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SECOND REPORT

*of the*

STANDING COMMITTEE ON RULES OF  
PRACTICE AND PROCEDURE

*of the*

COURT OF APPEALS OF MARYLAND

CONTAINING

RECOMMENDED RULES OF PRACTICE AND PRO-  
CEDURE FOR THE COURTS OF MARYLAND

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August 15, 1947

## **SECOND REPORT OF THE COMMITTEE.**

To The Honorable, The Chief Judge and Associate  
Judges of the Court of Appeals of Maryland:

On January 25, 1946, Chief Judge Ogle Marbury announced the appointment of The Standing Committee on Rules of Practice and Procedure of the Court of Appeals of Maryland, to consist of fifteen members and a reporter. This action had been suggested by recommendation of the previous Committee on Rules of Practice and Procedure contained in a report submitted to the Court of Appeals on December 20, 1940. The recommendation was: "Doubtless it will be helpful to the profession if some smaller body or board of unpaid members be maintained permanently to study this subject and report its findings and recommendations to the Court at frequent intervals in order that we may keep abreast of the times."

Judge Levin C. Bailey of the First Judicial Circuit was named Chairman of the Committee and an organization meeting was held at Annapolis on March 7, 1946. Thereafter meetings of the whole Committee were held on July 2, 1946, September 26, 1946, January 21, 1947 and May 28, 1947.

At the initial meeting on March 7, 1946, the Committee considered four matters: Summary Judgment Procedure, Divorce Procedure, Permissive Joinder of Parties, Claims and Counterclaims including Third Party Practice and Uniformity in Rules of the Judicial Circuits. As a result of this meeting the Chairman and Assistant Reporter were directed to transmit a report recommending the immediate adoption of a rule to be designated as General Equity Rule 10A, requiring the plaintiff in a divorce or annulment proceeding to make every effort to notify the defendant in addition to notice by publication. The report was made on March 9, 1946, and the recommended rule was subsequently adopted by the Court of Appeals on March 13, 1946, effective April 1, 1946. Action upon

the remaining matters was deferred pending further study and report by the Reporter.

At the second meeting on July 2, 1946, the Committee considered the report and proposed rules submitted by the Reporter and Assistant Reporter on Summary Judgment Procedure and Joinder of Parties and Claims including Third Party Practice. Final action upon these proposed rules was deferred pending publication to the Bench and Bar and for further study. The Committee also initiated consideration of a rule to establish a uniform time for pleading at Law as in Equity and the Reporter was directed to prepare and publish a rule or rules embodying the directions of the Committee. The Committee also directed the Reporter to prepare and submit a rule authorizing any Court in the State to set aside a judgment or decree at any time within thirty (30) days of its entry as well as at any time during the term of court at which it is entered. The Committee further directed the Reporter to prepare an amendment to the existing Judgment by Confession Rule 1, requiring return of personal summons to the return day next succeeding its issue.

At the third meeting on September 26, 1946, the Committee continued discussion and consideration of proposed rules on Joinder of Parties and Claims including Third Party Practice, Summary Judgment Procedure and Commencement of Actions and Time for Pleading. Final action on these rules was again deferred pending further study of proposed amendments and the publication thereof. At this meeting the Chairman appointed a subcommittee consisting of Judge Emory H. Niles, Judge William J. McWilliams and Frederick W. C. Webb, Esquire, for the purpose of making a study and report on the Codification and Arrangement of Existing and Proposed Rules.

Prior to the fourth meeting the Reporter was directed to prepare for publication a proposed rule on Service of Pleadings and Other Papers.

At the fourth meeting on January 21, 1947, the Committee after consideration voted to recommend the proposed rules relating to Joinder of Parties and Claims including Third Party Practice, the amendments to the existing Judgment by Confession Rule 1, and the rule relating to Revisory Power of Courts over Judgments, Orders and Decrees. The proposed rules on Summary Judgment and Commencement of Actions and Time for Pleading were again considered but final action deferred. The Committee also considered a preliminary draft of a proposed rule on Service of Pleadings and Other Papers but postponed final action in order that the rule might be redrafted pursuant to directions of the Committee and republished. The Committee, at this meeting, approved in principle the recommendation of the subcommittee on Codification and Arrangement that the Rules of Practice and Procedure be arranged according to subject matter and directed the subcommittee to expand its work to embrace the General Equity Rules with the Rules of Practice and Procedure in a single unified scheme. The Chairman of the subcommittee was directed to be prepared to report to the meeting of Judges to be held January 31, 1947, on the action so taken. As a result of the discussion at the meeting of Judges the scope of the codification was broadened to include all matters of procedure now contained in the Annotated Code of Maryland.

The advisability of a rule relating to renewal of process was referred to the Reporter for study and report at a later meeting. Similar action was taken with reference to a request from the Executive Committee of the Bar Association of Baltimore City that the existing procedure in relation to rulings on prayers and the form of instructions to juries be clarified and made uniform throughout the State.

On May 28, 1947, the Committee finally voted to recommend the adoption of rules relating to Summary Judg-

ment Procedure, Commencement of Actions and Time for Pleading and Service of Pleadings and Other Papers. After reconsideration of the rule previously adopted, relating to Joinder of Parties and Claims including Third Party Practice, the Committee reaffirmed its action of January 21, 1947, approving the proposed rule.

The Committee wishes to recommend and respectfully submits herewith drafts of the following rules:

- (1) Joinder of Parties and Claims including Third Party Practice
- (2) Summary Judgment
- (3) Service of Pleadings and Other Papers
- (4) Revisory Power of Courts over Judgments, Orders and Decrees
- (5) Commencement of Actions and Time for Pleading
- (6) Judgment by Confession Rule 1 (amendments)
- (7) General Equity Rules 1 and 11 (revision)

These rules are urged for adoption to accomplish long needed reforms in the practice and procedure of the Courts of this State. A rule relating to Permissive Joinder of Parties, Claims and Counterclaims was recommended by the previous Committee on Practice and Procedure on December 20, 1940, but was neither approved nor disapproved and final action upon the recommended rule was deferred. The previous Committee also stated in its report of December 20, 1940, that it had received a large number of proposals for changes in procedure which could not be studied, considered or acted upon, because of the lack of time. Among such proposals were ones relating to uniform return days throughout the State, uniform rules as to time for pleading and a uniform summary judgment procedure. These matters are dealt with in the rules now recommended.

The rule recommended in relation to Revisory Power of Courts over Judgments, Orders and Decrees is intended to make uniform throughout the State the prac-

tice heretofore prevailing in certain counties and the City of Baltimore. The recommended amendments to the existing Judgment by Confession Rule 1, are felt to be desirable in the interests of clarity. The purpose and effect of the recommended rules are discussed in the Reporter's Notes accompanying this Report.

The procedure of this Committee in preparing these recommended rules has been to use as a starting point the work of the previous Committee on Practice and Procedure and proposals for changes in rules submitted by the Bench and Bar to that Committee and also to the present Standing Committee. The Reporter is then directed to study the matters which the Committee feels deserve attention and to prepare and submit a report and proposed rules thereon. The Committee then considers the Reporter's proposals and modifies the proposed rules as it deems advisable. Thereupon the draft rules and report are published for comment by the Bench and Bar. Further action by the Committee has been influenced by such comments and suggestions. Where further publication is necessitated due to changes in the preliminary draft after consideration, it has been done.

The recommended rules were published in The Daily Record as follows:

- (1) Joinder of Parties and Claims including Third Party Practice—August 27, 1946; September 13, 1946; September 16, 1946; November 22, 1946 and January 27, 1947.
- (2) Summary Judgment—September 11 and 18, 1946 and February 13, 1947. In addition to the above publication, over four hundred printed pamphlets, containing the rule and report of the Reporter, were distributed to members of the Bench and Bar throughout the State.
- (3) Service of Pleadings and Other Papers—January 16, 1947 and May 20, 1947.

- (4) Commencement of Actions and Time for Pleading and General Equity Rule 11—September 14, 1946; January 16, 1947; February 13, 1947 and February 22, 1947.

Panel discussions of the published rules, sponsored by the Bar Association of Baltimore City, were held on January 28, 1947 and February 19, 1947. Other panel discussions have been held by local bar associations.

This procedure has resulted in material aid in the form of helpful and practical suggestions from an increasingly greater number of individuals, committees and groups. The Standing Committee has carefully considered all suggestions and comments, many of which were helpful, and it sincerely appreciates the help thus given.

The position of the Reporter in the functioning of the Standing Committee is of paramount importance. Initially the Committee was fortunate to obtain the services of Robert R. Bowie, Esquire, who had previously acted in a similar capacity with the Committee on Practice and Procedure of which Judge Samuel K. Dennis was Chairman. To Mr. Bowie the Committee is indebted. The speed and accuracy with which he, aided by the Assistant Reporter, Richard W. Emory, Esquire, has turned out the many reports, drafts and revisions have been noteworthy. At the September meeting of the Committee, Mr. Bowie tendered his resignation, this being necessitated by his appointment to a professorship at the Harvard Law School. Likewise, Mr. Emory's retirement was necessitated as a result of the increasing pressure of his law practice. On recommendation of a subcommittee appointed for the purpose of securing a new reporter, Mr. Frederick W. Invernizzi, Associate Professor of Law at the University of Maryland was recommended to the Court of Appeals of Maryland and his appointment was confirmed on October 1, 1946. Since that date the work of the Reporter had increased to a point where it has become necessary to appoint an assistant reporter particularly to assist the subcommittee on Codification and Arrangement of Existing and Proposed Rules. The

Committee was fortunate in securing the services of Joseph O. Kaiser, Esquire, a member of the Baltimore City bar.

The Standing Committee still has under advisement the work of the subcommittee on Codification and Arrangement of Existing and Proposed Rules, the matter of renewal of process, the clarification of the existing procedure in relation to rulings on prayers and the form of the instructions to the jury, and the advisability of a uniform rule with respect to examiners. At this time the Committee does not feel warranted in making a recommendation to the Court on these subjects until they have been further studied by the Reporter and considered by the Committee. Since your Committee is a standing committee it is not desirable to delay consideration of our present recommendations to await further action on the new proposals before the Committee.

The task has been laborious but interesting. The Committee hopes that the recommendations contained herein, the adoption of which we recommend, will furnish material which will aid the Court in effecting substantial improvement in the practice and procedure of the Courts of this State.

Respectfully submitted,

Levin C. Bailey,  
*Chairman*  
W. Conwell Smith  
Emory H. Niles  
Joseph Sherbow  
Charles C. Marbury  
J. Owen Knotts  
J. Howard Murray

William J. McWilliams  
D. Lindley Sloan  
Frederick W. C. Webb  
Frederick W. Brune  
Paul M. Higinbotham  
H. Vernon Eney  
Eli Frank, Jr.  
Parsons Newman

Robert R. Bowie,  
*Advisory Reporter*  
Richard W. Emory,  
*Asst. Reporter*

Frederick W. Invernizzi,  
*Reporter*  
Joseph O. Kaiser,  
*Asst. Reporter*

August 15, 1947



## RECOMMENDATIONS.

The Committee recommends the adoption of the following rules for inclusion in the General Rules of Practice and Procedure of November 1, 1945, viz:

### PART TWO.

## RULES APPLICABLE TO LAW AND EQUITY.

### III. JOINDER OF PARTIES AND CLAIMS;

#### THIRD PARTY PRACTICE.

#### 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.

(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 counter-

claims 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.

**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.**

##### **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 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 defence 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 47 A 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.**

### **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.

#### **(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 JUDGMENTS, ORDERS AND DECREES.**

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

Courts shall have for a period of thirty (30) days after the doing of any act or thing in any cause the same revisory power and control over such act or thing which they have had under the practice heretofore existing, or which they had under practice existing prior to the adoption of a special provision of any Public Local Law herewith superseded, during the term at which it was done, and no more; and after thirty (30) days from the doing of any such act or thing or after the expiration of the term at which it was done, whichever time is longer, courts shall have the same revisory power and control as they have had under practice heretofore existing, or which they had under practice existing prior to the adoption of a special provision of any Public Local Law herewith superseded, after the term at which it was done, and no more.

### **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.

## PART THREE.

## RULES APPLICABLE TO LAW ONLY.

IV. COMMENCEMENT OF ACTIONS AND TIME  
FOR PLEADING.**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.

**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 134 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 153 of Article 75 Code of Public General Laws and, to the extent of inconsistency, similar provisions of Section 155 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 in so far 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.

The following recommendation suggests amendments to PART THREE, JUDGMENTS BY CONFESSION, Rule 1, of the existing General Rules of Practice and Procedure. The new matter to be inserted in the existing Rule is printed in italics.

## 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 judg-

ment 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.

## GENERAL EQUITY RULES.

The following recommendations suggest a revision of the existing General Equity Rule 11 and the deletion of matter from existing General Equity Rule 1, so that the latter will conform with the proposed revision.

The purpose of the recommended revision of existing General Equity Rule 11, is to make the language of the rule coincide as nearly as possible with the phraseology of the recommended Law rules on Commencement of Actions and Time for Pleading and thereby conform the practice in Law and Equity.

### Rule 1.

*(Matter to be omitted lined through.)*

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 ~~in the counties~~ on the first Monday of January, of March, of May, of July, of September, and of November of each year. ~~; and in Baltimore City shall commence on the second Monday of January, of March, of May, of July, of September, and of November of each year.~~

### Rule 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.



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