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Book Reviews: Maryland Rules Commentary

George W. White Jr.
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BOOK REVIEWS

MARYLAND RULES COMMENTARY. By Paul V. Niemeyer and Linda M. Richards.† The Michie Company, Charlottesville, Va., 1984. Pp. 471. Reviewed by George W. White, Jr.‡

“We have strict statutes and most biting laws—
The needful bits and curbs for headstrong steeds—
Which for these . . . years we have let sleep
It rested in your grace to unloose this tied-up
justice”

Shakespeare
Measure for Measure
Act I, Scene IV

Paul V. Niemeyer and Linda M. Richards have taken hold of the reins to lead the trial lawyer out of the confusion surrounding the new *Maryland Rules*. Their commentaries on the discovery rules, in general, and on depositions, in particular, alone justify the price of this newest roadmap to the streets and alleys of civil procedure and makes their book a more useful tool than the Annotated Code.

Following *Rule 2-412. Deposition-Notice*, for example, the Code lists the sources of the rule, one case, and a few tangentially related articles. MARYLAND RULES COMMENTARY, on the other hand, provides a cross-reference checklist of seventeen related rules,¹ understandable guidelines for timing of filing depositions that include considerations of “etiquette,”² and most importantly, a form for a “Notice of Deposition” by designation.³ The authors note that the deposition by designation (for example, one that requires a corporation to name the persons who will testify on its behalf regarding the subjects described in the notice) is “one of the more useful tools of discovery;”⁴ and the form that they recommend militates against unnecessary discovery expenses and fishing expeditions. Similarly, the commentaries following *Rule 2-419. Deposition-Use*⁵ and *Rule 2-416. Deposition-Videotape and Audiotape*⁶ clarify the

† Paul V. Niemeyer: B.A., Kenyon College, 1962; J.D., University of Notre Dame, 1966. Mr. Niemeyer, of Piper & Marbury, was a member of the Maryland Rules Committee for over ten years and was the originator and principal architect of the reorganization of the rules. Linda M. Richards: B.A., Pennsylvania State University, 1972; M.A., Pennsylvania State University, 1974; J.D., with honor, University of Maryland, 1980. Ms. Richards, of Frank, Bernstein, Conaway & Goldman, served as assistant reporter and is currently a member of the Rules Committee. She is the author of “Current Work of the Rules Committee,” *The Maryland Bar Journal*, October, 1981.

‡ B.A., University of Maryland, 1937; LL.B., University of Maryland, 1939. Mr. White, a trial attorney, is senior partner of White, Mindel, Clarke & Hill.

1. P. NIEMEYER & L. RICHARDS, MARYLAND RULES COMMENTARY 202 (1984).

2. *Id.* at 203-04.

3. *Id.* at 205.

4. *Id.*

5. *Id.* at 219-20.

quandary of presenting the depositions of expert witnesses at trial. The authors make clear that the Rule "permits"⁷ a party to videotape experts. Although videotaped depositions of experts may be used "to present the testimony of experts . . . where the expert is available but would be inconvenienced by having to coordinate his schedule with the court's,"⁸ any deposition of the expert may be used if the expert is unavailable for the trial.⁹

The value of the volume is hardly limited to discovery. A range of forms is provided, from pleadings,¹⁰ to the trial itself,¹¹ to judicial orders.¹² The commentary following *Rule 2-503. Consolidation; Separate Trials*¹³ not only provides a sample form of a consolidation order but also distinguishes the use of consolidation of cases for the purpose of resolving issues from the use of consolidation for the purposes of appeal.¹⁴

The forms are but one small part of this desk book. In simple, direct language, the authors discuss the nuances of numbering causes of action as counts.¹⁵ Local legal holidays used for computing time are listed in the commentary following *Rule 1-203. Time*.¹⁶ Rules requiring motions are distinguished from those requiring the filing of an application or a request.¹⁷ Potential pitfalls of the Rules are anticipated, such as in the commentary following *Rule 2-341. Amendment of Pleadings*¹⁸ where the authors suggest how to resolve the dilemma faced by a recipient of an amendment.¹⁹ Also, the authors make new motions lose their mystery. For example, *Rule 2-519. Motion for Judgment*²⁰ is followed by commentary that further dispels the confusion between motions to dismiss and motions for directed verdicts,²¹ which the rule was drafted to eliminate. More familiar motions, such as *Rule 2-501. Motion for Summary Judgment*,²² are supplemented with strategic considerations for their filing.²³

The book is divided into chapters that correspond to those in the Rules. Each rule is given, followed by cross-reference checklists of other

6. *Id.* at 215-17.

7. *Id.* at 215.

8. *Id.*

9. *Id.* at 223.

10. *Id.* at 155-56. A sample of an Answer to a Complaint is provided.

11. *Id.* at 288-90. A sample form of voir dire questions, along with a discussion of preemptory challenges, is offered.

12. *Id.* at 261.

13. *Id.* at 258.

14. *Id.* at 259.

15. *Id.* at 130. This discussion follows *Rule 2-303. Form of Pleadings. Id.* at 128.

16. *Id.* at 16-18.

17. *Id.* at 137-38.

18. *Id.* at 173.

19. *Id.* at 175.

20. *Id.* at 298-99.

21. *Id.* at 299-300.

22. *Id.* at 248-49.

23. *Id.* at 253.

relevant rules and then explanatory commentary. End-of-chapter comparisons of former rules to new rules are given. An additional strength of the work is that the entire volume is indexed in a most understandable manner, making it useful to locate quickly the applicable Rules.²⁴

Judge John F. McAuliffe, Chairman of the Standing Committee on Rules of Practice and Procedure of the Court of Appeals, wrote the Preface to the book. He states in part:

This is a book which should have been written, authored by two attorneys who should have written it, and published at a most opportune time.

Paul Niemeyer and Linda Richards have collaborated to produce a very important work on the Maryland Civil Rules of Procedure that will be of great assistance to the Bench, Bar and other persons who deal with the Maryland Circuit Court system. In a well organized and easily understood work they have presented and discussed each civil rule, carefully outlining its proper office and function and explaining its interaction with other rules.

I am confident that attorneys and judges not only will find this book extremely helpful in understanding and applying the newly revised rules, but will also find it a valuable reference for work for many years to come.²⁵

I am in 100 percent agreement. It is my prediction that the book will become the "Bible" for the active, busy trial lawyer. It is an excellent work.

24. *Id.* at 425-71. The index is 46 pages. There is a typographical error under Amendments: Pleadings; reference should be to Rule 2-341 not Rule 2-391. *Id.* at 426.

25. *Id.* at ix.