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Maryland. Court of Appeals.
Rules and regulations
respecting appeals, general

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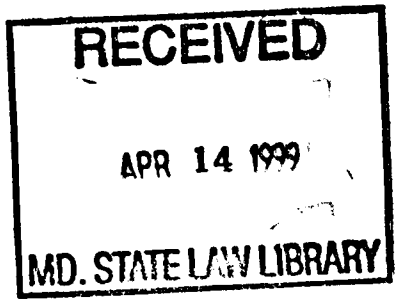

Rules and Regulations Respecting Appeals,

General Equity Rules

AND

General Rules of Practice and Procedure

OF THE

Court of Appeals of Maryland

LATEST RULES AND AMENDMENTS

TO

OCTOBER 1, 1955

INDEX TO RULES RELATING TO APPEALS

INDEX TO GENERAL EQUITY RULES

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GENERAL RULE

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LAW RULES

CRIMINAL RULES

RULES AND REGULATIONS RESPECTING APPEALS[1]

MADE AND PRESCRIBED BY THE

JUDGES OF THE COURT OF APPEALS OF MARYLAND

APPEALS FROM COURTS OF LAW

1.

Formal Writs of Error shall, in all cases, be dispensed with, and the party applying to have the record removed, as upon Writ of Error, in cases where by law Writs of Error are allowable, shall, by brief petition, addressed to the Court in which the case was tried, plainly designate the points or questions of law by the decision of which he feels aggrieved; which application so to remove the record, shall be allowed as of right; and no point or question not thus plainly designated in such application shall be heard or determined by the Court of Appeals.

2.

All appeals, or Writs of Error, allowed from any judgment or determination of a Court of Law, to the Court of Appeals of this State, other than from decisions on questions arising under the Insolvent Law, shall be taken within thirty days from the date of such judgment or determination, and not afterwards, except that all appeals from any decisions or determinations or rulings of a court of law in cases of issues sent from the Orphans'

[1] For amendments and additions to these rules since the important amendments made on (a) January 30, 1945 and, (b) July 24, 1945 and, (c) revised November 1, 1945, see italicized notes following text of rule.

Court to be tried, shall be taken within thirty days from the date the verdict is rendered, unless a motion for a new trial is duly filed, in which case the appeal shall be taken within thirty days from the date upon which such motion for a new trial is denied, overruled or dismissed; and the transcript of the record shall be transmitted to the Court of Appeals within sixty days from the time of the appeal taken, or Writ of Error allowed *(amended February 17, 1950, effective March 1, 1950; order supersedes Art. 5, sec. 7).*

3.

All appeals allowed from decisions of questions arising under the Insolvent Law shall be taken within thirty days from the time of the decision made, and a transcript of the record shall be transmitted to the Clerk of this Court within sixty days from the date of the decision appealed from, but the execution or effect of any judgment, decree, decision or order so appealed from shall not be suspended or stayed, unless a bond shall be given in such penalty and condition, and with such security as the lower court may prescribe and approve.

4.

SEC. 1. In all cases where judgments shall be reversed or affirmed by the Court of Appeals, and it shall appear to the Court that a new trial ought to be had, such new trial shall be awarded and a certified copy of the opinion and judgment of the Court of Appeals shall be transmitted forthwith to the court from which the appeal was taken, to the end that said cause may be again tried as if it had never been tried; and no writ of procedendo, with transcript of record, shall be transmitted, as heretofore practiced.

SEC. 2. When an appeal is dismissed or a judgment or decree is affirmed or reversed without being remanded, the Clerk of this Court shall transmit a copy

of the docket entries, under the seal of the Court, to the court from which the appeal is taken, or writ of error granted, as soon as practicable, not later than thirty days after the case is disposed of by this Court.

APPEALS FROM COURTS OF EQUITY

5.

All appeals allowed from decrees or orders of Courts of Equity shall be taken and entered within thirty days from the date of the decree or order appealed from, and not afterwards; unless it shall be alleged on oath that such decree or order was obtained by fraud or mistake, in which case the appeal shall be entered within thirty days from the time of the discovery of the fraud or mistake, and not afterwards.

6.

All transcripts of records, on appeals from Courts of Equity, shall be made and transmitted to the Court of Appeals within sixty days from the time of the appeal prayed; but on appeals taken as provided by Sec. 35 of Art. 5, of the Code of Public General Laws, the transcript of the record shall be made and transmitted to the Court of Appeals forthwith after the appeal prayed.

6A.

No appeal shall be allowed from an order overruling a demurrer to a bill of complaint, but the ruling shall be reviewable upon appeal from the final decree *(added May 18, 1950, effective June 1, 1950, pursuant Art. 5, sec. 30).*

APPEALS FROM THE ORPHANS' COURTS

7.

All appeals allowed from orders or decrees of the Orphans' Courts to the Court of Appeals, shall be taken

and entered within thirty days after such order or decree appealed from; and the Register of Wills shall make out and transmit to the Court of Appeals, under his hand and the seal of his office, a transcript of the record of proceedings in such case, within thirty days after the appeal prayed *(superseded in part April 23, 1953, effective June 1, 1953, see Rule 10).*

APPEALS FROM THE COMMISSIONER OF THE LAND OFFICE

8.

All appeals allowed from the judgments or orders of the Commissioner of the Land Office, shall be taken within thirty days from the date of the judgment or order appealed from, the party appealing filing at the time of such appeal the ground or reasons therefor; and thereupon it shall be the duty of the said Commissioner to make out, under his hand and the seal of his office, and transmit to the Court of Appeals, a transcript of the record of proceedings in such case, within sixty days from the time of the appeal taken, but in such transcript no paper or proceedings, not necessary to the determination of the appeal, shall be incorporated.

RELATING TO APPEALS GENERALLY

9.

In no case shall the Court of Appeals decide any point or question which does not plainly appear by the record to have been tried and decided by the court below.

10.

SEC. 1. *Record on Appeal.* Appeals from the courts of this State, in all cases, civil and criminal, shall be heard on the original papers, which papers shall constitute the record on appeal. The term "original papers" includes exhibits.

SEC. 2. *Record — Contents — Transmission.* Promptly after the appeal is taken and within the time prescribed by Rules 2, 3, 6, 7, 8, 15, 24 and 50 of this Court, the clerk of the lower court shall transmit to the Clerk of this Court, unless otherwise ordered by the judge of the court from which the appeal is taken, all the original papers in the file dealing with the action or the proceeding appealed from. The clerk of the lower court shall append his certificate identifying such papers with reasonable definiteness. The appellant shall promptly serve upon the appellee, and also file with the clerk of the lower court for transmission with the original papers, a transcript of all the testimony if no copy of said transcript of testimony is already on file. Instead of serving and filing a transcript of all the testimony the parties, by written stipulation filed with the clerk, may file, or upon order of the court shall file, with the clerk of the lower court for transmission with the original papers such transcript of the testimony as such parties or the court may deem necessary for the appeal. With the original papers transmitted to this Court the clerk of the court below shall transmit a copy, certified by him, of the relevant docket entries in the lower court and a statement of the cost of making up and certifying the record.

SEC. 3. *Form In Which Original Papers Shall Be Transmitted.* The original papers shall be fastened together in one or more binders in the form of a transcript of record; the pages shall be numbered consecutively, except that the pages of any transcript of testimony should not be renumbered; and a cover page and a complete index of all the papers shall be attached at the beginning.

SEC. 4. *Approval of Record by Lower Court Not Required.* It is not necessary for the record on appeal to be approved by the lower court or judge thereof except as provided in Rule 22, but, if any difference arises as to whether the record truly discloses what occurred in the lower court, the difference shall be submitted to and

settled by the lower court and the record made to conform to the truth.

SEC. 5. *Transcript Instead of Original Papers When Lower Court So Orders.* If the judge of the court from which the appeal is taken is of opinion that it is necessary that the original papers in the case be kept in the lower court pending the appeal for use in the trial of other litigation or for other valid reason, he may sign an order to that effect and thereupon it shall be the duty of the clerk of the lower court from which the appeal is taken to transmit to the Clerk of this Court a certified copy of the original papers which would otherwise have been transmitted to this Court in accordance with the provisions of section 2 of this Rule.

SEC. 6. *Docketing Cases on Receipt of Record.* Upon the receipt of the record on appeal, the Clerk of the Court of Appeals shall enter the case upon his docket as of the term during which it is received, but all records received on or after April first in any year shall be entered by the Clerk as of the term commencing on the first Monday in October in such year.

SEC. 7. *Return of Original Papers to Lower Court.* After the appeal has been disposed of, the original papers comprising the record on appeal shall be returned to the custody of the lower court at the time the mandate of this Court is issued and transmitted to the lower court.

SEC. 8. *Effect on Existing Rules.* Rule 10 supersedes the following rules or parts thereof, of the Rules and Regulations Respecting Appeals: (a) The last clause of Rule 7 (Article 5, Section 66 of the 1951 Code); (b) Rule 13 (Article 5, Section 48 of the 1951 Code); (c) Rules 18, 19, 20 and 21; (d) All of Rule 23 (Article 5, Section 53 of the 1951 Code) except the last paragraph.

SEC. 9. *Application to Other Rules.* All other provisions of the Rules and Regulations Respecting Appeals providing for the preparation and transmission of the record on

appeal shall be applicable, except those superseded by section 8, but reference to the transcript or transcripts in any such rules shall be deemed to apply to original papers. *(Rule 10 revised July 23, 1946; amended April 23, 1953, effective June 1, 1953.)*

11.

No appeal shall be dismissed because the transcript shall not have been transmitted within the time prescribed, if it shall appear to the Court of Appeals that such delay was occasioned by the neglect, omission or inability of the clerk or appellee; but such neglect, omission or inability shall not be presumed, but must be shown by the appellant. For good cause shown the Court of Appeals, or if the Court is not in session the Chief Judge thereof, may extend the time for transmitting the transcript by order made before the expiration of the time.

12.

In all cases of cross-appeals, or of more than one appeal being entered in the same case from any judgment, decree or order, there shall be but one transcript of the record transmitted to the Court of Appeals, and that shall be used upon the hearing of all such appeals. In cases arising under this rule, the Appellate Court shall have power to award costs, including the cost of transmitting the record, to either of the parties in its discretion, or the costs may be apportioned as the said Court may deem just.

(Rule 13 superseded April 23, 1953, effective June 1, 1953, see Rule 10.)

14.

In all cases where a writ of diminution shall be issued, the clerk of the inferior court, to which the writ may be sent, shall, in his return thereto, transmit to the Court

of Appeals only so much of the proceedings remaining of record in the inferior court as may be necessary to correct the alleged errors or defect in the transcript first sent to the Court of Appeals.

15.

The appeal allowed by Sec. 108 of Art. 23[1] of the Code of Public General Laws, shall be taken within thirty days from the date of the judgment or determination of the court appealed from; and the transcript of the record shall be transmitted to this Court within thirty days from the day of the appeal entered.

16.

The appellant or appellants, if the defendant or defendants in the cause, upon praying such appeal, in order to stay the execution or enforcement of the judgment appealed from, shall tender and file in the cause an appeal bond, in such form and with such sureties, as may be approved by the Court, the penalty in such bond not to exceed, in any case, the sum of ten thousand dollars.

17.

Formal exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court and his grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice him. Unless requested by the court, it is not necessary to state the grounds for objections to evidence except in circumstances in which

[1] This reference is to the 1939 Code. Compare Sec. 80 of Art. 23 in the 1951 Code.

it would heretofore have been necessary to call attention to special grounds for objection. Objections, other than objections to evidence, heretofore required to be made by exceptions in writing shall be made in writing.

(Rules 18, 19, 20 and 21 superseded April 23, 1953, effective June 1, 1953. See Rule 10.)

22.

When the questions presented by an appeal can be determined by the Court of Appeals without an examination of all the pleadings and evidence, the parties, with the approval of the lower court, may prepare and sign a statement of the case showing how the questions arose and were decided and setting forth so much only of the facts alleged and proved, or sought to be proved, as is essential to a decision of such questions by the Appellate Court. Such statement, when filed in the office of the clerk of the lower court shall be treated as superseding, for the purposes of the appeal, all parts of the record other than the judgment or decree from which the appeal is taken, and, together with such judgment or decree, shall be copied and certified to the Appellate Court as the record on appeal.

23.

Within the time prescribed for transmitting the record, the appellant or appellants shall deposit with the clerk of the lower court a fee of twenty dollars ($20.00)[1] to be forwarded to the Clerk of this Court for filing the record and all duties incident thereto. The Clerk of this Court shall not be required to file the record on appeal or docket the case until the required fee is received by him. *(Superseded in part April 23, 1953, effective June 1, 1953, see Rule 10; amended March 22, 1955, effective April 1, 1955; amended April 20, 1955, effective June 1, 1955.)*

[1] Chapter 208 of the Acts of 1955.

APPEALS IN CRIMINAL CASES

24.

SEC. 1. In criminal cases an appeal or writ of error allowed by law shall be taken within ten days from the date of the judgment or sentence, except where a sentence of death is imposed, in which case the appeal shall be taken within thirty days from the date of the judgment or sentence.

SEC. 2. The transcript of the record shall be transmitted to the Court of Appeals within sixty (60) days from the time of the appeal taken or writ of error allowed. The transcript shall be made up as in civil cases, but the accused shall not be required to file more than two copies of the reporter's transcript, one of which shall be for inclusion in the record.

SEC. 3. Criminal cases may, by order of this Court, or on motion of the Attorney-General or counsel for the accused, be advanced so as to be disposed of without unnecessary delay *(amended June 10, 1949; amended April 23, 1953, effective June 1, 1953).*

APPEALS FROM PRO FORMA ORDERS

25.

This Court will not entertain or consider any appeal taken from a pro forma order, decree or judgment, but will treat every such appeal as prematurely taken, and will dismiss the same whenever it appears on the face of the record, or otherwise, that the appeal is from such pro forma order, decree or judgment.

RULES SPECIALLY APPLICABLE TO PRACTICE IN THE COURT OF APPEALS OF MARYLAND, ADOPTED BY SAID COURT

TERMS

26.

The Court shall hold one term annually, beginning on the first Monday in October in each year and continuing until the beginning of the next term.

DOCKETS

27.

SEC. 1. In preparing the Court Docket for each term, the Clerk shall place the cases on said Docket in the order in which the transcripts of record are received by him, including all cases not disposed of at the preceding term.

SEC. 2. Before the beginning of each term and on the first Monday in every second month after the beginning of the term, the Clerk shall have printed in The Daily Record of Baltimore, a list of all cases filed by that time which have not been heard, including those continued or postponed and those ordered to be reargued, which list so printed in The Daily Record shall be sent to attorneys as the preliminary dockets have heretofore been sent; and all cases afterwards received shall be added to the list in the above order and included with it in the Court Docket.

SEC. 3. The Clerk shall not place upon the Court Docket any case until the record therein shall have been actually filed in his office.

28.

Cases will be called for argument in their numerical order, as they appear on the Court Docket. No more

than five cases will be called for argument on any one day, nor will any case be taken up out of its course in prejudice to the call of any subsequent case, unless entitled to a preference by law, or for sufficient cause appearing to the Court; and all cases reached in the regular call of the docket must be finally disposed of unless continued or postponed for cause shown, or by consent of the parties.

29.

Cross-appeals, and writs of error by both parties, will be called and heard at the same time, and will be regarded as one case in making assignments under Rule 28.

CONTINUANCE AND POSTPONEMENT

30.

No cases will be postponed or continued for more than four months without the mutual consent of the parties in open Court, or their written order to that effect, and if any case be so postponed or continued, it must be argued or submitted within six months after the transmission of the record, unless by leave of Court it be further postponed or continued. Unless such leave be obtained, the case shall not be placed on subsequent Court dockets without an order of the Court, and upon the expiration of six months after it is so dropped the appeal shall be dismissed, unless otherwise ordered by the Court, before the expiration of six months.

The Clerk will charge a fee of five dollars ($5.00) for the continuance of any case.

COUNSEL, APPEARANCES, ETC.

31.

SEC. 1. Upon the filing of the transcript of a record brought up by writ of error or appeal, the appearance of the counsel who appeared below shall be entered,

excepting of such as have directed their appearance to be stricken out in the court below, as shown by the record, or have ordered the Clerk of this Court not to enter their appearance, and other appearances may be entered on the written order of counsel filed with the Clerk of this Court.

SEC. 2. Where no counsel appears, and no brief has been filed for the appellant or plaintiff in error, when the case is called for argument the appellee, or defendant in error, may have the appellant, or plaintiff in error, called and the appeal or writ of error dismissed, or may have an affirmance of the judgment, order or decree.

SEC. 3. Where the appellee, or the defendant in error, fails to appear when the case is called for argument, the Court may proceed to hear an argument on the part of the appellant, or the plaintiff in error, and to give judgment according to the right of the case.

32.

When a case shall be called in its regular order and the counsel for the appellant, or plaintiff in error, whose appearance is entered, shall be absent, the opposing counsel, if present and ready to be heard, may argue the case orally, or submit it on brief, or he may have an affirmance of the judgment if no brief has been filed for the appellant, or the plaintiff in error.

If the counsel for the appellee, or defendant in error, whose appearance is entered, be absent, the opposing counsel, if present and ready to be heard, may argue the case orally, or submit it on brief, or he may claim a continuance if no brief has been filed by the appellee, or defendant in error.

33.

Counsel on either side, not otherwise in default, prevented from arguing any case argued or submitted on the other side when called in regular order, may with leave of the Court argue the case on notes to be filed within six days thereafter; and the counsel for the adverse party may then conclude by replying in the same manner within the next six days.

34.

The argument of cases regularly called will not be postponed on account of the absence of counsel on either side, unless such absence be occasioned by sickness or other sufficient cause.

35.

In all cases where judgments are affirmed by reason of default, the judgment so affirmed will not be stricken out unless the Court be satisfied that the absence of counsel and his failure to file a brief as required by the Rules of this Court, were unavoidable by reason of sickness or other sufficient cause.

RECORDS

36.

Unless ordered by this Court, the record on appeal shall not be printed, except to the extent provided in Rule 37A. *(Amended March 22, 1955, effective April 1, 1955.)*

37.

No paper shall be read or referred to as a part of the record in the argument of any case without consent of the counsel and leave of the Court, unless such paper be copied into and made part of the transcript filed with the Clerk, or unless for special reasons the Court so authorizes.

PRINTED RECORD EXTRACT

37A.

SEC. 1. Appellant shall cause to be printed, either as a separate volume or as an appendix to his brief, extracts from the record which shall include the parts thereof provided for by section 2 of this Rule arranged in the order in which the same appear in the record. The extracts from the record so printed shall be copied verbatim from the record, except as otherwise provided in section 7 of this Rule. Asterisks or other appropriate means shall be used to indicate omissions in the testimony or in exhibits, reference to the pages of the record shall be made and the names of the witnesses shall be indexed.

SEC. 2. (a) The printed record extract shall contain such parts of the record as may reasonably be necessary for the determination of the questions presented by the appeal, and shall include:

(1) The judgment, decree or order appealed from, together with any opinion or charge of the Court.

(2) So much of the evidence, pleadings or other parts of the record as is material to any question the determination of which depends upon the sufficiency of the evidence, pleadings or other matter contained in the record to sustain any action, ruling, order, judgment or decree of the lower court.

(3) Such other parts of the record as may be designated by the parties pursuant to section 3 of this Rule.

(b) The printed record extract should not include those parts of the record which:

(1) Support facts set forth in an agreed statement of facts pursuant to section 7 of this Rule.

(2) Are summarized in a stipulation pursuant to section 7 of this Rule.

SEC. 3. (a) The parties shall whenever possible, by stipulation, agree on the parts of the record to be included in the printed record extract.

(b) In the event the parties are unable so to agree, then within ten days after the filing of the record in this Court the appellant shall deliver to the appellee a written statement of the parts of the record he proposes to print in the record extract. Within ten days after the delivery of such statement by the appellant to the appellee, the appellee shall deliver to the appellant a written statement of any additional parts of the record the appellee desires to be included in the printed record extract. Within ten days after delivery of the appellee's statement to the appellant the appellant may deliver to the appellee a statement of any additional parts of the record he proposes to include in the printed record extract in view of the parts of the record designated in the statement of the appellee.

SEC. 4. Notwithstanding the provisions of section 2(a)(3) of this Rule, the appellant shall not be required to include in the printed record extract any parts of the record designated by the appellee pursuant to section 3 of this Rule which the appellant does not deem material to the questions presented if within two days after demand therefor by the appellant the appellee has failed to secure the payment of the estimated cost of including in the printed record extract the parts of the record so designated by the appellee. If pursuant to this section the appellant omits from the printed record extract any parts of the record designated by the appellee, he shall include in the printed record extract a statement of the reason for such omissions.

SEC. 5. If by reason of inadvertence, or failure of the appellee to secure the payment of the estimated cost of printing pursuant to section 4 of this Rule, or any other cause, the printed record extract does not contain some parts of the record which the appellee deems material

and which he desires the Court to read, the appellee may print such parts of the record as an appendix to his brief together with a statement of the reasons therefor. Parties and counsel are cautioned that the cost of printing such appendix may be withheld under section 10 of this Rule.

SEC. 6. The appellant may include in an appendix to his reply brief such additional parts of the record as he deems material and which he desires the Court to read in view of the matter contained in the appellee's brief or appendix. Any such appendix to the appellant's reply brief shall be prefaced by a statement of the reasons therefor. Parties and counsel are cautioned that the cost of printing such appendix may be withheld under section 10 of this Rule.

SEC. 7. The parties may agree upon a statement of undisputed facts, which agreed statement may be included in the printed record extract or, if the parties so agree, may be included as all or a part of the statement of facts in the appellant's brief. If facts are disputed or if the parties cannot agree upon a statement of undisputed facts, the parties may, by stipulation, summarize the testimony of any witnesses or the contents of any exhibits and include such stipulation in the printed record extract in lieu of the testimony and exhibits summarized therein. This section shall be so construed as to authorize but not require the parties, by agreement, to state all or parts of the testimony in narrative form.

SEC. 8. If the record extract is printed as a separate volume, forty copies thereof shall be filed with the Clerk at the same time the appellant's brief is filed. It shall be printed with clear readable type and on good paper, the pages to be 6⅛″ x 9¼″.

SEC. 9. For violation of section 2 of this Rule the Court may require that additional portions of the record be printed or otherwise furnished, or it may dismiss the

appeal or make any other appropriate order with respect to the case. Inadvertent omissions or misstatements in the printed record extract or in any appendix may be corrected by direction of this Court on application or of its own motion.

SEC. 10. The cost of printing the record extract and any necessary appendices to briefs shall be taxed as costs in the case. When, in the opinion of the Court, unnecessary matter has been printed, it may withhold or divide the costs as justice may require. There shall be no taxation of costs for extracts or appendices of amici curiae, unless otherwise ordered by the Court.

SEC. 11. Where in this Rule it is provided that a party may act, or any action is to be performed, such act may be performed by his counsel. Where any notice is to be given by or to a party, such notice shall be given by or to the counsel for such party. *(Added March 22, 1955, effective April 1, 1955.)*

BRIEFS

38.

In all cases to be argued, the counsel shall furnish the Clerk with printed briefs, which shall be printed with clear readable type and on good paper, the pages to be 6⅛" x 9¼" when delivered.

39.

SEC. 1. The brief of the appellant shall contain:

(a) An index and table of citations with cases alphabetically arranged. Where Maryland cases are cited, the citation shall include a reference to Maryland reports if published.

(b) A brief statement of the case together with a succinct statement of the questions presented, separately numbered.

(c) A clear, concise statement of the facts material to the determination of the questions presented. If there is any dispute with regard to any of the facts asserted by the appellant or a possibility of such a dispute the appellant shall so state. Reference shall be made to the pages of the record supporting his assertions, or if such portions of the evidence are included in the printed record extract, such reference shall be to the pages of the extract of the record.

(d) Argument in support of the position of the appellant.

SEC. 2. The brief of the appellee shall contain:

(a) An index and table of citations with cases alphabetically arranged. Where Maryland cases are cited, the citation shall include a reference to the Maryland reports if published.

(b) A statement of the case and of the questions presented, if the appellee disagrees with the statement of the appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with references to pages of the record supporting the assertions, or if such portions of the evidence are included in the printed record extract, or in an appendix, such reference shall be to the pages of the printed record extract or appendix.

(d) Argument in support of the position of the appellee.

SEC. 3. The appellant may file a reply brief and may include therewith an appendix as provided in section 6 of Rule 37A.

SEC. 4. Briefs shall not exceed fifty pages in length except by special permission of the Court; but this limitation shall not apply to appendices under sections 5 and 6 of Rule 37A or to the index and table of cases.

SEC. 5. Briefs shall be printed and the cost of printing them shall be taxed as costs in the case. There shall be no taxation of costs for briefs of amici curiae, or replies thereto, unless ordered by the Court. *(Amended March 22, 1955, effective April 1, 1955.)*

FILING OF BRIEFS

40.

SEC. 1. Within forty days after the filing of the record in this Court, the appellant shall file with the Clerk forty copies of a printed brief conforming to the requirements of Rule 39; within twenty days after the filing of the appellant's brief the appellee shall file forty copies of his printed brief conforming to said requirements. A reply brief may be filed by the appellant provided forty printed copies thereof are filed at least three days before the day the case is called for argument. One copy of all briefs and printed record extracts filed shall forthwith be furnished by the Clerk to each of the counsel of record on the opposite side. Unless advanced by order of this Court, no case will be called for argument until ten days after the appellant's brief and the appellee's brief have each been filed or according to this Rule should have been filed.

SEC. 2. When, according to this Rule, an appellant is in default, the case may be dismissed on motion or by the Court of its own motion; and when an appellee is in default, he will not be heard except on consent of his adversary, or by request of the Court.

SEC. 3. If a case is advanced by order of this Court, such order shall fix the times within which the briefs of the respective parties shall be filed or exchanged.

SEC. 4. The time for filing a brief may be extended, by stipulation of counsel filed in the Clerk's office if such extension will not delay the argument of the case, but in any event the appellant's brief and the appellee's brief shall be filed at least ten days and the reply brief, if any, at least three days before the case is called for argument. *(Amended March 22, 1955, effective April 1, 1955.)*

41.

Subject to special permission of the Court, oral argument will be restricted to one hour a side, to be divided as counsel desire, provided always that there shall be an adequate opening by appellant. No more than two counsel will be permitted to argue any case on the same side, unless by special permission of the Court. When no oral argument is made for one side, only one counsel will be heard for the adverse party. The Court may, when it appears necessary in the interest of justice, require oral argument from either side or from both sides notwithstanding the previous submission of the case by counsel *(amended February 17, 1950).*

42.

In case of cross-appeals, the order of hearing counsel will be determined by the Court. In the absence of prior determination, counsel for the appellant first in order on the docket will open and close *(amended February 17, 1950).*

REARGUMENT

43.

SEC. 1. No motion for reargument will be entertained unless a petition, distinctly stating the grounds for the same, be filed within thirty days after the opinion of the Court has been delivered; and no reargument will then be allowed unless a majority of the judges

who concurred in the opinion consent to it. An opportunity will be given the opposite party to file a reply to such motion, if any member of the Court who concurred in the opinion requests it before the motion is acted on. A motion and any reply shall be accompanied by copies to the number of the judges who heard the original argument in the case.

SEC. 2. A motion for a reargument shall not prevent the issuance of a fieri facias, or other writ, or otherwise stay the proceedings, unless so ordered by the Court.

SEC. 3. No writ shall issue, or other proceedings be taken (excepting remanding the cause) within thirty days from the time the opinion is delivered without leave of the Court.

For filing a motion or petition for reargument and all duties incident thereto, the Clerk shall charge a fee of five dollars ($5.00).

NO ORIGINAL PAPER TO BE DELIVERED BY CLERK

44.

The opinions of the Court filed with the Clerk, will be delivered by him to the Reporter when required for printing in the State Reports, but they shall be returned as speedily as possible to the Clerk for preservation. The Clerk will deliver no other original paper out of his office without leave of the Court.

DIMINUTION

45.

No writ of diminution will be hereafter granted, unless a motion therefor shall be made in writing, stating the facts on which the same is founded, and if such facts are not admitted by the counsel for the other party, they shall be verified by the affidavit of the counsel for

the party making such application. Said application shall also state that the correction is in the opinion of counsel for the party applying for said writ necessary to the trial of the merits of the case, that it cannot be had without said writ of diminution and that the suggestion is not made for the purpose of delaying the argument of the case.

46.

No case will be postponed or continued on account of any diminution alleged to exist in the transcript of a record, unless the Court be satisfied that there was no unreasonable delay in making application for the writ, and that the additional record cannot be supplied in time for argument, and in such case the Court may, in its discretion, direct the argument to proceed and permit the additional record to be afterwards filed, when it shall have the same effect as if transmitted with the original record, but if the Court determines that the writ was unnecessary, the cost will be imposed on the party at whose instance it was granted.

MOTION TO DISMISS APPEAL

47.

All motions to dismiss appeals shall be filed at least five days before the cases are called for argument, unless the motion be based on some cause arising after that time, provided that this Rule shall not be construed to prevent the Court from dismissing an appeal on its own motion when that is deemed proper.

48.

The Clerk of this Court shall procure and keep a separate record to be known as "The Rules of Court" in which the aforegoing rules and all amendments, alterations and modifications of them, hereafter adopted, shall be recorded.

HABEAS CORPUS APPEALS

49.

Applications for leave to prosecute an appeal under Section 6 of Article 42, of the Code as enacted by Chapter 625 of the Acts of 1947, may be filed within ten days after the passage of the order in question, either with the Clerk of this Court or with the clerk of the lower court to be by the latter transmitted to this Court. A brief in support of the application may be filed as provided in Rule 40 in respect of other cases. The applicant may, at his option, omit filing a brief and in lieu thereof rely on the statement in his application of the reasons why the order should be reversed *(added October 7, 1947).*

50.

Whenever an application for leave to file an appeal from an order in a habeas corpus case is filed with the clerk of the court wherein the order was passed, it shall be the duty of such clerk to transmit forthwith all the original papers in the case to this Court. Where such application is filed with the Clerk of this Court, the latter shall immediately notify the clerk of the lower court to transmit such papers, and it shall be the duty of the clerk of the lower court, upon receipt of such notice to transmit such papers forthwith to this Court *(added November 19, 1948).*

GENERAL EQUITY RULES[1]

EQUITY COURTS ALWAYS OPEN

DUTIES OF THE CLERK

1.

The Circuit Courts for the several counties of this State, and the Circuit Court of the City of Baltimore, and the Circuit Court Number Two of the City of Baltimore, as Courts of Equity, shall be deemed and taken to be always open for the transaction of business therein, and the several regular terms of said Courts for the return of process and other practical purposes shall be of two months' duration, and shall commence on the first Monday of January, of March, of May, of July, of September, and of November of each year *(amended November 12, 1947, effective January 1, 1948).*

2.

The several clerks of said Courts shall receive and file all papers pertaining to said Courts, respectively, and shall keep substantial dockets, and make all proper entries therein, of papers filed, and of the proceedings of the said Courts, as they occur; so that the docket entries shall always show, as near as possible, the real condition and progress of the proceedings.

PROCEEDINGS—HOW COMMENCED

3.

All original proceedings in said Courts shall be commenced by bill, or by special case stated, as hereinafter provided for; and the term "bill" shall embrace petition

[1] For amendments and additions to these rules since the general revision on November 1, 1945, see italicized notes following text of rule.

or information, where, by statute, or the established practice, petition or information be proper.

4.

No order or process shall be made or issued upon any bill, petition, or other paper, until such bill, petition, or other paper, together with all the exhibits referred to as parts thereof, be actually filed with the Clerk of the Court. Nor shall any injunction or restraining order, or order appointing a receiver issue until the originals or duly certified copies of all deeds, or other instruments of record, and verified copies of all documents, papers or writings not of record, necessary to show the character and extent of the complainant's interest in the suit shall have been filed, if said instruments of writing be in possession of the plaintiff or accessible to him; if not, that fact shall be stated in the bill or petition.

FRAME OF BILLS GENERALLY

5.

Every bill or petition shall be expressed in terms as brief and concise as it reasonably can be, and shall contain no unnecessary recitals of documents of any kind, in *haec verba,* or any impertinent matter, or matter scandalous and not relevant to the suit; and the same rule shall apply to all answers filed by defendants; and if this rule be violated, the unnecessary or improper matter or averment may, by order of Court, upon motion or upon its own initiative, be stricken out at the cost of the party introducing the same. The signature of a solicitor of record to any bill or other pleading shall be considered as a certificate of such solicitor that he has read the paper so signed by him, and that upon the information and instructions laid before him regarding the case there is good ground for the same and it is not filed for delay, or other improper purpose.

6.

All bills and petitions in the introductory part thereof shall contain the names of all the parties, plaintiffs, and defendants, by and against whom the suit is brought. The form shall be substantially as follows:

In the Circuit Court for County

A. B., Plaintiff
against
C. D., Defendant.

To the Honorable, the Judges of said Court:

Your orator, complaining, says:

1. That, &c., making each paragraph contain a succinct but a complete statement of fact.

7.

All bills and petitions shall be divided into paragraphs, as indicated in the preceding rule, and be consecutively numbered, and shall contain simply a statement of the facts upon which the plaintiff asks relief, and, at his option, the facts which are intended to avoid an anticipated defense, and such averments as may be necessary, under the rules of Equity pleading, to entitle the plaintiff to relief, and the prayer for relief shall specify particularly the relief desired, and shall also contain the prayer for general relief. And if an injunction, or other writ other than the writ of subpoena, or any special order, be required, pending the suit, it shall be specially prayed for, the several subjects of the prayer being formed into distinct paragraphs, and consecutively numbered. The ordinary or formal combination clause, the allegation of the want of remedy at law, and similar formal averments, shall be omitted; nor shall it be necessary to pray that the defendants be required to answer unless it be desired that they shall answer under oath,

or there be special interrogatories appended to the bill, to be answered by the defendants, or some of them, in which cases there shall be a prayer that the defendant or defendants be required to answer the bill, or the special interrogatories appended thereto under oath.

8.

The bill or petition, or a memorandum or directions to the Clerk accompanying the same, shall contain the names of all the defendants named in the introductory part of the bill or petition, and the place of their residence, as far as known. If any of said defendants are known to be infants under age, or under any other disability, such facts shall be stated in the bill or petition, so that the Court may take order thereon, as justice may require. And if an injunction, or other writ, or any special order be asked in the prayer for relief, that shall be sufficient, without repeating the same in a prayer for process.

9.

All infants and other persons under any disability to sue, may sue by their guardian or committee, if any, or by their *prochein ami;* subject, however, to such orders as the Court or Judge thereof may direct for the protection of infants and other persons; but before the name of any person shall be used in any suit to be instituted as next friend of any infant or other party, or as relator in any information, such person shall sign a written authority to the solicitor for that purpose, and such authority shall be filed with the bill or other proceeding.

PROCESS—SERVICE AND RETURN

10.

The process and mode of publication for giving notice to appear, and for procuring the appearance of parties, shall be the same as that now provided by law, except

as the same may be changed or modified by these rules or by statute.

10A.

In all divorce and annulment of marriage proceedings where the defendant has not been served with subpoena, and has not appeared voluntarily, the complainant shall be required to make reasonable efforts to ascertain the actual whereabouts of the defendant, and, by whatever means that may be available—that is to say, by registered mail, by wire, by telephone, or by personal interview—to bring to the knowledge of the defendant the fact that a suit is pending against him or her, the object and purpose of which is to obtain a divorce, or to have the marriage annulled, as the case may be. In such cases, therefore, where only notice by publication has been given to the defendant, a final decree for the complainant shall not pass until a sworn statement by the complainant or his or her solicitor shall be filed which shall give a circumstantial account of the efforts of the complainant to locate the absent defendant and to warn him or her of the pendency of the suit, or until sworn evidence before the examiner shall disclose a bona fide effort by the complainant to discharge his or her obligation to notify the defendant. And the failure of the complainant to make such reasonable effort in good faith, and to offer proof thereof, shall be ground for the postponement or denial of the entry of decree pro confesso or of final relief *(added March 13, 1946, effective April 1, 1946).*

11.

(1) The return day for all writs and process in equity shall be the first Monday in each month.

(2) When any proceeding is commenced in equity, the Clerk shall forthwith issue a subpoena thereon as of course against any defendant residing in the State, without the necessity of any prayer therefor, and deliver it

to the sheriff for service. The subpoena shall be made returnable at the first return day after its issuance, or if the plaintiff so directs, at the second return day after its issuance. Upon request of the plaintiff, separate subpoena shall issue against one or more of several defendants or additional subpoena issue against any defendants.

(3) The subpoena shall be signed by the Clerk, be under the seal of the Court, contain the name of the Court and the names and addresses of the parties, state the name and address of the plaintiff's attorney, if any, and the time within which the defendant must make his defense, and shall notify the defendant that in case of his failure to do so decree *pro confesso* may be rendered against him for the relief demanded by the plaintiff.

(4) In commencing any proceeding in equity, the plaintiff shall furnish the Clerk of the Court with one copy of his bill or other original pleading for each defendant other than those proceeded against by publication and the Clerk shall deliver the copy or copies to the sheriff with the subpoena. In addition to the service required by Rule 13, the sheriff shall leave with each defendant a copy of the bill or other original pleading. Where there are five or more defendants the Court may make other orders with respect to furnishing copies.

(5) The defendant in any proceeding in equity shall file with the Clerk of the Court his answer or other defense within fifteen days after the return day to which he is summoned. *(This rule amended November 12, 1947, effective January 1, 1948.)*

12.

Whenever any subpoena shall be returned not served as to any defendant, the plaintiff at any time before final decree shall be entitled to other subpoenas against such defendant.

13.

The service of process to require appearance shall be by reading, and delivering a copy of, the summons or other writ or order to the party to be served therewith; and in case the party be an infant or *non compos mentis,* in addition to the service on such party, a copy of the process or writ, or order, shall be left with the parent or guardian of the infant, if there be one within the jurisdiction of the Court, and with the committee or other person having the care of the person or estate of the party alleged to be *non compos mentis;* and such service shall be specially certified in the return of the officer making the service.

APPOINTMENT OF GUARDIAN OR NEXT FRIEND

14.

Upon return of process as served, or upon proof of due publication of the order of publication as against non-resident defendants, the Court shall, in case of an infant or non-sane defendant, on application of the plaintiff, or any other party concerned, by order either require the legal guardian or committee of the infant, or non-sane defendant (if there be such guardian or committee within the jurisdiction of the Court) to appear, answer and defend for such party, or appoint a guardian *ad litem* to answer and defend the suit for such party. And in appointing guardians *ad litem,* no person shall be appointed who may have any interest whatever involved in the suit adverse to that of the party so under disability. The Court or Judge thereof may, in any case, wherever it may be deemed necessary, appoint a solicitor, to appear and defend for any infant or non-sane defendant. All commissions for taking answers or to plead shall be and they are hereby abolished.

DEFENDANT TO ANSWER—DEFAULT—DECREE PRO CONFESSO

15.

It shall be the duty of the defendant, unless the time be enlarged, by an order of Court upon petition showing good cause therefor, to file his answer or other defense to the bill in the Clerk's office within the time required by Rule 11. In default thereof the plaintiff, may at his election, take an order as of course that the bill be taken *pro confesso,* and thereupon the case shall proceed *ex parte* as against such defendant.

16.

When the bill is taken *pro confesso,* a final decree may be entered at any time after the expiration of thirty days from the entry of the order of *pro confesso,* if no answer or other defense be interposed, and the allegations of the bill or petition present a proper case for relief. But the Court or the Judge thereof may, in all such cases, if it be deemed proper, order that the allegations of the bill or petition, or any of them, be supported by affidavit or deposition to be taken as may be directed. And the Court shall have power at any time within thirty days from the date on which the decree *pro confesso* shall have been entered, excluding the day thereof, and before final decree, upon motion or upon its own initiative, to set aside the decree, and permit the filing of an answer or the interposing of other defense. But such motion shall only be granted upon the payment of the costs of the plaintiff up to that time, unless the Court by its order shall relieve the defendant of the payment of such costs, or such part thereof as the Court shall deem reasonable, and upon such terms as the Court shall prescribe for the purpose of speeding the cause. In all cases in which an order of publication shall have been passed and in which the notice by publication therein prescribed shall have been given, it shall be the duty of such defendant to file

his answer or other defense within fifteen days after the time limited by such order for his appearance, and in default thereof the bill or petition may be taken *pro confesso,* and the case shall proceed against him as above provided in these rules with respect to other defendants in default.

AMENDMENTS

17.

The Court shall at any time before final decree, in furtherance of justice and upon such terms as to payment of costs as may be just, permit any bill, answer, process, proceeding, pleading, or record to be amended, or material supplemental matter to be set forth in an amended or supplemental pleading. The Court at every stage of the proceeding shall disregard any error or defect in the proceedings or pleadings which does not affect the substantial rights of the parties. A further and better statement of the claim or defense or further and better particulars of any matter stated in any pleading may be permitted upon order of Court.

DEFENSE—HOW PRESENTED

18.

Pleas are hereby abolished. Every defense in point of law arising upon the face of the bill or petition, whether from misjoinder, nonjoinder or insufficiency of fact to constitute a valid cause of action in equity, which might heretofore have been made by demurrer or plea, shall be made by demurrer or by answer; and every point of law, raised by demurrer, may be made to the whole or a material part of the cause or causes of action stated in the bill. No demurrer shall be allowed to be filed to any bill, or part thereof, unless it be supported by affidavit that it is not intended for delay. The form of demurrers shall be substantially as follows: "The de-

fendant demurs to the whole," or "to so much of the bill, or petition, or discovery, or relief," stating the particular part or parts demurred to, and the special grounds of demurrer. Every defense heretofore presentable by plea in bar or abatement shall be made in the answer, and may be separately heard and disposed of before the trial of the principal case in the discretion of the Court. If any defendant demur to the bill, or any part thereof, the demurrer may be set down for hearing by either party upon five days' notice, and if overruled the defendant shall answer within five days thereafter, unless a longer time be allowed by the Court. In any case, however, if the Court or Judge hearing the demurrer shall declare in writing on overruling the demurrer that he is satisfied that the same was intended for vexation, or delay, or is frivolous, or unfounded, the bill shall be taken *pro confesso* as against the party filing the demurrer, and the matter thereof proceeded in and decreed accordingly, as provided in these rules with respect to defendants in default.

19.

If upon hearing, any demurrer shall be allowed, the Court may, in its discretion, upon motion of the plaintiff, allow him to amend the bill upon such terms as it shall deem to be reasonable.

ANSWER

20.

The defendant in his answer shall in short and simple terms set out his defense to each claim asserted by the bill, omitting any mere statement of evidence, but specifically admitting or denying or explaining the facts upon which the plaintiff relies, unless the defendant is without knowledge, in which case he shall so state, and such statement shall operate as a denial. He shall make answer to all the material allegations. The answer shall

be divided into paragraphs, numbered consecutively, each paragraph containing, as near as may be, a separate and distinct averment. The defendant shall be entitled in all cases by answer to insist upon all matters of defense in law or Equity, to the merits of the bill of which he may be entitled to avail himself by demurrer. Averments, other than the value or amount of damage, if not denied, shall be deemed to be confessed, except as against an infant, lunatic, or other person *non compos* and not under guardianship, but the answer may be amended by leave of the Court or the Judge thereof, upon reasonable notice so as to put an averment in issue, when justice requires it. The answer may state as many defenses, in the alternative, regardless of consistency, as the defendant deems essential to his defense.

REPLICATION—WHEN REQUIRED—WHEN CAUSE AT ISSUE

21.

No replication shall be required without special order of the Court or Judge, but the cause shall be deemed at issue upon the filing of the answer, and any new or affirmative matter therein shall be deemed to be denied by the plaintiff.

22.

In every case where an amendment to the bill shall be made after answer filed, a written notice of such amendment, or a copy thereof, shall be served upon the defendant or his solicitor of record, and the defendant shall, if so ordered by the Court, put in a new or supplemental answer within such time as the Court may allow; and upon a default, the like proceedings may be had as upon an omission to put in an answer.

23.

Exceptions for insufficiency of an answer are abolished. All questions heretofore available by exceptions to an answer shall be presented by demurrer to the

answer. The demurrer shall be supported by an affidavit that it is not intended for delay. It may be filed to the whole, or to any part of the answer, and be in the form prescribed for demurrer to a bill as provided in Rule 18. Either party may set the demurrer for hearing upon five days' notice. If the answer or any part thereof be found insufficient, but amendable, the Court may allow an amendment upon such terms as it may prescribe.

24.

Upon application of either party the Court or Judge may upon reasonable notice and such terms as are just, permit him to file a supplemental pleading, alleging material facts occurring after his former pleading, or of which he was ignorant when it was made, including the judgment or decree of a competent Court rendered after the commencement of a suit determining the matters in controversy or a part thereof.

SPECIAL INTERROGATORIES

(Rules 25 and 26 superseded by the General Rules of Practice and Procedure—Discovery Rule 8.)

27.

When the time prescribed by these rules for doing an act expires on a Sunday, or a legal holiday, such time shall extend to and include the next succeeding day that is not Sunday or legal holiday.

PARTIES

(Rules 28, 30 and the second sentence of Rule 31 superseded by the General Rules of Practice and Procedure—Joinder Rule 7, November 12, 1947, effective January 1, 1948.)

29.

In all suits concerning real or personal estate, where the entire estate sought to be affected by the decree or

order prayed for, is vested in trustees, under any deed, will, or other instrument, with an immediate and unqualified power of sale, coupled with the right to give receipts, such trustees shall represent the persons beneficially interested under the trust, in the same manner and to the same extent as the executors or administrators in suits concerning personal estate represent the persons beneficially interested in such personal estate; and in such cases it shall not be necessary to make the persons beneficially interested under the trust, parties to the suit. But any party interested may, upon his own application, be allowed to come in and be made a party to such proceeding, and the Court or Judge thereof may, upon consideration of the matter on the hearing, if it should be deemed proper, order such persons, or any of them, to be made parties.

31.

It shall not be necessary to dismiss the entire bill or petition in any suit, because simply of the misjoinder of parties or the subject-matter of the suit; but the Court may dismiss the bill or petition, as to such of the parties, plaintiff or defendant, as may be improperly joined, and may dismiss the bill or petition, as to such of the subject-matter as may be improperly joined or included therein, so as to relieve the bill or petition of the objection of being multifarious *(see General Rules of Practice and Procedure — Joinder Rule 7).*

32.

If a defendant shall, at the hearing of the cause, object that the suit is defective for want of parties, not having by demurrer or answer taken the objection, and therein specified by name or description the parties to whom the objection applies, the Court or Judge thereof, if it be deemed proper, shall be at liberty to make a decree, saving the rights of the absent parties, or may require

the plaintiff to bring in such absent party, upon such terms as the Court may prescribe as to cost.

33.

Where the defendant shall, by his demurrer or answer, suggest that the bill is defective for want of parties, the plaintiff shall be at liberty within fifteen days after answer filed, to set down the cause for argument upon that objection only; and the Clerk, at the instance of the plaintiff, shall make entry thereof in his docket in the following form: "Set down upon the defendant's objection for want of parties." And if the plaintiff shall not set down the cause, but shall proceed therewith to a hearing notwithstanding the objection for want of parties when taken by the answer, he shall not, at the hearing of the cause, if the defendant's objection for want of parties be then allowed, be entitled as of course, to an order for liberty to amend his bill by adding parties; but the Court or Judge thereof may, if it be thought fit, dismiss the bill. If, however, the cause be set down upon the objection taken, and, upon hearing, the objection be allowed, the plaintiff shall have liberty to amend, upon paying the cost of amendment.

EVIDENCE—HOW TAKEN

(Deposition Rule 13 of the General Rules of Practice and Procedure supersedes General Equity Rules 34 through 41, and 44, insofar as such rules apply to depositions de bene esse. But Deposition Rules 1 through 12 do not affect hearings before an examiner in equity pursuant to General Equity Rules 34 through 42 in substitution for taking testimony in open court, or hearings before auditors or masters.)

34.

Except where testimony is to be taken beyond the limits of the State, or beyond the limits of the county or

city for which the Court exercises jurisdiction, no commission to take testimony shall issue. The Circuit Court for each of the counties, and the Supreme Bench of Baltimore City shall each appoint experienced and competent examiners, in number sufficient for the proper conduct of the Court's business, who shall, upon qualification, be officers of the Court; and for any special reason, a special examiner may be appointed. Each examiner shall have authority to issue subpoenas for witnesses, administer oaths, notify parties of the time of his sittings, and to preserve order and decorum during his sessions. Any person refusing to obey a subpoena issued by such examiner, or who shall be guilty of violating the order and proper decorum of the session of an examiner while in the discharge of his duties, shall be reported by the examiner, together with the facts of the case, to the Court; and, upon hearing, the Court, if satisfied of the facts as reported, and that the party was guilty of the matter charged, shall punish the party so offending.

Each examiner shall be entitled to receive ten dollars per case. However, the Court in which the case is pending may increase the total amount to be paid such examiner in any case when, in the discretion of said Court, the examiner should receive additional remuneration. It shall be the duty of each examiner, in making his return to the Court, to certify in each case at whose instance and for how long he has been employed *(amended June 10, 1949 and June 28, 1951).*

35.

Whenever any cause is at issue, involving matter of fact, or whenever any evidence is required to be taken, to be used in any proceeding in Equity, it shall be competent to the party desiring to take evidence to notify one of the regular examiners, or any special examiner that may be appointed, of such desire, and to furnish him with the titling of the cause and the names of witnesses

to be summoned to testify; and the examiners so applied to shall fix some reasonable day or days for the examination of witnesses, and the taking of evidence, of which he shall give due notice to the parties concerned, or those entitled to receive such notice, as if he were proceeding under a commission to take testimony, under former practice. He shall issue subpoenas for witnesses for either party, except where he is required to proceed *ex parte;* and he shall cause to come before him all witnesses subpoenaed, at the time appointed, to be examined; and their attendance and duty to testify may be enforced by attachment, to be issued and returned as provided in Section 299 of Article 16 of the Code of Public General Laws *(amended December 10, 1947).*

36.

All examinations of witnesses before the examiners shall be conducted in the presence of the parties, or their solicitors, if they think proper to be present; and the mode of examination shall be either by written interrogatories filed with the examiner, to be by him propounded to the witnesses, and the answers thereto written down by him, as has heretofore been the practice of commissioners in taking testimony; or the witnesses may be examined by the parties, or their solicitors, *viva voce,* and in such case, the answers of the witnesses shall be reduced to writing by the examiner, and the questions also, if necessary to the understanding of the answers of the witness, or if it be required by either party. By agreement of the parties or by order of Court, in its discretion, the testimony may be taken in shorthand and afterward typewritten under the direction of the examiner. The testimony produced by both parties shall be taken before the same examiner, unless, for special reasons, it be otherwise directed by the Court or Judge thereof; and all *viva voce* examination shall, as near as may be, be conducted in the manner and order of the examination of witnesses in the trials of facts in the

courts of common law. The defendant shall not be compelled to proceed with the taking of his testimony, until the plaintiff has finished or declared he has none to take; nor shall the plaintiff be compelled to proceed with the rebutting testimony, until the defendant has completed the testimony on his part.

37.

In all examinations, whether conducted by written interrogatories or *viva voce,* at the conclusion of the examination by the parties, the examiner shall put to the witness an interrogatory in the following form: "Do you know, or can you state, any other matter or thing which may be of benefit or advantage to the parties to this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question between the parties? If yea, state the same fully and at large in your answer." And the examiner shall write down the answer to said interrogatory, as part of the deposition of the witness.

38.

In all cases the testimony shall be written down in the language of, and as delivered by, the witness, and be signed by him in the presence of the parties or their solicitors, or such of them as may attend, unless such signing be waived; but if the witness, for any cause, may not be able to sign the same, or shall for any reason refuse so to do, and the signature is not waived, the examiner shall sign the deposition, stating the reason why the witness has not signed the same; and the examiner may, upon all examinations, state any special matters to the Court that he may deem proper, to enable the Court the better to understand the evidence. Any question or questions that may be objected to by either of the parties shall be noted by the examiner upon the deposition; but he shall not have power to decide on the competency, materiality or relevancy of any question proposed or

evidence elicited, nor as to the competency or privilege of any witness offered. All questions of privilege raised, or demurrer interposed, by any witness, to questions propounded, shall be at once reported by the examiner to the Court or Judge thereof for decision, and the Court or Judge shall hear and determine the same without delay; and in such cases the Court may award cost as justice may appear to require; and in all cases the Court shall have full power to deal with and to direct the payment of the cost of incompetent, immaterial or irrelevant evidence, or any part thereof, as justice may require, apart from the general cost of the case.

38A

In all examinations of witnesses before an examiner, in divorce and annulment of marriage proceedings, conducted by written interrogatories or *viva voce,* it shall be the duty of the examiner to remain in the same room with the witnesses throughout the taking of the testimony. The examiner shall examine or cross-examine any and all witnesses, notwithstanding the witnesses may have been examined by counsel, whenever in his judgment such examination or cross-examination is proper or necessary for a full presentation of the true facts in the case. It shall also be the duty of the examiner to report to the Court any irregularities or unusual circumstances in the taking of the testimony or in the conduct of the proceedings *(added May 25, 1948).*

39.

So soon as the examination of witnesses before the examiner shall be concluded, the original depositions, with all vouchers, documents, or other papers filed with the examiner as evidence, shall be put together in proper order and form, so as to be convenient for reference and use, and be authenticated by certificate and signature of the examiner, and by him enclosed, with the titling of the cause endorsed thereon, and filed with the

Clerk of the Court, without delay; he shall also return properly authenticated all other exhibits filed with him as evidence.

40.

Testimony shall be taken without any unnecessary delay, and it shall be the duty of the examiner to avoid such delay as far as possible. After the lapse of a reasonable time for the taking of testimony, either party may obtain a rule on the adverse party to close the taking of his testimony within such reasonable time after notice of such rule as may be deemed proper; and any testimony taken after the lapse of that time shall not be read in evidence at the hearing of the cause. But it shall be in the discretion of the Court to enlarge the time, on application of the party against whom such rule may have been obtained, upon sufficient cause shown.

41.

Evidence taken and returned shall be opened by the Clerk, and shall remain in Court ten days, subject to exception, before the cause shall be taken up for hearing unless by agreement of the parties, such time be waived, but after the expiration of that time the cause shall stand for hearing, unless some sufficient cause be shown to the contrary. This rule not to apply to interlocutory applications.

42.

Upon any petition, motion, or other interlocutory application, for the hearing and determination of which evidence may be required, the Court or Judge thereof may order testimony to be taken before an examiner, or before a justice of the peace, upon such notice, and in such manner as the Court or Judge may think proper to direct, to be used at the hearing of such matter.

43.

Instead of the mode of taking testimony provided in the preceding rules the witnesses, or any of them, may be examined orally in open Court as provided by Sections 320 and 321 of Article 16 of the Code of Public General Laws.

SPECIAL CASE STATED

45.

Any person interested, or claiming to be interested, in any question cognizable by a Court of Equity, as to the construction of any statute, deed, or other instrument of writing, or as to any other matter falling within the original jurisdiction of such Court, or made subject to the jurisdiction thereof by statute, may state and raise such question before the Court in the form of a special case stated, instead of formal pleading. Every such special case stated shall be entitled as a cause between some one or more of the parties interested, or claiming to be interested, as plaintiff or plaintiffs, and the others of them as defendants; and such special case shall be regularly docketed as a cause pending in said Court, and shall be in all respects, and for all purposes, treated and regarded as a pending cause, as if regularly instituted by formal pleading.

46.

Such special case shall concisely state such facts and documents as may be necessary to enable the Court to decide the question intended to be raised, and it shall be divided into paragraphs, consecutively numbered; and upon the hearing of such case, the Court and the parties shall be at liberty to refer to the whole contents of such documents, and the Court shall be at liberty to draw from the facts and documents stated and referred to in such special case, any inference which the Court

might have drawn therefrom, if such facts and documents were proved under formal pleading. And upon such special case stated, the Court may decree as upon bill and answer, and such decree shall be enforced as other decrees are but such decree shall in no case conclude or affect the rights of any other persons than those who are parties to such special case, and those claiming under or through such parties and the right of appeal shall exist as in cases of decrees upon bill and answer.

47.

Married women may join in any special case stated with their husbands, and infants having guardians, and lunatics having committees, may join in such special case by their guardians or committees, in respect to any interest or right represented by such guardians or committees; and all the parties to such special case shall sign the same in person or by solicitor, and the appearance of the parties shall be entered to said case, as to a cause regularly instituted by formal proceedings; and all the parties to such special case shall be subject to the jurisdiction of the Court in the same manner as if the plaintiff in the special case had filed a bill against the parties named as defendants thereto, and such defendants had appeared to such bill, and by answer admitted the facts thereof.

REHEARING

48.

All final decrees, and orders in the nature of final decrees, shall be considered as enrolled from and after the expiration of thirty days from the date of the same, the day of the date inclusive.

49.

Clerical mistakes in decrees or decretal orders, or errors arising from any accidental slip or omission, may, at any time before the enrollment of such decrees or

orders, be corrected by order of the Court or Judge thereof upon petition, without the form or expense of a rehearing.

50.

Every petition for rehearing shall contain the special matter or cause on which such hearing is applied for, and shall be signed by solicitor or the petitioner himself, and the facts therein stated, if not apparent on the record, shall be verified by the oath of the party, or by some other person. No rehearing shall be granted after the enrollment of the decree or decretal order; and if the decree or order has been executed, parties who have acted on the faith of such decree or order shall not be prejudiced by such decree or order being reversed or varied.

PROCEEDINGS BEFORE THE AUDITOR

51.

Whenever a reference of any matter is made to the auditor for examination and report thereof, or for the statement of an account, the party at whose instance the reference is made, shall, within a reasonable time and without any unnecessary delay, cause the matter of reference to be laid before the auditor for his action; and if such party shall omit to do so any other party interested in the subject-matter of the reference shall be at liberty to cause the matter to be laid before the auditor, who shall proceed therein without delay.

52.

Upon every such reference it shall be the duty of the auditor, as soon as he reasonably can, after the matter of the reference is brought before him, if evidence is to be produced, or vouchers filed, to assign a time and place for proceeding in the matter, and to give notice thereof to the parties or their solicitors and if either party shall fail to attend at the time and place appointed,

the auditor shall be at liberty to proceed in the absence of such party, or, in his discretion, to adjourn the examination and proceeding to a future day, giving notice thereof to the parties or their solicitors, but noting all the cost that may attend such adjournment, which shall be subject to the order and direction of the Court. It shall be the duty of the auditor to proceed with all reasonable diligence in every such reference, and with the least practicable delay; and either party shall be at liberty to apply to the Court or a Judge thereof for an order to the auditor to speed the proceedings before him, and to make his report, and to certify to the Court the reasons for any delay that may have occurred.

53.

The auditor shall regulate all the proceedings in every hearing or examination before him; and in addition to his right and power to examine the parties to the cause, and all witnesses produced by them, or which they may cause to be summoned, on oath or affirmation touching the matters of the reference, he shall also have power and authority to require the production of all books, papers, writings, vouchers and other documents applicable thereto, where, by the principles and practice of Courts of Equity, the production of such writings may be compelled; and if any party so liable to produce such books, papers, writings, vouchers or other documents, shall fail or refuse so to do, when required by the auditor, such party shall, without delay, be reported to the Court by the auditor, with the facts of the case, that the proper proceeding may be taken thereon, by way of attachment or otherwise, as justice and the settled practice may require.

54.

All parties accounting before the auditors shall produce their respective accounts in the form of debtor and creditor, and any of the other parties interested,

who shall not be satisfied with the account so produced, shall be at liberty to examine the accounting party, *viva voce*, or upon written interrogatories, before the auditor, who shall write down and report the testimony, if required. And in all cases where the auditor may be required to take testimony to be reported to the Court, he shall observe and pursue the same mode and form of examination, and writing down the testimony, as that prescribed to be observed by examiners.

INJUNCTIONS

54A.

(1) *Interlocutory; Notice.* No interlocutory injunction shall be issued without notice to the adverse party.

(2) *Temporary Mandatory or Restraining Order; Notice; Hearing; Duration.* No temporary mandatory or restraining order shall be granted without notice to the adverse party or without his consent unless it appears from specific facts shown by affidavit or by the verified complaint that immediate, substantial and irreparable injury, loss or damage will result to the applicant before notice can be served and a hearing had thereon. Such an order granted without notice shall be served forthwith on the adverse party by the quickest possible means; and shall give the adverse party leave to move for the dissolution or modification of the order on not more than 2 days' notice; and shall expire by its terms within such time after entry, not to exceed 10 days, in case of resident defendants, or not to exceed 35 days in case of non-resident defendants as the Court may fix, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. In case a temporary mandatory or restraining order is granted without notice, a motion for an interlocutory injunction shall be set down for hearing at the earliest possible time and takes precedence of all

matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary mandatory or restraining order shall proceed with the application for an interlocutory injunction and, if he does not do so, the Court shall dissolve the temporary mandatory or restraining order, unless good cause is shown to the contrary.

(3) *Security; Bond; Requirements.* No temporary mandatory or restraining order or interlocutory injunction shall issue except upon the giving by the applicant of a bond with surety or other security in such amount as may be fixed by the Court, except that, in cases of extraordinary hardship the requirement of surety or other security on the bond may be dispensed with in the discretion of the Court.

Where the applicant is the State of Maryland or an officer or agency thereof or any of its political subdivisions, the requirement of bond, either with or without surety or other security, may be dispensed with in the discretion of the Court.

(4) *Form and Scope of Injunction or Restraining Order.* Every order granting an injunction and every temporary mandatory or restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon such parties to the action, such of their officers, agents, servants, employees, and attorneys, and upon such persons in active concert or participation with them as receive actual notice of the order by personal service or otherwise.

(5) *Denial of Application.* Where an application for a temporary mandatory or restraining order or an interlocutory injunction is denied and no order is signed, an endorsement of the denial shall be made on the complaint or affidavit, and the complaint or affidavit shall be filed.

(6) *Effect on Other Proceedings.* This rule does not modify or supersede Sections 63 through 75 of Article 100 of the 1951 Annotated Code of Maryland or any other statute relating to temporary restraining orders and interlocutory injunctions in actions affecting employer and employee; nor does this rule apply to proceedings for divorce, alimony, support of wife or child, custody of children and annulment of marriage. *(This rule added April 23, 1953, effective June 1, 1953.)*

55.

The foregoing rules shall be taken to regulate all cases and procedure to which they are applicable; and all other cases and procedure not therein provided for shall remain to be regulated and governed by the existing statute law of the State, and by the general rules and principles of equity pleading and practice, as heretofore existing, so far as the same may not be changed or modified, by the adoption of the foregoing rules. But nothing in the foregoing rules shall, in any manner, be taken or construed to prevent or restrict the several Circuit Courts, as Courts of Equity, from making and enforcing, from time to time, such general rules and orders as they may deem proper for the good government and regulation of their respective Courts and the proceedings thereof, and the officers and suitors therein; provided, that such rules and orders be not inconsistent with the foregoing rules, or the statutes of this State *(June 10, 1949; revised July 1, 1951).*

GENERAL RULES OF PRACTICE AND PROCEDURE

CITATION OF RULES

To facilitate future additions without renumbering, the Rules have been grouped and numbered by topics, such as Depositions, Discovery, and Trials. They may be conveniently cited by reference to the topic and the Rule number,—as, for example, "Deposition Rule 3," "Discovery Rule 5."

GENERAL RULES OF PRACTICE AND PROCEDURE[1]

PART ONE.

GENERAL RULE.

Except as modified or superseded by the following rules, all existing general and local statutes and rules of the Court of Appeals regulating practice and procedure in civil cases at law and in equity in courts of record in this State are hereby adopted as general rules of the Court of Appeals, pursuant to its powers under Article IV, Section 18A of the Constitution *(amended June 10, 1949).*

PART TWO.

RULES APPLICABLE TO LAW AND EQUITY.

I. DEPOSITIONS

Rule 1. Depositions Pending Proceedings.

At any time after jurisdiction has been obtained over any defendant or over property which is the subject of the proceeding, any party to any proceeding may, without leave of court, cause the testimony of any person, whether a party or not, to be taken by deposition upon oral examination or written interrogatories for the purpose of discovery or for use as evidence in the proceeding or for both purposes. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes. The taking and use of such depositions shall be governed by Rules 3 to 12, inclusive.

[1] Adopted January 30, 1941, effective September 1, 1941. For amendments and additions to these rules since their effective date see italicized notes following text of rule.

Rule 2. Depositions Before Proceedings.

(a) *Right to Take.* A person who desires to perpetuate his own testimony or that of any other person regarding any matter in proving which he may apprehend himself to be interested may have his own or such person's deposition taken in this State in accordance with these rules. The notice required by Rule 5 shall be given to each person against whom such deposition is expected to be used. In applying the rules to such depositions the persons notified shall be deemed "parties" and references to the "court in which the proceeding is pending" shall be deemed to refer to any court of law or equity in this State within whose jurisdiction the depositions are to be taken.

(b) *Minors and Incompetents.* Where any person against whom such deposition is to be used is a minor or incompetent, notice may be given to his attorney or guardian or committee, or if he has none, any court of law or equity within whose jurisdiction the deposition is to be taken may appoint a guardian or attorney for that purpose upon motion by the person taking the deposition.

(c) *Non-residents.* When any person against whom such deposition is intended to be used is absent from the State and has no agent, attorney or guardian within the State, any court of law or equity within whose jurisdiction the deposition is to be taken may, upon motion by the person taking the deposition, authorize notice to such person by publication, registered mail or otherwise and may appoint an attorney to represent him at the examination.

Rule 3. Persons Before Whom Taken.

(a) *Within This State.* Within this State, depositions shall be taken before any standing commissioner or equity examiner or before any notary public of this State.

(b) *In Other States.* Within any other state of the United States or within a territory, district, or possession of the United States, depositions shall be taken before any officer authorized to administer oaths by the laws of the United States or of the place where the examination is held.

(c) *In Foreign Countries.* In a foreign state or country depositions shall be taken (1) on notice before a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or (2) before such person or officer as may be appointed by commission or under letters rogatory. A commission or letters rogatory shall be issued only when necessary or convenient, on application and notice, and on such terms and with such directions as are just and appropriate. Officers may be designated in notices or commissions either by name or descriptive title and letters rogatory may be addressed "To the Appropriate Judicial Authority in (here name the country)."

(d) *Disqualification for Interest.* No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the proceeding, unless the parties agree thereto.

Rule 4. Stipulations as to Taking of Depositions.

If the parties so stipulate in writing, depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions.

Rule 5. Notice to Take Depositions.

(a) *Upon Oral Examination.* A party desiring to take the deposition of any person upon oral examination shall give at least five days' notice in writing to every other party to the proceedings. The notice shall state the time

and place for taking the deposition, the name or descriptive title of the officer before whom the deposition is to be taken, and the name and address of each person to be examined, or, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. On motion of any party upon whom the notice is served, the court may for cause shown enlarge or shorten the time.

(b) *Upon Written Interrogatories.* A party desiring to take the deposition of any person upon written interrogatories shall serve them upon every other party with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before whom the deposition is to be taken. Within 10 days thereafter a party so served may serve cross interrogatories upon the party proposing to take the deposition. Within 5 days thereafter the latter may serve redirect interrogatories upon a party who has served cross interrogatories. Within 3 days after being served with redirect interrogatories, a party may serve recross interrogatories upon the party proposing to take the deposition.

Rule 6. Orders to Protect Parties and Deponents.

(a) *Power.* After notice is served for taking a deposition by oral examination, or upon written interrogatories, upon motion seasonably made by any party or by the person to be examined and upon notice and for good cause shown, the court in which the proceeding is pending may make an order (1) that the deposition shall not be taken, or (2) that it may be taken only at some designated place other than that stated in the notice, or before some other designated officer, or (3) that it may be taken only on written interrogatories, or only by oral examination, as the case may be, or (4) that certain matters shall not be inquired into, or (5) that the scope of the examination shall be limited to certain matters, or (6) that the examination shall be held with no one present except

the parties to the proceeding and their officers or counsel, or (7) that after being sealed the deposition shall be opened only by order of the court, or (8) that secret processes, developments or research need not be disclosed, or (9) that the parties shall simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court; or the court may make any other order which justice requires to protect the party or witness from hardship or oppression.

(b) *Limitations.* The policy of these rules is to require full disclosure as specified in Discovery Rule 3 and the powers conferred by section (a) of this rule shall be used only to prevent genuine oppression or abuse.

(c) *Expenses.* If a motion under this rule is denied and if the court finds that the motion was made without substantial justification, the court shall require the moving party or witness or the attorney advising the motion or both of them to pay to the party taking the deposition the amount of the reasonable expenses incurred in opposing the motion, including reasonable attorney's fees. If, upon a motion under this rule, the court orders that the deposition shall not be taken and if it finds that the purpose in taking the deposition was to harass or oppress the witness or party, the court shall require the party attempting to take the deposition or the attorney advising such taking or both of them to pay to the moving party or witness the amount of the reasonable expenses incurred in obtaining the order, including reasonable attorney's fees.

Rule 7. Subpoenas; Place of Examination.

(a) *Subpoena.* Upon proof of service of a notice to take a deposition as provided in Rule 5, the clerk of any court of this State having jurisdiction over the place where the deposition is to be taken shall issue subpoenas for the persons named or described in the notice. A sub-

poena commanding the production of documentary evidence on the taking of a deposition shall not be issued without an order of the court.

(b) *Place of Examination.* A resident of this State may be required to attend an examination for deposition only in the county wherein he resides or is employed or transacts his business in person. A non-resident may be required to attend in this State only in the county wherein he is served with a subpoena or within forty (40) miles from the place of service or at such other place as is fixed by an order of the court.

(c) *Out of State.* Where the examination is held outside of this State, witnesses shall be compelled to attend and testify in accordance with the law of the place where the examination is held.

Rule 8. Conduct of Examination.

(a) *Upon Oral Examination.* When the deposition is taken upon oral examination, examination and cross-examination of the deponents may proceed as permitted at the trial. In lieu of participating in the oral examination, parties served with notice of taking a deposition may transmit written interrogatories to the officer who shall propound them to the witness and record the answers verbatim.

(b) *Upon Written Interrogatories.* When the deposition is to be taken upon written interrogatories, a copy of the notice and copies of all interrogatories served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly in the manner provided by these rules to take the testimony of the witness in response to the interrogatories and to prepare, certify and file or mail the deposition, attaching thereto the copy of the notice and the interrogatories received by him.

(c) *Record of Examination.* The officer before whom the deposition is to be taken shall put the witness on

oath and shall personally, or by some one acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically and shall be transcribed unless (1) the parties agree otherwise, or (2) the court in which the proceeding is pending, upon motion and for good cause shown, orders otherwise to save expense, or to prevent hardship or injustice. All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections.

(d) *Refusal to Answer.* If a party or other deponent refuses to answer any question propounded upon oral examination, the examination shall be completed on other matters or adjourned, as the proponent of the question may prefer. Thereafter, on reasonable notice to all persons affected thereby, he may apply to any court of law or equity within whose jurisdiction the deposition is taken for an order compelling an answer. Upon the refusal of a deponent to answer any written interrogatory the proponent of the question may on like notice make like application for such an order. If the motion is granted and if the court finds that the refusal was without substantial justification, the court shall require the refusing party or other deponent and the party or attorney advising the refusal or either of them to pay to the examining party the amount of the reasonable expenses incurred in obtaining the order, including reasonable attorney's fees. If the motion is denied and if the court finds that the motion was made without substantial justification, the court shall require the examining party or the attorney advising the motion or both of them to pay to the refusing party or witness the amount of the reasonable expenses incurred in opposing the motion, including reasonable attorney's fees.

Rule 9. Signing and Certification of Deposition.

(a) *Signing.* When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress under Rule 10 (d) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(b) *Certification, Filing and Copies.*

(1) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope endorsed with the title of the proceeding and marked "Deposition of (here insert name of witness)" and shall promptly file it with the court in which the proceeding is pending or send it by registered mail to the clerk thereof for filing.

(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

Rule 10. Effect of Errors and Irregularities in Depositions.

(a) *As to Notice.* All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(b) *As to Disqualification of Officer.* Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(c) *As to Taking of Deposition.*

(1) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(3) Objections to the form of written interrogatories submitted under Rule 5 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other interrogatories and within 3 days after service of the last interrogatories authorized.

(d) *As to Completion and Return of Deposition.* Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise

dealt with by the officer are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

Rule 11. Use of Depositions.

(a) *When to be Used.* At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence, may be used in accordance with any one of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(2) The deposition of a party or of any one who at the time of taking the deposition was an officer, director, or managing agent of a public or private corporation, partnership, or association which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose against any other party who was present or represented at the taking of the deposition or who had due notice thereof, if the court finds: (i) that the witness is dead; or (ii) that the witness is out of the jurisdiction, unless it appears that the absence of the witness was procured by the party offering the deposition; or (iii) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or (iv) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (v) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts in accordance with this rule.

Substitution of parties does not affect the right to use depositions previously taken; and, when a proceeding in any court of this State or of any other state or of the United States has been dismissed and another proceeding involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former proceeding may be used in the latter as if originally taken therefor.

(b) *Objections to Admissibility.* Subject to the provisions of Rule 10, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(c) *Effect of Taking or Using Depositions.* A party shall not be deemed to make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than as permitted by paragraphs (1) and (2) of section (a) of this rule makes the deponent the witness of the party introducing the deposition. At the trial or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party.

Rule 12. Penalties.

(a) *Contempt.* If a party or other witness refuses to be sworn or refuses to answer any question after being directed to do so by any court of law or equity within whose jurisdiction the deposition is being taken, the refusal may be considered a contempt of that court.

(b) *Other Orders.* If any party or any officer or managing agent of a party wilfully fails to appear before the officer who is to take his deposition after being served with the proper notice or refuses to answer any designated questions after an order of court to do so, the court in which the proceeding is pending may make any of the orders authorized by Discovery Rule 7.

(c) *Failure to Attend.* If the party giving the notice of the taking of a deposition on oral examination fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by him and his attorney in so attending, including reasonable attorney's fees.

(d) *Failure to Subpoena Witness.* If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by him and his attorney in so attending, including reasonable attorney's fees.

Rule 13. Application and Effect on Existing Laws.

Rules 1 through 12 shall apply in all civil actions both in law and equity in all courts of record throughout the State. These rules shall be the exclusive method for taking depositions in all cases to which they apply, and to that extent supersede the following statutes and rules:

(1) Sections 21 through 36 of Article 35 of the 1939 Code and all rules of court pursuant thereto, except the provisions of Section 24 as to appointment of standing commissioners, and Sections 25, 33 and 36;

(2) Section 44 of Article 17 of the 1939 Code;

(3) General Equity Rules 34 through 41, and 44 (Article 16, Sections 281 through 289 of the 1939 Code) and Sections 294 through 299 of Article 16 of the 1939 Code, and all rules of court pursuant thereto, insofar as such sections and rules apply to depositions *de bene esse* or for use in trials where testimony is taken in open court pursuant to Sections 290 and 291 of Article 16 of the 1939 Code. But Rules 1 through 12 shall not affect hearings before an examiner in equity pursuant to Rules 34 through 42 of the General Equity Rules (Article 16, Sections 281 through 288, and 293, 1939 Code) in substitution for taking testimony in open court, or hearings before auditors or masters.

II. DISCOVERY

Rule 1. Discovery by Deposition.

Depositions may be taken for discovery in accordance with Deposition Rules 1 and 3 to 12, inclusive, and Discovery Rule 3.

Rule 2. Interrogatories to Parties.

(a) *Delivery.* Any party to any proceeding may at any time serve upon any adverse party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association, by any officer thereof competent to testify in its behalf. No party may, without leave of court, serve upon the same party more than one set of interrogatories or more than thirty interrogatories (including interrogatories subsidiary or incidental to, or dependent upon other interrogatories, however grouped, combined or arranged) to be answered by him.

(b) *Answers.* Within fifteen days after the delivery of the interrogatories, unless the court, on motion and notice and for good cause shown, enlarges or shortens the time, the party upon whom the interrogatories have

been served shall serve a copy of the answers on the party submitting the interrogatories. Each interrogatory shall be answered separately and fully in writing under oath or the grounds for refusal to answer shall be fully stated under oath. The answers shall be signed by the person making them.

(c) *Exceptions.* Within ten days after the delivery of the answers, the party submitting the interrogatories may file exceptions to the sufficiency of any answer or to any refusal to answer, which shall be heard as soon as practicable. If an exception is sustained, the court shall order an answer or further answer within such time as it may prescribe and, if the court finds that the refusal or insufficient answer was without substantial justification, the court shall require the party or his attorney or both of them to pay to the party submitting the interrogatories the amount of the reasonable expenses incurred in obtaining the order, including reasonable attorney's fees. If the exception is denied and if the court finds that it was made without substantial justification, the court shall require the party submitting the interrogatories or his attorney or both of them to pay to the other party the amount of the reasonable expenses incurred in opposing the exceptions, including reasonable attorney's fees.

(d) *Default.* If, after proper service of interrogatories upon a party, he fails to serve answers to them within the time allowed, the court on motion and notice may strike out all or any part of any pleading of that party, or dismiss the action or proceeding or any part thereof, or enter a judgment by default against that party.

(e) *Use of Answers.* At the trial or at any interlocutory proceeding, all or any part of the answers of a party to interrogatories, so far as admissible under the rules of evidence, may be used as evidence against such

party by the party submitting the interrogatories. If only a part of the party's answers is offered in evidence, he may require the introduction of all of the answers which are relevant to the part introduced.

Rule 3. Scope of Examination and Interrogatories.

Unless otherwise ordered by the court, a deponent may be examined pursuant to Rule 1, or interrogatories may be submitted to a party pursuant to Rule 2, regarding any matter, not privileged, which is relevant to the subject matter involved in the pending proceeding (1) whether relating to the claim or defense of the party examining or submitting interrogatories or to the claim or defense of any other party and (2) including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and (3) including any information of the witness or party, however obtained, as to the identity and location of persons having knowledge of relevant facts and (4) whether or not any of such matters is already known to or otherwise obtainable by the party examining or submitting interrogatories.

Rule 4. Discovery of Documents and Property.

Upon motion of any party showing good cause therefor and upon notice to all other parties, the court may, at any time in any proceeding,

(1) order any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects, or tangible things, not privileged, which may constitute or contain evidence material to any matter involved in the proceeding and which are in his possession, custody, or control; or

(2) order any party to permit entry upon designated land or other property in his possession or control for

the purpose of inspecting, measuring, surveying, or photographing the property or any designated relevant object or operation thereon; or

(3) order any samples to be taken, or any observations to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence as to any matter involved in the proceeding.

The order shall specify the time, place, and manner of making the inspection, observations or experiments and of taking the copies and photographs or samples and may prescribe such terms and conditions as are just.

Rule 5. Mental and Physical Examinations.

Whenever the mental or physical condition of a party is material to any matter involved in any proceeding, the court may, upon motion by any party and notice to all other parties, for good cause shown, order such party to submit to a mental or physical examination by a physician or physicians. The order (1) shall specify the time, place, manner, conditions and scope of the examination and the person or persons by whom it is to be made and (2) may regulate the filing of a report of findings and conclusions and the testimony at the trial by the examining physician or physicians, the payment of the expenses of the examination and any other relevant matters.

Rule 6. Admission of Facts and of Genuineness of Documents.

(a) *Request.* A party to any proceeding may at any time serve upon any other party a written request to admit (1) the genuineness of any relevant documents described in and exhibited with the request or (2) the truth of any relevant matters of fact set forth in the request. Copies of the documents shall be delivered

with the request unless copies have already been furnished.

(b) *Admission.* Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request, not less than ten days after service thereof or within such further time as the court may allow on motion and notice, the party to whom the request is directed serves upon the party requesting the admission a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny those matters.

(c) *Effect of Admission.* Any actual or implied admission made by a party pursuant to such request is for the purpose of the pending proceeding only and it neither constitutes an admission by him for any other purpose nor may it be used against him in any other proceeding.

(d) *Expenses on Refusal to Admit.* If a party, after being served with a request to admit any matters, serves a sworn statement refusing such admission and if the party requesting the admissions thereafter proves the genuineness of any such document or the truth of any such matter of fact, the court, upon application, may order the other party to pay him the reasonable expenses incurred in making such proof, including reasonable attorney's fees, unless the court finds that there were good reasons for the refusal or that the admission sought were of no substantial importance. Objections to a request to admit or to a refusal to admit shall be heard only on the application to assess expenses pursuant to this section (d).

(e) *Withdrawal.* The court may, to prevent injustice, allow the party making any such admission to withdraw it or relieve a party from any implied admission, upon such terms as may be just.

Rule 7. Failure to Comply With Orders.

If any party or an officer or managing agent of a party refuses to obey an order requiring him to answer designated questions, or to produce any document or other thing for inspection, copying or photographing or to permit it to be done, or to permit entry upon land or other property, or to submit to a physical or mental examination, the court may make such orders in regard to the refusal as are just, and among others the following:

(1) An order that the matters regarding which the questions were asked, or the character or description of the thing or land, or the contents of the paper, or the physical or mental condition of the party, or any other designated facts shall be taken to be established for the purposes of the proceeding in accordance with the claim of the party obtaining the order;

(2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing in evidence designated documents or things or items of testimony, or from introducing evidence of physical or mental conditions;

(3) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(4) In lieu of any of the foregoing orders or in addition thereto, an order punishing any party or agent of a party for contempt, for disobeying any of such orders except an order to submit to a physical or mental examination.

Rule 8. Application and Effect on Existing Laws.

Rules 1 through 7 shall apply to all civil actions in law and equity in all courts of record throughout the

State. These rules supersede the following statutes and rules:

(1) General Equity Rules 25 and 26 (Article 16, Sections 186 and 187 of the 1939 Code);

(2) Sections 27 and 28 of Article 16 of the 1939 Code; and

(3) Sections 104 and 106 of Article 75 of the 1939 Code.

III. JOINDER OF PARTIES AND CLAIMS; THIRD PARTY PRACTICE[1]

Rule 1. Application and Definitions.

The succeeding Rules 2 through 6 govern actions at law and suits in equity, respectively, but do not affect the existing distinction between law and equity. In applying these rules:

(a) In cases at law, "action" means an action at law, and "claim" is restricted to a claim cognizable at law (including claims so cognizable by statute, such as Article 75, Sections 134-146 of the 1939 Code); and

(b) In cases in equity, "action" means a suit in equity, "claim" is restricted to a claim cognizable in equity (including claims so cognizable by statutes, such as Article 16, Sections 52 and 241, and Article 66, Sections 25 and 34 of the 1939 Code), and "judgment" means a decree.

Rule 2. Permissive Joinder of Parties and Claims.

(a) *Same Parties.* The plaintiff may join in one action either as independent or as alternate claims as many claims as he may have against the defendant.

(b) *Successive Remedies.* Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties.

[1] Rules 1-7 adopted November 12, 1947, effective January 1, 1948. Rule 6(e) added February 15, 1951.

(c) *Joinder in the Alternative.* Where the plaintiff is uncertain against which of several persons he is entitled to relief, he may join any or all of them as defendants in the alternative although the claim or right to relief against one may be inconsistent with the claim or right to relief against the other. Where several persons are uncertain as to which of them is entitled to a claim or to relief, any or all of them may join as plaintiffs in the alternative although the claim or right to relief by one may be inconsistent with the claim or right to relief by the other.

(d) *Multiple Joinder.* Separate claims involving different plaintiffs or defendants or both may be joined in one action whenever any substantial question of law or fact common to all the claims will arise in the action or for any other reason the claims may conveniently be disposed of in the same proceeding. The claims joined may be joint, several, or in the alternative, as to plaintiffs or defendants or both. Any person may join in the action as a plaintiff who demands any relief on any of the claims joined, and he need not be interested in the other claims or in obtaining all the relief demanded. Any person may be joined as a defendant against whom any relief is demanded on any claim, and he need not be interested in defending against the other claims or all the relief demanded.

(e) *Judgments Among Multiple Parties.* Where the action involves more than one plaintiff or defendant or both, judgment may be given for one or more of the plaintiffs according to their respective rights to relief and against one or more defendants according to their respective liabilities.

(f) *Application to Counterclaim, Cross-claims and Third-Party Claims.* This rule shall apply to counterclaims as if the party or parties asserting them had brought an independent action; and shall apply in like

manner to cross-claims and third-party claims if the requirements of Rules 3 and 4, respectively, are also satisfied.

Rule 3. Counterclaims and Cross-claims.

(a) *Counterclaim.* In any action any party, against whom a claim, counterclaim, cross-claim or third-party claim has been asserted, may plead as a counterclaim any claim he has against any opposing party. The counterclaim may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party, and need not diminish or defeat the recovery sought by the opposing party. A claim which either matured or was acquired by the pleader after serving his pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.

(b) *Cross-claim against Co-Party.* In any action any party may plead as a cross-claim any claim he has against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(c) *Additional Parties to Counterclaim or Cross-claim.* When the presence of parties other than those to the original action is required for the granting of complete relief in the determination of a counterclaim or cross-claim, the court shall order them to be brought in as defendants if jurisdiction over them can be obtained.

Rule 4. Third-Party Practice.

(a) *Motion by Defendant.* Where the defendant in any action claims that a person not a party to the action

is or may be liable to him for all or part of the plaintiff's claim against him, he may move for leave to serve a summons and claim upon such person as a third party. The motion may be made *ex parte* before the action is at issue, and thereafter on notice to the plaintiff. The motion shall be accompanied by a copy of the pleading to be served on the third party; and a copy shall be served on the plaintiff. If the motion is made more than thirty days after the action is at issue, the court shall grant such leave only on a showing that the delay was excusable or does not prejudice other parties to the action.

(b) *Pleadings by Third Party against Defendant and other Third Parties.* If the court in its discretion grants the motion, the defendant shall cause a summons and copies of the third-party claim and the previous pleadings to be served on the third party. When so served, the third party shall make his defenses to the defendant's claim, and may assert his counterclaims against the defendant and his cross-claims against other third parties, in the same time and manner as in an original action. The third party may also assert against the plaintiff on behalf of the defendant any defenses which the defendant has to the plaintiff's claim.

(c) *Related Claims between Plaintiff and Third Party.* The plaintiff or the third party may assert against the other in the pending action any claim he has against the other party which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the defendant. The claim may be asserted by an amended or separate pleading, or as a counterclaim. If either party asserts such a claim, the other party shall assert his defenses thereto, and may assert his counterclaims and his cross-claims, in the same time and manner as in an original action. The plaintiff may not assert against the third party in a separate action, instituted after the third party is impleaded, any claim

which arises out of the transaction or occurrence that is the subject matter of his claim against the defendant in the pending action.

(d) *Conduct of Proceedings.* The court may make such orders as it thinks fit to regulate the conduct of the proceedings and to prevent injustice or unnecessary delay or expense for any party. The court may render one or more judgments on the claims asserted in the action upon such terms as are appropriate to protect the rights of the interested parties. Unless the court orders otherwise, the adjudication of the defendant's liability to the plaintiff shall be *res adjudicata* as to the third party as well as to the plaintiff and defendant.

(e) *Application of Rule to Other Parties.* A third party may proceed under this rule against any person who is or may be liable to him for all or part of any claim made against him in the action. Likewise, when a counterclaim is asserted against a plaintiff he may cause a third party to be brought in under circumstances which would entitle a defendant to do so under the rule.

Rule 5. Separate Trials; Protection of Parties.

(a) *Separate Trials.* The court in furtherance of convenience or to avoid prejudice may order a separate trial of any claim, counterclaim, cross-claim, or third-party claim, or of any separate issue, or any number of claims, counterclaims, cross-claims, third-party claims or issues.

(b) *Other Orders.* The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion in the action of a party against whom he has asserted no claim and who asserts no claim against him, and may make other orders to prevent prejudice, or unnecessary delay or expense.

Rule 6. Judgment Upon Multiple Claims.

(a) *When Entered.* When more than one claim for relief is presented in an action, whether as a claim,

counterclaim, cross-claim, or third-party claim, the court may direct the entry of a final judgment upon one or more but less than all of the claims only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates less than all the claims shall not terminate the action as to any of the claims, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims.

(b) *Stay of Judgment.* When a court has ordered a final judgment on some but not all of the claims presented in the action, the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

(c) *Judgment on Counterclaim.* When money damages are awarded on a claim and counterclaim, judgment for the excess of one over the other, with costs of suit, shall be given in favor of the plaintiff or defendant, as the case may be, or if such excess is below the jurisdiction of the court, the finding shall have the same effect given a like verdict under Article 26, Section 18 of the Code.

(d) *Effect of Dismissal of Opposing Claims.* Judgment may be rendered on a counterclaim or cross-claim even if the claims of the opposing party have been dismissed or otherwise disposed of.

(e) *Motion for Judgment of Recovery Over.* Where in a single action a joint judgment has been entered against more than one defendant, and one of such defendants has discharged the judgment by payment or has paid more than his pro rata share thereof, then in any case where a right of contribution or recovery over as between such defendants exists, an appropriate judgment against any

other defendant may be entered, after 15 days' notice, upon motion by the defendant and proof of payment. *(This section added February 15, 1951.)*

Rule 7. Effect on Existing Law.

Rules 1 through 6 supersede the following statutes and rules:

(1) General Equity Rules 28 and 30;

(2) The second sentence of General Equity Rule 31 (Article 16, Section 204 of the 1939 Code);

(3) Sections 16 and 17 of Article 75 of the 1939 Code;

(4) Section 27 of Article 50 of the Code (1943 Supplement), as amended by Chapter 717 of the Acts of 1947.

IV. SUMMARY JUDGMENT[1]

Rule 1. Motion for Summary Judgment.

(a) *When Allowed.* In any proceeding at law or in equity, a party asserting a claim (whether an original claim, cross-claim, counterclaim, or third-party claim), or a party against whom a claim is asserted, may at any time make a motion for a summary judgment in his favor as to all or any part of the claim on the ground that there is no genuine dispute as to any material fact and that he is entitled to judgment as a matter of law. A motion for summary judgment does not affect the time for pleading unless the court orders otherwise.

(b) *Use of Affidavits.* The motion must be supported by affidavit when filed with the pleading asserting the claim or before the defending party has pleaded in answer to it; otherwise the motion may be made with or without supporting affidavits. The adverse party may file opposing affidavits before the day of the hearing.

Rule 2. Form of Affidavit; Further Evidence.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would

[1] Rules 1-7 adopted November 12, 1947, effective January 1, 1948.

be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn, or certified or photostatic copies of all material papers or parts thereof referred to in an affidavit shall be attached thereto or filed therewith or their absence satisfactorily explained. The court may permit affidavits to be supplemented or opposed by depositions or by further affidavits.

Rule 3. Time of Hearing.

(a) *Motions Filed Before Defense Asserted.* When a claimant files the motion with his pleading asserting the claim, or thereafter but before the adverse party has pleaded in answer to it, the motion, upon not less than fifteen days' notice by either party, may be heard at any time after the expiration of the time allowed by law or rule of court to plead in answer to such claim. Every such motion shall be accompanied by a notice to the adverse party (1) stating the time at or after which the motion may be heard, and (2) warning him that upon his failure to plead in answer to the claim within the time allowed by law or rule of court, judgment will be entered against him.

(b) *Motions Filed After Defense Asserted.* When a motion is filed after pleadings in answer to the claim have been filed, the motion, upon not less than ten days' notice by either party, may be heard at any time. The motion shall be accompanied by a notice stating the time at or after which it may be heard.

(c) *Proceedings in Absence of Defense.* After motion and notice, and upon failure of the adverse party to plead in answer to the claim within the time allowed by law or rule of court, the court may, at any time thereafter, without hearing and without further notice to the adverse party, enter a judgment in conformity with Rule 4.

Rule 4. Proceedings on Motion.

(a) *When Motion Is Granted.* The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine dispute as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine dispute as to the amount of damages. Where appropriate, the court on the hearing may render judgment for the opposing party even though he has not filed a cross-motion for summary judgment.

(b) *When Affidavits Not Available.* Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(c) *Judgment on Part of Claim.* If at the hearing it appears that there is no genuine dispute as to part of the claim or as to the defense to part of the claim, the court in its discretion may render judgment forthwith as to that part, upon such terms as it thinks fit. In that case, the action shall proceed on the disputed part of the claim; and the court shall retain jurisdiction of the action even though the disputed part is below its jurisdictional amount if the original claim was within its jurisdiction. If the summary judgment or judgment on the disputed portion is below the jurisdiction of the court, Section 18 of Article 26 of the Code shall apply, except that execution on the combined judgments may issue from the court entering them, if their sum is within its jurisdiction.

(d) *Order Limiting Issues.* If on the motion judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the parties are not limited at the trial to the facts stated in their affidavits. But in such cases, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and direct such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) *Amendments to Pleadings Unaffected.* Nothing contained in this rule shall be construed to limit or affect the power of the court to permit amendment of the pleadings at any stage of the proceedings.

Rule 5. Motions or Affidavits in Bad Faith.

Should it appear to the satisfaction of the court at any time that any motion or affidavit presented pursuant to this rule is presented in bad faith or solely for the purpose of delay, the court shall forthwith order the offending party to pay to the other party the amount of the reasonable expenses which the filing of the motion or affidavit caused him to incur, including reasonable attorney's fees.

Rule 6. Judgment Includes Decree.

The term "judgment" as used in the foregoing five rules includes decree.

Rule 7. Effect on Existing Laws and Rules.

The foregoing six rules supersede Section 24 of Article 26 of the Code of Public General Laws and the following

provisions of the Code of Public Local Laws: Sections 62 to 64, inclusive, of Article 1; Sections 189 A to G, inclusive, of Article 2; Sections 84 to 91, inclusive, of Article 3; Sections 312 to 315B, inclusive, of Article 4 (Charter and P. L. L. of Baltimore City, 1938, Sections 404-410); Section 69 of Article 5; Sections 79 and 80 of Article 6; Sections 23 to 28, inclusive, of Article 7; Section 39 of Article 9; Sections 78 to 83, inclusive, of Article 11; Sections 53 to 55, inclusive, of Article 12; Sections 173 to 175, inclusive, of Article 13; Sections 42 to 47, inclusive, of Article 14; Sections 145 to 150, inclusive, of Article 16; Sections 197 to 199, inclusive, of Article 17; Section 42 of Article 19; Sections 102 to 104, inclusive, of Article 22; and Section 47A of Article 24; and any other statutes and rules of court to the extent inconsistent with these rules.

V. SERVICE OF PLEADINGS AND OTHER PAPERS[1]

Rule 1. Service of Pleadings and Other Papers.

(a) *When Required.*

(1) Every pleading, notice or other similar paper (except the declaration, bill of complaint or other original pleading) shall be in writing and shall be served upon the party to be affected by it, or his attorney of record in accordance with this rule except where pleading is permitted orally in open court.

(2) Whenever filing of any pleading, notice or other similar paper (except the declaration, bill of complaint or other original pleading) is required or permitted, such pleading, notice or other similar paper shall not be received and filed by the clerk of the court unless accompanied by an admission or proof of service of a copy thereof upon the opposite party or his attorney of record in accordance with this rule.

[1] This rule adopted November 12, 1947, effective January 1, 1948.

(b) *When Not Required.*

No service need be made on parties in default for failure to appear except that pleadings or other similar papers asserting new or additional claims for relief against them shall be served upon them.

(c) *Service—How Made.*

When service is to be made upon a party represented by an attorney of record, the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney of record or upon a party may be made by any person over the age of 21 years and shall be made—

(1) by delivering a copy to him personally, or leaving it at his office with his clerk or other person in charge thereof; or, if there is no one in charge, or the office is closed, or the person to be served has no office, by leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein; or,

(2) by mailing a copy (by ordinary mail, registered mail or air mail) addressed to him at his business address, or if that is not known, at his residence; service by mail shall be considered as made one day after the day of mailing, if in the same city or county, and one day additional for each 500 miles or fraction thereof between the place of mailing and the place of address; or,

(3) if for any reason service cannot reasonably be made by delivery or mailing, then by such other method as the court may order upon *ex parte* motion.

(d) *Proof Of Service.*

In the absence of a written admission of service of such paper or copy by the attorney or party to be served, the certificate of the person who shall have made such service, showing the date thereof and the manner of making the same in accordance herewith, shall be *prima facie* proof of such service.

VI. REVISORY POWER OF COURTS OVER FINAL JUDGMENTS, ORDERS AND DECREES

Rule 1. Revisory Power of Courts over Final Judgments, Orders and Decrees.

For a period of thirty (30) days after the entry of any judgment, order or decree, final in its nature, or thereafter pursuant to motion filed within such period, the court shall have the same revisory power and control over such judgment, order or decree as it had during the term at which it was entered under the practice heretofore existing. After the expiration of such period the court shall have the same revisory power and control over such judgment, order or decree as it had after the expiration of the term at which it was entered under the practice heretofore existing.

Rule 2. Effect on Existing Laws and Rules.

The foregoing rule supersedes the following provisions of the Code of Public Local Laws (1930): Sections 317 to 318, inclusive, of Article 4 (Charter and P. L. L. of Baltimore City (1938), sections 412-413); Sections 176 to 177, inclusive, of Article 13; and Section 199A of Article 17; and any other statutes and rules of court to the extent inconsistent with this rule. *(These rules adopted November 12, 1947, effective January 1, 1948; amended June 28, 1951.)*

VII. RECORD IN LOWER COURT

Rule 1. Record in Lower Court.

(a) All papers and objects filed in an action shall constitute a part of the record thereof. The clerk of the lower court shall number and file all papers chronologically and record in his docket the number assigned.

(b) All papers and objects offered in evidence, whether admitted or rejected, shall be marked as exhibits or for identification and deemed to be filed in the cause unless otherwise ordered by the lower court. A party may, with

the permission of the lower court, substitute a copy or photostat in lieu of any paper offered in evidence.

(c) Upon appeal noted, each party shall deposit with the clerk all exhibits in his possession. *(This rule added April 23, 1953, effective June 1, 1953.)*

PART THREE

RULES APPLICABLE TO LAW ONLY

I. PLEADING

Rule 1. Pleas Amounting to General Issue.

It shall be no objection to any special plea that it amounts to the general issue plea.

II. JUDGMENTS BY CONFESSION

Rule 1. Judgment by Confession.

(a) *Entry.* Judgment by confession may be entered by the clerk upon the filing by the plaintiff of a declaration in the usual form, accompanied by one or more written instruments authorizing the confession of judgment and entitling the plaintiff to a claim for liquidated damages and supported by an affidavit made by the plaintiff or some one on his behalf stating the amount due thereunder, and indicating the post office address (including street address if needed to effect mail delivery) of the defendant.

(b) *Personal Summons.* Immediately upon entering any such judgment the clerk shall issue a summons for the defendant notifying him of the entry of the judgment and requiring him to appear in the cause wherein it is entered within thirty days after the service upon him of the summons and show cause, if any he has, why the judgment should be vacated, opened, or modified. The summons shall be made returnable at the first return day after its issuance, or if the plaintiff so directs, at the second return day after its issuance. When returned *non*

est, the summons may be reissued at the request of the plaintiff. Any application made by the defendant with respect to the judgment within thirty days from the service of the summons shall be promptly heard by the court, and such action taken as the court may deem just. If the judgment is opened or set aside the case shall stand for trial in accordance with the rules of the court. If no cause is shown in pursuance of the summons, the judgment shall be deemed to be final, to the same extent as a judgment entered after trial, but may be set aside or modified on the ground of fraud or mistake.

(c) *Non-resident Defendants.* If the affidavit filed in the proceedings shows that the defendant is not a resident of Maryland, the clerk shall send by registered mail to such defendant at his address indicated in the affidavit a summons similar to that prescribed in section (b) and it shall be the duty of such defendant to respond to such summons within thirty days after the receipt thereof; or the plaintiff may, if he so elects, provide for the personal service of the summons upon the defendant, wherever he may be found, and file in the proceedings an affidavit showing the time and place of such service. Such personal service shall have the same effect as if the defendant had been summoned in the manner prescribed in section (b).

(d) *When Service is Not Effected.* When the summons issued under section (b) is returned *non est,* or the registered letter sent under section (c) is returned undelivered, the judge shall, upon petition of the plaintiff, provide for notice to the defendant through order of publication, posting a copy of the summons at the Court House door, or otherwise.

(e) *Address Unknown.* Where the affidavit filed in the proceedings indicates that the address of the defendant is unknown, no judgment shall be entered except upon order of court, and the judge shall provide for notice to the defendant through order of publication,

posting of a copy of the summons at the Court House door, or otherwise.

(f) *Extension of Time.* The court may, for good cause shown, extend the time for responding to any summons or notice issued in pursuance of this rule.

(g) *Other Cases.* Except as authorized by this rule, judgments by confession shall be entered only upon order of court, after such notice and upon such terms as the court may direct.

Rule 2. Effect on Existing Laws.

Rule 1 supersedes Section 6 of Article 26 of the 1939 Code and all local court rules inconsistent with the Rule. *(Rules 1 and 2 amended November 12, 1947, effective January 1, 1948.)*

III. TRIALS

Rule 1. Voluntary Dismissal.

(a) *By Parties.* Without an order of court a party may dismiss his claim, counterclaim or set-off as to any other party only:

(1) by filing a notice of dismissal at any time before the introduction of any evidence at the trial or hearing; or

(2) by filing a stipulation of dismissal signed by all parties who have appeared generally in the action.

(b) *By Court Order.* Except as provided in (a), such voluntary dismissal shall be allowed only upon order of court and upon such terms and conditions as the court deems proper. If any party has pleaded a counterclaim or set-off before service upon him of an opponent's motion for voluntary dismissal, the dismissal shall not be allowed over such party's objection unless the counterclaim or set-off can remain pending for independent adjudication by the court.

(c) *Effect.* Unless otherwise specified in the notice of dismissal, stipulation, or order of court, a dismissal is without prejudice except that a notice of dismissal operates as an adjudication upon the merits when filed by a party who has previously dismissed in any court of any state or of the United States an action based on or including the same claim.

(d) *Costs.* Unless otherwise provided by stipulation or order of court, the party dismissing is responsible for all costs as to the action or the part dismissed. If a party, who has once dismissed a claim in any court, asserts substantially the same claim against the same defendant in another action, the court may make such order for the payment of costs in connection with the previous dismissal as it may deem proper and may stay the proceedings in the action until the party has complied with the order.

(e) *Application.* "Dismiss" or "dismissal" includes submission to a voluntary judgment of *non-pros* or nonsuit or other voluntary discontinuance. This rule governs proceedings at law only.

Rule 2. Consolidation.

When actions involving a common question of law or fact or a common subject matter are pending before any court of law, or before several of the courts of law of Baltimore City, such court or any of such courts in Baltimore City may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

Rule 3. Juries of Less Than Twelve—Majority Verdict.

The parties may stipulate that the jury shall consist of any number less than twelve or that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury.

Rule 4. Directed Verdict.

In any proceeding tried by jury any party may move, at the close of the evidence offered by an opponent or at the close of all the evidence, for a directed verdict in his favor on any or all of the issues. A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted without having reserved the right to do so and to the same extent as if the motion had not been made, but in so doing he withdraws the motion. A motion for a directed verdict shall state the grounds therefor. Instead of granting or denying the motion for a directed verdict the court may submit the case to the jury and reserve its decision on the motion until after the verdict or discharge of the jury, but for the purpose of appeal such reservation constitutes a denial of the motion, unless judgment is entered for the moving party pursuant to Rule 8. In this rule "motion" includes "prayer" and "move" includes "pray".

Rule 4A. Directed Verdict—Entry by Court.

Upon the granting by the court of an instruction directing a verdict, the court shall instruct the clerk to enter such verdict, and to note that it has been entered by the court's instruction; it shall not be necessary for the jury by its foreman, or otherwise, to render such verdict *(added May 25, 1948)*.

Rule 5. Demurrer to Evidence.

In any proceeding at law tried by the court without a jury, any party, without waiving his right to offer evidence in the event the motion is not granted, may move at the close of the evidence offered by an opponent for a dismissal on the ground that upon the facts and the law he has shown no right to relief. Unless the court otherwise specifies, such a dismissal operates as an adjudication upon the merits.

Rule 6. Instructions to the Jury.

(a) *Prayers.* At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file with the court written prayers that the court instruct the jury on the law as set forth in the prayers, and shall furnish to all adverse parties copies of such prayers.

(b) *Instructions.* In its instructions to the jury, which may be given either orally or in writing or both, the court, in its discretion

(1) may instruct the jury upon the law of the case, either by granting requested instructions or by giving instructions of its own on particular issues or on the case as a whole, or by several or all of these methods, but need not grant any requested instruction if the matter is fairly covered by instructions actually given; and

(2) may sum up the evidence, if it instructs the jury that they are to determine for themselves the weight of the evidence and the credit to be given to the witnesses.

An oral charge need not comply with the technical rules as to prayers.

(c) *Objections.* Before the jury retires to consider its verdict, any party may object to any portion of any instruction given or to any omission therefrom or to the failure to give any instruction, stating distinctly the portion or omission or failure to instruct to which he objects and the specific grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury. Either party shall have the right to express such objection in open court out of the presence of the jury, upon application, either orally or in writing, made before or after the conclusion of the charge. *(This section amended April 23, 1953, effective June 1, 1953.)*

(d) *Appeal.* Upon appeal a party, in assigning error in the instructions, shall be restricted to (1) the particular portion of the instructions given or the particular omission therefrom or the particular failure to instruct distinctly objected to before the jury retired and (2) the specific grounds of objection distinctly stated at that time; and no other errors or assignments of error in the instructions shall be considered by the Court of Appeals.

Rule 7. Special Verdicts.

(a) *Use.* The court in its discretion may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives his right to a trial by jury of the issue so omitted unless before the jury retires he demands its submission to the jury. As to an issue omitted without such demand the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict. Upon the return of the special verdict of the jury, the court shall direct the entry of the appropriate judgment in accordance with this rule.

(b) *Appeal.* Upon appeal error may be assigned as to the submission of issues, or as to any explanation and instructions of the court, or as to any refusal of the court to submit issues upon demand, only in accordance with

Rule 6, subsections (c) and (d); but any express or implied findings by the court, and the judgment directed by it may be reviewed as provided in Rule 9, subsection (c).

Rule 8. Judgment N. O. V.

(a) *Motion.* Whenever a motion for a directed verdict made by a party at the close of all the evidence is denied, then (1) within three days after the reception of a verdict, such party may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict, or (2) if a verdict was not returned, such party, within three days after the jury has been discharged, may move for a judgment in accordance with his motion for a directed verdict. Whenever the court reserves decision on a motion for a directed verdict and submits the case to the jury, that operates as a motion for judgment under this rule. A motion for a new trial may be joined with a motion for judgment under this rule or a new trial may be prayed for in the alternative. Failure to move for judgment under this rule does not affect a party's right upon appeal to assign as error the denial of his motion for a directed verdict.

(b) *Disposition.* If a verdict was returned, the court may allow the judgment to stand or may re-open the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed. If no verdict was returned, the court may direct the entry of judgment as if the requested verdict had been directed or may order a new trial. If the motion for judgment is granted, the court shall also rule upon any motion for new trial, but the new trial if granted shall be had only if the judgment so entered is reversed upon appeal.

(c) *Appeal.* Whenever a judgment so entered by the trial court is reversed on appeal, the Court of Appeals

(1) shall remand the case for a new trial if the lower court conditionally so ordered or (2) otherwise may order a new trial or enter such judgment upon the original verdict as may be just. Whenever a judgment is reversed on appeal for refusal of a motion for judgment pursuant to subsection (a), the Court of Appeals may enter judgment as if the requested verdict had been directed or may order a new trial.

Rule 9. Trial by the Court.

(a) *Judgment.* When any proceeding at law is tried upon the facts by the court, the court at or after the trial shall direct such judgment to be entered as it thinks right upon the evidence and the law. The court shall dictate to the court stenographer, or prepare and file, a brief statement of the grounds for its decision and the method of determining any damages awarded. No requests for instructions and no objections or exceptions to the judgment or to the opinion of the court are required for the purpose of review.

(b) *Amendment.* Upon a motion for a new trial the court may open such judgment, revise it or amend it, and in its discretion may take additional testimony and direct the entry of a new judgment.

(c) *Appeal.* When a proceeding has been so tried by the court, an appeal from the judgment, if allowed by law, may be taken according to the practice in equity. Upon appeal the Court of Appeals may review upon both the law and the evidence, but the judgment of the trial court shall not be set aside on the evidence, unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The Court of Appeals may affirm, reverse, modify, or remand, as in appeals from equity.

Rule 10. Partial New Trial.

When it appears to a court of law upon a motion for a new trial that any grounds for a new trial affect only a

severable part of the matters in controversy, or only some or one of the parties, the court may grant a new trial as to such part, or as to such party or parties and either enter final judgment as to the remaining parts or parties, or stay the entry of final judgment until after the new trial.

Rule 11. Effect on Existing Laws.

(a) Rule 1 supersedes all of Section 183 of Article 75 of the 1939 Code except the first clause.

(b) Rules 4 and 5 supersede Section 96 of Article 75 of the 1939 Code.

(c) Rules 6 and 9 supersede Section 10 except the first clause, and Section 11 of Article 5 of the 1939 Code.

IV. COMMENCEMENT OF ACTIONS AND TIME FOR PLEADING[1]

Rule 1. Commencement of Action.

An action at law is commenced by filing a declaration or other original pleading with the court. No action shall hereafter be commenced by titling.

Rule 2. Return Days.

The return day for all writs and process at law shall be the first Monday in each month.

Rule 3. Issuance of Summons.

When any action is commenced at law, the clerk shall forthwith issue a summons thereon as of course without the necessity of any prayer therefor, and deliver it to the sheriff for service. The summons shall be made returnable at the first return day after its issuance, or if the plaintiff so directs, at the second return day after its issuance. Upon request of the plaintiff, separate summons shall issue against one or more of several defendants or additional summons issue against any defendants.

[1] Rules 1-8 adopted November 12, 1947, effective January 1, 1948.

Rule 4. Form of Summons.

The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names and addresses of the parties, state the name and address of the plaintiff's attorney, if any, and the time within which the defendant must make his defense, and shall notify the defendant that in case of his failure to do so judgment by default may be rendered against him for the relief demanded by the plaintiff.

Rule 5. Service of Summons and Original Pleadings.

In commencing any action at law, the plaintiff shall furnish the clerk of the court with one copy of his declaration or other original pleading for each defendant and the clerk shall deliver the copy or copies to the sheriff with the summons. In serving each defendant, the sheriff shall leave with him a copy of the summons and of the original pleading. Where there are five or more defendants, the court, by order, may make other provisions as to furnishing copies.

Rule 6. Time For Pleading.

(a) The defendant in any action at law shall file with the clerk of the court the pleading asserting his defenses within fifteen days after the return day to which he is summoned. All subsequent pleadings (except motions to implead third parties) shall be filed with the clerk of the court within fifteen days after the filing of the next preceding pleading. As used in this rule the word "pleading" shall include demands for particulars, particulars, demurrers, motions, exceptions and answers.

(b) In all cases where demurrers or demands for particulars are filed or exceptions are filed, the time for pleading shall be enlarged, without special order, to fifteen days after compliance with the demand or disposition by the court of the demurrers or exceptions.

(c) For good cause shown, the court at any time by order may shorten or extend the time allowed for filing defenses or for filing any other pleading.

Rule 7. Judgment by Default.

If a party is in default for failure to comply with the requirements as to time allowed for pleading, judgment may be entered against him on motion of the adverse party.

Rule 8. Effect on Existing Laws and Rules.

(a) Rule 1. "Commencement of Action" supersedes the words "if by titling" in Section 135 of Article 75 of the Code of Public General Laws, and the following provisions of the Code of Public Local Laws: Section 309 of Article 4 (Charter and P. L. L. of Baltimore City (1938), section 401); Section 171 of Article 13.

(b) Rule 2. "Return Days" supersedes the following provisions of the Code of Public Local Laws: Section 61 of Article 1; Section 189 of Article 2; Section 79 of Article 3; Section 303 of Article 4 (Charter and P. L. L. of Baltimore City (1938), section 395); Section 18 of Article 7; Section 73 of Article 11; Section 52 of Article 12; Section 165 of Article 13; Section 36 of Article 14; Section 140 of Article 16 (Flack's Code of P. L. L. of Montgomery County (1939), section 128); Section 97 of Article 22.

(c) Rule 3. "Issuance of Summons" supersedes the words "and the said summons shall be returnable on the first day of the term next after issuing the same" in Section 154 of Article 75 Code of Public General Laws and, to the extent of inconsistency, similar provisions of Section 156 of Article 75 Code of Public General Laws. Also superseded are the following similar inconsistent provisions of the Code of Public Local Laws: Sections 57 and 66 of Article 1; Section 189 of Article 2; Section 80 of Article 3; Section 304 of Article 4 (Charter and P. L. L. of Baltimore City (1938), section 396); Sections 16, 19 and 21 of Article 7; Sections 72 and 74 of Article 11;

Section 50 of Article 12; Sections 35, 36 and 38 of Article 14; Section 131 of Article 15; Sections 139, 140, 141 and 143 of Article 16 (Flack's Code of P. L. L. of Montgomery County (1939), sections 127, 128, 129 and 131); Section 196 of Article 17 (Flack's Code of P. L. L. of Prince George's County (1943), section 231); Section 174 of Article 18; Section 50 of Article 21; Sections 97, 98, 100, 101 and 102 of Article 22.

(d) Rule 6. "Time for Pleading" supersedes the provisions of the following sections of the Code of Public Local Laws insofar as they relate to time for pleading: Section 308 of Article 4 (Charter and P. L. L. of Baltimore City (1938), section 400); Section 69 of Article 5; Section 79 of Article 6; Section 23 of Article 7; Section 39 of Article 9; Section 78 of Article 11; Section 170 of Article 13; Section 42 of Article 14; Section 145 of Article 16 (Flack's Code of P. L. L. of Montgomery County (1939), section 133); Section 197 as amended by the Laws of 1941, Chapter 812 of Article 17 (Flack's Code of P. L. L. of Prince George's County (1943), section 232); Section 42 of Article 19; Section 102 of Article 22; Section 47A added by the Laws of 1941, Chapter 216 of Article 24; and any other statutes and rules of court to the extent inconsistent with Rules 1 to 7, inclusive.

V. REMOVAL OF ACTION[1]

Rule 1. Record.

Where the record of the proceedings in an action shall be ordered to be transmitted to some other court for the trial of the action, the record to be transmitted shall consist of all the original papers filed in the action and a copy of the docket entries.

Rule 2. Transmittal of Record.

The clerk shall append his certificate identifying such papers with reasonable definiteness and shall transmit

[1] Rules 1-4 adopted March 22, 1955, effective April 1, 1955.

the record to the clerk of the court to which the action has been ordered to be removed within five (5) days from the date of the order unless the court ordering the transmittal shall extend the time.

Rule 3. Return of Original Papers.

Within thirty (30) days after a judgment shall have been made final in such action, the clerk of the court in which the action shall have been determined shall return the original papers to the court where the action was originally instituted.

Rule 4. Application of Existing Law.

The provisions of Article 75, Sections 109-124, *Annotated Code of the Public General Laws of Maryland* (1951) shall be applicable to removal of actions, but reference to the transcript of the record in such statutes shall be construed to mean the record as herein constituted.

PART FOUR

I. CRIMINAL RULES OF PRACTICE AND PROCEDURE[1]

Rule 1. Arraignment.

(a) Arraignment shall be conducted in open court and shall consist of reading the indictment or information to the defendant or stating to him the substance of the charge and calling on him to plead thereto. In every indictment or information for the alleged commission of a criminal offense in this State, the accused shall be furnished a copy thereof as soon as practicable after the same shall have been prepared and in any event before he is called upon to plead, and at the expense of the prosecuting authority.

[1] Rules 1-9 adopted December 6, 1949, effective January 1, 1950. For amendments and additions since their effective date see italicized notes following text of rule.

(b) If the defendant appears in court without counsel, the court shall advise him of his right to obtain counsel. Unless he elects to proceed without counsel, the court shall, in all capital cases or other serious cases, assign counsel to defend him.

(c) The record shall affirmatively show compliance with this rule.

Rule 2. Pleas.

A defendant may plead not guilty, not guilty by reason of insanity as provided by statute, guilty or, with the consent of the court, *nolo contendere.* The court may refuse to accept a plea of guilty. If a defendant refuses to plead or if the court refuses to accept a plea of guilty, the court shall enter a plea of not guilty.

Rule 3. Pleadings and Motions Before Trial; Defenses and Objections.

(a) *Pleadings and motions.* Pleadings in criminal proceedings shall be the indictment and the information, and the pleas of not guilty, not guilty by reason of insanity as provided by statute, guilty and *nolo contendere.* All other pleas, and demurrers and motions to quash are abolished, and defenses and objections raised before trial which heretofore could have been raised by one or more of them shall be raised only by motion to dismiss or to grant appropriate relief.

(b) *The motion raising defenses and objections.*

(1) *Defenses and objections which may be raised.* Any defense or objection which is capable of determination without the trial of the general issue may be raised before trial by motion.

(2) *Defenses and objections which must be raised.* Defenses and objections based on defects in the institution of the prosecution or in the indictment or information other than that it fails to show jurisdiction in the

court or to charge an offense may be raised only by motion before trial. The motion shall include all such defenses and objections then available to the defendant. Failure to present any such defense or objection as herein provided constitutes a waiver thereof, but the court for cause shown may grant relief from the waiver. Lack of jurisdiction or the failure of the indictment or information to charge an offense shall be noticed by the court at any time during the pendency of the proceeding.

(3) *Time of making motion.* The motion shall be made before the plea is entered, but the court may permit it to be made within a reasonable time thereafter.

(4) *Hearing on motion.* A motion before trial raising defenses or objections shall be determined before trial unless the court orders that it be deferred for determination at the trial of the general issue. All issues of fact raised by such motions may be determined by the court without a jury or on affidavits or in such other manner as the court may direct.

(5) *Effect of determination.* If a motion is determined adversely to the defendant he shall be permitted to plead if he had not previously pleaded. A plea previously entered shall stand. If the court grants a motion based on a defect in the institution of the prosecution or in the indictment or information, it may also order that the defendant be held in custody or that his bail be continued for a specified time pending the filing of a new indictment or information.

(6) *Motion in writing.* A motion other than one made during a trial or a hearing shall be in writing. It shall state the grounds upon which it is made and shall set forth the relief or order sought.

Rule 4. Depositions.

(a) *When taken.* If it appears that a prospective witness may be unable to attend or prevented from attend-

ing a trial or hearing, that his testimony is material and that it is necessary to take his deposition in order to prevent a failure of justice, the court, in any case pending before it, may, in its discretion, upon motion of a defendant and notice to the parties order that his testimony be taken by deposition and that any designated books, papers, documents or tangible objects, not privileged, be produced at the same time and place. If a witness is committed for failure to give bail to appear to testify at a trial or hearing, the court on written motion of the witness and upon notice to the parties may direct that his deposition be taken in the presence of the accused. After the deposition has been subscribed the court may discharge the witness. *(This section amended February 15, 1951.)*

(b) *Notice of taking.* The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time.

(c) *How taken.* A deposition shall be taken in the manner provided in civil actions. The court at the request of a defendant may direct that a deposition be taken on written interrogatories in the manner provided in civil actions.

(d) *Use.* At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used if it appears: that the witness is dead; or that the witness is out of the State, unless it appears that the absence of the witness was procured by the party offering the deposition; or that the witness is unable to attend or testify because of sickness or infirmity; or that the party offering the deposition has been unable to procure the attendance of the witness by summons. Any deposition may also be used by any party for

the purpose of contradicting or impeaching the testimony of the deponent as a witness. If only a part of a deposition is offered in evidence by a party, an adverse party may require him to offer all of it which is relevant to the part offered and any party may offer other parts.

(e) *Objections to admissibility.* Objections to receiving in evidence a deposition or part thereof may be made as provided in civil actions.

(f) *Joint defendants.* Where persons are jointly indicted and are jointly tried, the court shall not permit the use of a deposition at the trial, over the objection of any one of the defendants.

Rule 5. Discovery and Inspection.

Upon motion of a defendant, the court, in any case pending before it, may order the State's Attorney to permit the defendant to inspect and copy or photograph designated books, papers, documents or tangible objects, including written statements by the defendant, obtained from or belonging to the defendant or obtained from others by seizure or by process, upon a showing that the items sought may be material to the preparation of his defense and that the request is reasonable *(amended February 15, 1951).*

Rule 5A. Directed Verdict — Entry By Court.

(a) At the conclusion of the evidence offered by the State the accused may request an instruction that the evidence is insufficient in law to sustain his conviction of the offense or offenses charged in the indictment or information, whether charged by way of separate counts or as a matter of law under a single count. If the requested instruction is refused, the accused may offer evidence without having reserved the right to do so, but by so doing, he withdraws his request for such instruction. The request for such an instruction may be renewed at the close of the whole case.

(b) In the event such a requested instruction is granted after the evidence on either side is closed, the court may direct the clerk to enter a verdict of "not guilty" as to the offense or offenses embraced within the requested instruction, and to note that it has been entered by the court's direction, in which event it shall not be necessary for the jury by its foreman, or otherwise, to render such verdict; or, under appropriate circumstances, the court may instruct the jury to embrace the instructed finding in its verdict *(added February 15, 1951; amended April 23, 1953, effective June 1, 1953).*

Rule 6. Advisory Instructions to the Jury.

(a) At the close of the evidence, the State or anyone of the accused may file with the court written prayers that the court instruct the jury on the law as set forth in the prayers, and shall furnish to all other parties copies of such prayers.

(b) The court may and at the request of any party shall grant such advisory instructions to the jury as may correctly state the applicable law. But the court may give its instructions either orally or in writing or both. It need not grant any requested instruction if the matter is fairly covered by the instructions actually given. The court shall in every case in which instructions are given to the jury tell the jury that they are themselves the final Judges of the Law and that the court's instructions are advisory only.

(c) In giving any advisory instructions under subsection (b) the court may make such summation of or reference to the evidence as may be appropriate in order to present clearly to the jury the issues to be decided by them; provided the court instructs the jury that they are to determine for themselves the weight of the evidence and the credit to be given to the witnesses.

(d) The court shall, in advance of argument to the jury, advise counsel of its proposed action on the prayers, whether to grant or refuse them, or to substitute an oral instruction in their stead. An oral charge need not comply with the technical rules as to prayers.

(e) The court may give its instructions at any time after the conclusion of the presentation of the evidence. The giving of such instructions prior to the argument of counsel shall not preclude counsel from arguing to the contrary.

(f) Before the jury retires to consider its verdict, any party may object to any portion of any instruction given or to any omission therefrom or to the failure to give any instruction stating distinctly the portion or omission or failure to instruct to which he objects and the specific grounds of his objection. Opportunity shall be given to make the objection out of the presence of the jury. Either party shall have the right to express such objection in open court out of the presence of the jury, upon application, either orally or in writing, made before or after the conclusion of the charge *(amended April 23, 1953, effective June 1, 1953).*

(g) Upon appeal a party, in assigning error in the instructions, shall be restricted to (1) the particular portion of the instructions given or the particular omission therefrom or the particular failure to instruct distinctly objected to before the jury retired and (2) the specific grounds of objection distinctly stated at that time. No other errors or assignments of errors in the instructions shall be considered by the Court of Appeals, but the Court of Appeals of its own motion may take cognizance of and correct any plain error material to the rights of the accused even though not included in the assignment of errors.

(h) As used herein the term "instructions" includes advisory instructions on the law and any summation of

or reference to the evidence. *(This rule amended by renumbering sections, February 15, 1951; section (f) amended April 23, 1953.)*

Rule 7. Trial by the Court.

(a) When any criminal charge is tried by the court sitting without a jury, the court shall render such verdict as it thinks right upon the evidence and the law. The court may render such verdict without comment, or it may state in open court the grounds for its decision.

(b) At the close of the evidence offered by the State the accused may move for a verdict of "not guilty" on the ground that the evidence is legally insufficient to justify his conviction. If the motion is denied the accused may offer evidence without having reserved the right to do so but in so doing he withdraws the motion. The motion may be re-offered at the close of all the evidence.

(c) When a criminal charge has been so tried by the court, an appeal may be taken as provided by law. Upon appeal the Court of Appeals may review upon both the law and the evidence to determine whether in law the evidence is sufficient to sustain the conviction, but the verdict of the trial court shall not be set aside on the evidence, unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses.

Rule 8. Exclusion of Witnesses.

The court shall, upon the request of any defendant, or upon request of the State, order that the witnesses be excluded from the courtroom until called upon to testify.

Rule 9. Effect on Existing Law.

(a) Rule 1 (a), second sentence, supersedes Section 690 of Article 27 (Laws 1949, Ch. 757).

(b) Rule 3 supersedes so much of Article 75, Section 10 as authorizes demurrers to be filed to any indictment; so

much of Article 27, Section 688 as authorizes pleas in abatement to any indictment; so much of Article 27, Section 692 as authorizes demurrers or motions to quash to be filed to any indictment.

(c) Rule 7 supersedes the words "who shall thereupon try the law and the facts" contained in Article 27, Section 678.

(d) Rules 1 to 8, inclusive, supersede any other statutes and rules of court to the extent inconsistent with these rules.

Rule 10. Correction and Reduction of Sentence.

(a) The court may correct an illegal sentence at any time.

(b) In cases involving bastardy, desertion, and non-support of wife, children or destitute parents, the court may at any time before expiration of sentence, reduce, change or modify said sentence upon such conditions and terms as the court may impose, and the balance of the sentence may be suspended and the defendant placed upon probation upon such terms and conditions as the court may impose.

(c) In all other criminal cases the court may reduce a sentence within ninety (90) days after the sentence is imposed, or within ninety (90) days after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of appeal. *(This rule added June 28, 1951; section (c) amended May 13, 1952.)*

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