND RULES OF PROCEDURE
TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION
CHAPTER 500 - COLLABORATIVE LAW PROCESS

TABLE OF CONTENTS

- Rule 17-501. APPLICABILITY
- Rule 17-502. DEFINITIONS
- Rule 17-503. INFORMED CONSENT; CONTENTS OF AGREEMENT
- (a) Requirements Before a Collaborative Law Process Begins
 - (b) Certification and Acknowledgment
- Rule 17-504. STAY
- (a) Motion
 - (b) Order; Extension of Stay
 - (c) Proceedings During Stay
 - (d) Lift of Stay
- Rule 17-505. TERMINATION OF COLLABORATIVE LAW PROCESS;
WITHDRAWAL OF APPEARANCE
- (a) If All Collaborative Matters Resolved
 - (b) Unresolved Collaborative Matters
 - (c) Motion to Require Compliance
- Rule 17-506. SCOPE OF REPRESENTATION
- (a) Definitions
 - (b) Generally
 - (c) Exception
- Rule 17-507. CONFIDENTIALITY; PRIVILEGE

MARYLAND RULES OF PROCEDURE
TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION
CHAPTER 500 - COLLABORATIVE LAW PROCESS

ADD new Rule 17-501, as follows:

Rule 17-501. APPLICABILITY

This Chapter applies to a collaborative law process under Code, Courts Article, Title 3, Subtitle 19 (Maryland Uniform Collaborative Law Act).

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE
TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION
CHAPTER 500 - COLLABORATIVE LAW PROCESS

ADD new Rule 17-502, as follows:

Rule 17-502. DEFINITIONS

In this Chapter, the definitions in Code, Courts Article §3-1901 apply except as expressly otherwise provided or as necessary implication requires, and the term "collaborative attorney" has the meaning stated in Code, Courts Article, §3-1901 (e) for "collaborative lawyer."

Committee note: Code, Courts Article, §3-1901 contains definitions of "person" and "proceeding" that differ from the definition in Rule 1-202. In this Chapter, the statutory definitions supersede the definitions of "person" and "proceeding" in Rule 1-202.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE
TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION
CHAPTER 500 - COLLABORATIVE LAW PROCESS

ADD new Rule 17-503 as follows:

Rule 17-503. INFORMED CONSENT; CONTENTS OF AGREEMENT

(a) Requirements Before a Collaborative Law Process Begins

Before beginning a collaborative law process, an attorney shall:

(1) discuss with the client factors the attorney reasonably believes relate to whether a collaborative law process is appropriate;

(2) provide the client with information that the attorney reasonably believes is sufficient for the client to make an informed decision about the material benefits and risks of a collaborative law process;

(3) advise the client that participation in a collaborative law process is voluntary and any party has the right unilaterally to terminate a collaborative law process with or without cause;

(4) explain to the client that if the collaborative law proceeding terminates prior to full resolution of all

collaborative law matters, the client will need to obtain another attorney or proceed without an attorney; and

(5) make a reasonable effort to determine whether the client has a history of a coercive or violent relationship with another prospective party, and if such circumstances exist, to determine whether a collaborative law process is appropriate.

(b) Certification and Acknowledgment

In addition to complying with the requirements of Code, Courts Article, §3-1902, a collaborative law participation agreement shall contain a certification by each collaborative attorney that the collaborative attorney has complied with section (a) of this Rule and an acknowledgment by all parties of the attorney disqualification requirements under Rule 17-506 applicable to the party's attorney and to each other attorney who will participate in the collaborative law process.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE
TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION
CHAPTER 500 - COLLABORATIVE LAW PROCESS

ADD new Rule 17-504, as follows:

Rule 17-504. STAY

(a) Motion

The parties to a pending court action may file a joint motion to stay court proceedings during a collaborative law process. The motion shall include a certification that a collaborative law participation agreement that complies with the requirements of Code, Courts Article, §3-1902 and Rule 17-503 has been signed by all parties and their attorneys.

(b) Order; Extension of Stay

Subject to sections (c) and (d) of this Rule, upon the filing of a joint motion by all parties, the court shall stay court proceedings for a reasonable period of time during the collaborative law process, unless the court finds the existence of extraordinary circumstances requiring denial of the motion. On motion of the parties, for good cause shown, the court may enter an order to extend a stay. An order to stay court proceedings and an order to extend a stay shall specify the date

on which the stay terminates, subject to an earlier lifting of the stay in accordance with section (d) of this Rule.

(c) Proceedings during Stay.

During a stay, a party and the party's attorney may appear before a court to:

(1) request or defend against a request for an emergency order to protect the health, safety, welfare, or interest of a party or party eligible for relief; or

(2) request approval of a full or partial settlement of a collaborative law matter.

Cross reference: See Code, Courts Article, §§3-1904 and 3-1905.

(d) Lift of Stay

A court shall lift a stay:

(1) upon request of any party;

(2) on the date stated in an order for stay or for extension of the stay entered pursuant to section (b) of this Rule;

(3) for lack of prosecution under Rule 2-507 or 3-507; or

(4) as necessary to comply with statutory time requirements for proceedings in an orphans' court or before a register of wills relating to the settlement of decedents' estates under Title 6 of the Maryland Rules.

Committee note: Time elapsed during a stay under this Rule is not included in the computation of time under any applicable

case management time standards or guidelines.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE
TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION
CHAPTER 500 - COLLABORATIVE LAW PROCESS

ADD new Rule 17-505, as follows:

Rule 17-505. TERMINATION OF COLLABORATIVE LAW PROCESS;
WITHDRAWAL OF APPEARANCE

(a) If All Collaborative Matters Resolved

At the conclusion of a collaborative law process that resolves all collaborative matters and all other issues in an action pending in a court, the parties shall file:

- (1) a stipulation of dismissal;
- (2) a consent judgment; or
- (3) a request for other appropriate relief necessary or desirable to implement the parties' agreement resulting from the collaborative law process.

(b) Unresolved Collaborative Matters

If a collaborative matter or other issue remains unresolved at the conclusion of a collaborative law process pertaining to an action pending in a court, a collaborative law attorney shall:

(1) notify the court that the collaborative law process has terminated and, if a stay is in effect, request that it be lifted;

(2) if the parties agreed to a resolution of any collaborative law matter that requires court action for implementation of the parties' agreement, request such action from the court; and

(3) file a notice or a motion, as appropriate, to withdraw.
Cross reference: See Rules 2-132 and 3-132.

(c) Motion to Require Compliance

If a collaborative attorney who is required to file a notice or motion to withdraw has not done so within a reasonable time after termination of the collaborative law process, a party may file a motion to require the collaborative law attorney to comply with subsection (b) (3) of this Rule.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE
TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION
CHAPTER 500 - COLLABORATIVE LAW PROCESS

ADD new Rule 17-506, as follows:

Rule 17-506. ~~DISQUALIFICATION~~ SCOPE OF REPRESENTATION

(a) Definitions

In this Rule, "firm" and "screened" have the meanings stated in [Rule 1.0 of the Maryland Lawyers' Rules of Professional Conduct] [the Maryland Attorneys' Rules of Professional Conduct, Rule 19-301.0].

(b) Generally

Except as otherwise provided in section (c) of this Rule:

(1) a collaborative attorney who represents a client in a collaborative law process pursuant to a collaborative law participation agreement may not represent a party in a proceeding related to the collaborative matter, notwithstanding any subsequent agreement between the client and the attorney; and

(2) an attorney associated with a firm with which the collaborative attorney is associated may not appear before a tribunal to represent a party in a proceeding related to the

collaborative matter if the collaborative attorney is ~~disqualified~~ prohibited from doing so under this section.

(c) Exception

If the collaborative attorney is associated with a firm that is (1) a legal services organization providing legal services to indigent individuals or (2) the legal department of a government, another attorney in the firm may represent the disqualified collaborative attorney's client in a proceeding, provided that the collaborative attorney is timely screened from participation in the subsequent representative and full disclosure of this exception is made and acknowledged in the collaborative law participation agreement.

Cross reference: See Rule 17-503 (b).

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE
TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION
CHAPTER 500 - COLLABORATIVE LAW PROCESS

ADD new Rule 17-507, as follows:

Rule 17-507. CONFIDENTIALITY; PRIVILEGE

Code, Courts Article, §§3-1908 through 3-1911 govern confidentiality of collaborative law communications and the privilege against disclosure of information.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

APPENDIX: THE MARYLAND [LAWYERS'] [ATTORNEYS'] RULES OF PROFESSIONAL CONDUCT

AMEND Rule 1.2, as follows:

[Rule 1.2.] [Rule 19-301.2.] SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND [LAWYER] [ATTORNEY]

. . .

COMMENT

. . .

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

~~[8]~~ [9] All agreements concerning a lawyer's representation of a client must accord with the Maryland Lawyers' Rules of Professional Conduct and other law. See, e.g., Rule 1.1, 1.8 and 5.6.

Criminal, Fraudulent and Prohibited Transactions. - ~~[9]~~ [10] Paragraph (d) prohibits a lawyer from knowingly counseling or assisting a client to commit a crime or fraud. This prohibition, however, does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. The fact that a client uses advice in a course of action that is criminal or fraudulent does not, of itself, make a lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

~~[10]~~ [11] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See Rule 1.16 (a). In some cases withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. See Rules 1.6, 4.1.

~~[11]~~ [12] Where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.

~~[12]~~ [13] Paragraph (d) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer must not participate in a transaction to effectuate criminal or fraudulent avoidance of tax liability. Paragraph (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of paragraph (d) recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

~~[13]~~ [14] If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Maryland Lawyers' Rules of Professional Conduct or other law or if the lawyer intends to act contrary to the client's instructions, the lawyer must consult with the client regarding the limitations on the lawyer's conduct. See Rule 1.4 (a) (4).

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