Writing Findings and Conclusions

Findings of Fact and Conclusions of Law

01 FRAME | 02 FIND | 03 CONCLUDE | 04 ASSESS | 05 FILE

THE FRAMEWORK · MD. RULE 19-727(d), (e)

Within 45 days after the hearing, file a written statement: (1) findings of fact and conclusions of law as to each charge; (2) findings on any remedial action; (3) findings on any aggravating or mitigating circumstances. Hearing must be completed within 120 days after service on the attorney of the Rule 19-722 designation order. Petitioner proves charges by clear and convincing evidence.

01 FRAME *procedural background*

☐ **Designation**	Date designated as hearing judge.
☐ **Hearing dates**	Date(s) of hearing; in person or remote.
☐ **Appearance**	Whether the Respondent appeared.
☐ **Parties and counsel**	Respondent and Bar Counsel identified.
☐ **Charges**	MARPC charged in the Petition for Disciplinary or Remedial Action; specify the subsection (e.g., 8.4(d), not 8.4).
☐ **Pre-hearing motions**	Rulings and grounds, including any motion for order of default.
☐ **Witnesses and exhibits**	Witnesses called by each side; exhibits admitted into evidence.
☐ **Motions not permitted**	Motions to dismiss, motions for summary judgment, and motions for judgment. The circuit judge may not dismiss the petition. Md. Rule 19-725(c).

02 FIND *facts*

☐ **Organization**	Divide by client, complainant, or alleged victim, or by instance. Within each part, write findings as a chronological narrative.
☐ **Admission and practice**	Begin with the date of admission to the Bar; describe the nature and location of practice.
☐ **Numbering**	Each finding numbered and separately stated.
☐ **Record cites**	Tr. ____ / Ex. ____ / Stip. ____ for each factual finding.
☐ **Mental state**	Intentional, knowing, or negligent, where appropriate.
☐ **Injury**	Caused or that could have been caused.
☐ **Disputes resolved**	State the basis or grounds for resolution. Inferences from circumstantial evidence explained.
☐ **Proposed findings**	Do not refuse Proposed Findings of Fact and Conclusions of Law offered by the parties. If adopted, the writing reflects independent factual findings.
☐ **Credibility**	Where testimony conflicts, make and state a credibility determination. Do not write "he said, she said." Failure to explain is a ground for remand.

Writing Findings and Conclusions · back

Conclusions, aggravation and mitigation, before you file

01 FRAME | 02 FIND | 03 CONCLUDE | 04 ASSESS | 05 FILE

03 CONCLUDE *law, rule by rule*

☐ **Organization**	Separate heading for each MARPC section or subsection.
☐ **Quote the rule**	Begin with the relevant MARPC section quoted.
☐ **Violation finding**	State whether the Respondent violated or did not violate, with supporting facts.
☐ **All allegations addressed**	Address each charged MARPC section and the reasons separately. In the writing, are all allegations fully addressed?
☐ **Standard**	Clear and convincing evidence.
☐ **Respondent's position**	Address it. Explain why it is not persuasive where applicable.
☐ **Do not exceed the petition**	No violations of rules not charged. No violations of different subsections of a charged rule (e.g., only 1.15(a) charged, do not find 1.15(d)). On 8.4(d), conduct likely to impair public confidence is conduct prejudicial to the administration of justice.

04 ASSESS *aggravation and mitigation*

☐ **Standards**	Aggravating: ABA Standards § 9.22. Mitigating: ABA Standards § 9.32.
☐ **Petitioner's burden**	Aggravating factors by clear and convincing evidence. Eckel, 443 Md. 75 (2015).
☐ **Respondent's burden**	Mitigating factors and affirmative defenses by a preponderance. Vanderlinde, 364 Md. 376 (2001).
☐ **Credit or discredit mitigation**	Were aggravating and mitigating factors, if applicable, addressed? Credit or discredit all evidence of mitigation, even where the Respondent does not label it mitigating, and even if no MARPC violation is found. Davy, 435 Md. 674, 694 (2013); Basinger, 441 Md. 703 (2015); Reno, 436 Md. 504 (2014).
☐ **No evidence offered**	If the Respondent offered no mitigation evidence, say so.
☐ **Default cases**	Findings must be as detailed as contested hearings, including mental state and aggravation and mitigation. Armstrong, 471 Md. 537 (2020).
☐ **Sanction**	The hearing judge should refrain from recommending a particular sanction. The Supreme Court determines the sanction under Md. Rules 19-727 and 19-741. Floyd, 400 Md. 236 (2007).

05 FILE *before you file*

☐ **Every charge addressed**	Each MARPC charge found or not found.
☐ **Aggravating and mitigating addressed**	Both fully treated in the writing where applicable.
☐ **Every cite accurate**	Page or line where needed.
☐ **Labels**	Label clients and witnesses accurately; be consistent, especially where last names are shared.
☐ **Terminology**	Consistent throughout.
☐ **45 days**	Statement filed within 45 days after the hearing closes. Md. Rule 19-727(e).

OPINION-WRITING POTPOURRI

Indicate whether the hearing was virtual or in person. Provide record cites in support of factual findings. Do not refuse Proposed Findings of Fact and Conclusions of Law offered by the parties. Do not find violations of MARPC not charged in the Petition. Do not find violations of different sections of a charged MARPC. Label clients and witnesses accurately; be consistent.