COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Training Rooms 5 and 6 of the Judiciary Education and Conference Center, 2011 Commerce Park Drive, Annapolis, Maryland on September 10, 2015.

Members present:

Hon. Alan M. Wilner, Chair

H. Kenneth Armstrong, Esq.
Hon. Yvette M. Bryant
James E. Carbine, Esq.
Hon. John P. Davey
Mary Anne Day, Esq.
Christopher R. Dunn, Esq.
Hon. Angela M. Eaves
Hon. JoAnn M. Ellinghaus-Jones
Alvin I. Frederick, Esq.
Donna Ellen McBride, Esq.
Hon. Danielle M. Mosley
Hon. Douglas R. M. Nazarian
Hon. Paula A. Price
Scott D. Shellenberger, Esq.
Steven M. Sullivan, Esq.
Robert Zarbin, Esq.
Thurman W. Zollicoffer, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
David R. Durfee, Jr., Esq., Assistant Reporter
Sherie B. Libber, Esq., Assistant Reporter
Erin McCarthy, Esq., Circuit Court for Anne Arundel County
Lee Sampson, Administrative Office of the Courts
Hon. Gary G. Everngam
Faye D. Matthews, Deputy State Court Administrator
Polly Harding, District Court Headquarters
Jeffrey C. Shipley, Esq., Secretary, State Board of Law Examiners
Hon. Anne C. Dodd, Howard County Orphans' Court
Sarah Norton, Esq., Court of Special Appeals
Rachel Dombrowski, Esq., Court of Special Appeals
Margaret H. Phipps, Register of Wills for Calvert County
Grace G. Connolly, Register of Wills for Baltimore County
P. Gregory Hilton, Esq., Clerk, Court of Special Appeals

The Chair convened the meeting. He welcomed everyone back after the summer break. He welcomed a new member, the Honorable

Yvette M. Bryant, a judge on the Circuit Court of Baltimore City, who is replacing the Honorable W. Michel Pierson. He also welcomed Scott D. Shellenberger, Esq., State's Attorney for Baltimore County, who had previously attended many Committee meetings, and who is now on the Committee.

The Chair officially announced the unfortunate and untimely death of Derrick Lowe, Esq., who had been the Clerk of Cecil County and a member of the Committee. The Chair had sent a letter on behalf of the Committee to Mr. Lowe's wife and children expressing the Committee's sympathy. The Chair had just learned that the Court of Appeals had appointed Dennis J. Weaver, Clerk of Washington County, in place of Mr. Lowe. Mr. Weaver had only found out about the appointment yesterday afternoon and was unable to be at the meeting.

The Chair said that the Court of Appeals is going to have an open hearing on the 187th Report on September 17, 2015 at 1:00 p.m. The Chair told the Committee that they had been tasked over the summer with two new items to study and develop rules on quickly. One is going to be the product of a work group appointed by the Honorable Mary Ellen Barbera, Chief Judge of the Court of Appeals, to address what to do about teaching professionalism. The Honorable Clayton Greene, Jr., Associate Judge of the Court of Appeals, is chairing the work group, and he is going to make a report to the Court, possibly by September 17, 2015. Some rules will be necessary to implement whatever is decided. These also need to be completed in a hurry, because the

current professionalism procedures sunset on January 1, 2016.

The Chair referred to the exposés in The Washington Post, which were picked up by The Sunpapers, on problems arising from the assignment of rights under structured settlement agreements. The Court of Appeals has asked the Committee to address this issue quickly. The Chair has appointed a special subcommittee to discuss this and draft rules. Hopefully, there will be some rules to consider at the October Rules Committee meeting.

The Chair said that he had been asked to take up Agenda Item 2 first.

Agenda Item 2. Consideration of proposed amendments to Rule 16-205 (Disposition of Records)

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The Chair presented Rule 16-205, Disposition of Records, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 200 - GENERAL PROVISIONS - CIRCUIT AND DISTRICT COURT

Rule 16-205. DISPOSITION OF RECORDS

~~(a) Definitions~~

~~In this Rule, the following definitions apply except as otherwise provided or as necessary implication requires.~~

~~(1) Authorized Judge~~

~~"Authorized judge" means~~

(A) with respect to records of a circuit court, the County Administrative Judge; and

(B) with respect to records of the District Court, the Chief Judge of that Court.

(2) Court

"Court" means a circuit court or the District Court.

Cross reference: See Rule 8-113 (b)(3) for disposition of records of the Court of Appeals and Court of Special Appeals.

(3) Dispose

"Dispose" means to destroy or remove.

(4) Records

"Records" means any original papers, official books, documents, files, including dockets, electronic recordings of testimony, and exhibits within the custody of the clerk of the court.

Cross reference: See Code, State Government Article, §§9-1009 and 10-639 through 10-642.

(5) Schedule

"Schedule" means the form known as the "Records Retention and Disposal Schedule" used by the Records Management Division of the Department of General Services.

(b) Authority of Clerk

The clerk of the court may dispose of records in the clerk's custody:

(1) in accordance with the provisions of this Rule or Rule 16-405 (d)(2);

(2) with the written approval of the authorized judge; and

(3) in cooperation with the State

~~Archivist.~~

~~Cross reference: See Code, Courts Article, §2-205.~~

~~(c) Procedure~~

~~(1) The clerk shall prepare an initial schedule for the disposition of court records and submit the schedule to the State Archivist for the Archivist's recommendation.~~

~~(2) Upon receipt of the recommendation of the State Archivist, the clerk shall submit the schedule and the recommendation to the authorized judge, who may approve, amend, or disapprove the schedule. Approval of the schedule in whole or in part shall be by an order providing for disposal of the records.~~

~~(3) The schedule, as approved, shall identify the records and set forth:~~

~~(A) the length of time the records are to be retained by the clerk of the court before disposition;~~

~~(B) whether the State Archivist declines to accept the records for preservation;~~

~~(C) whether the records are to be destroyed or removed;~~

~~(D) if the records are to be removed, the place to which they would be removed; and~~

~~(E) whether the schedule shall be operative until changed by further order of court.~~

~~(4) The records shall be disposed of:~~

~~(A) in accordance with procedures of the State Archivist if the State Archivist accepts the records;~~

~~(B) otherwise, in accordance with the terms specified in the approved schedule. If the records are to be destroyed, the clerk shall obtain the approval of the Board of~~

~~Public Works and, upon destruction, shall file a certificate of destruction with the State Archivist.~~

~~Cross reference: See Code, State Government Article, §10-642.~~

~~(d) Limitations Upon Disposal of Circuit Court Records~~

~~(1) This section applies only to circuit court records.~~

~~(2) Subject to subsection (d)(5) of this Rule, the following records shall be retained permanently either by the clerk or the State Archivist:~~

~~(A) permanent books of account;~~

~~(B) indices and dockets maintained by the clerk; and~~

~~(C) other records designated on an approved schedule.~~

~~(3) Subject to subsection (d)(5) of this Rule, the clerk shall retain permanently records affecting title to real property.~~

~~(4) The clerk may destroy:~~

~~(A) Records in a motor vehicle or natural resources case at any time three years or more after the case was closed and any required audit was completed, except that the clerk shall retain as permanent records convictions of offenses which carry subsequent offender penalties;~~

~~(B) Records in a landlord/tenant case involving restitution of the premises but no money judgment at any time three years or more after the case was closed; and~~

~~(C) Other records designated in an approved schedule at any time 12 years or more after the case was closed.~~

~~(5) The clerk may dispose of records specified in subsections (d)(2), (d)(3), or~~

~~(d)(4) of this Rule at any time if an unredacted version of the records has been duplicated in accordance with State Archivist's procedures and copies have been substituted for the originals.~~

~~(e) Limitations upon Disposal of District Court Records~~

~~(1) This section applies only to District Court records.~~

~~(2) Subject to subsection (e)(10) of this Rule, the clerk shall retain the records described in subsections (e)(3) through (e)(9) of this Rule for the periods specified in those subsections.~~

~~(3) The clerk shall retain permanently all indices, dockets, and books of account.~~

~~(4) The clerk shall retain for a period of 12 years after the case is closed all original papers and exhibits in any case containing a petition for emergency evaluation or a petition for protection from domestic violence.~~

~~(5) In any case in which a money judgment is entered, the clerk shall retain all original papers, exhibits, and electronic recordings of testimony for a period of three years after entry of the judgment and thereafter shall continue to retain all original papers and exhibits in the file until the judgment expires or is satisfied.~~

~~(6) In any criminal case which is dismissed or in which a nolle prosequi or stet is entered, the clerk shall retain all original papers, exhibits, and electronic recordings of testimony for a period of three years after the case is so concluded.~~

~~(7) In any criminal case in which judgment is entered or probation before judgment is granted, the clerk shall retain all original papers, exhibits, and electronic recordings of testimony for a period of three years after the case is so concluded, and if within that three year period the defendant~~

~~fails to comply with the order of court, the clerk shall continue to retain the original papers and exhibits in the file until the failure is cured or an arrest warrant issued as a result of the failure is invalidated as permitted by law.~~

~~(8) In any criminal case involving a misdemeanor in which an arrest warrant issued on the charging document or as a result of the defendant's failure to appear for trial remains unserved three years after its issuance, the clerk shall retain all the original papers and exhibits in the file until the warrant is invalidated as permitted by law.~~

~~(9) The clerk shall retain the original papers, exhibits, and electronic recordings of testimony in all other cases for a period of three years after the case is concluded by dismissal, settlement, or entry of judgment.~~

~~(10) (A) Any of the records, except dockets, set forth in subsections (e)(1) through (e)(9) of this Rule may be disposed of at any time provided that an unredacted version of the records has been duplicated in accordance with State Archivist's procedures and copies have been substituted for the originals, including a master security negative which shall be retained permanently.~~

~~(B) Traffic and criminal dockets may be disposed of after a period of five years if copies are retained in accordance with subsection (10)(A) of this Rule.~~

~~(f) Retention by State Archives~~

~~A requirement of this Rule that the clerk retain records may be satisfied by retention of the records by the State Archives. Records retained by the clerk that are twenty-five years old and have not been transferred to the State Archives shall be transferred to the Archives or disposed of according to an approved schedule.~~

~~Cross reference: For the archival of MDEC records, see Rules 20-102 (c) and 20-503.~~

(a) Applicability

**(1) This Rule does not apply to records initially filed or submitted for filing in paper form and subsequently scanned into electronic form pursuant to Rule 20-106. Upon scanning, those written documents cease to be court records and shall be disposed of in accordance with Rule 20-106.**

**(2)** This Rule applies to records in the custody of a circuit court or the District Court that **(A)** for a circuit court are subject to a Records Retention and Disposal Schedule for the Circuit Courts adopted by the Records Management Division of the Department of General Services and approved by the Chief Judge of the Court of Appeals, or **(B)** for the District Court, are subject to a District Court Records Retention and Storage Manual adopted by the Chief Judge of that Court and approved by the Chief Judge of the Court of Appeals.

Committee note: This Rule is to be read in harmony with the statutes and Rules governing the expungement of court records.

(b) Definitions

In this Rule, the following definitions apply except as otherwise provided or as necessary implication requires.

(1) Dispose

"Dispose" means to destroy or remove.

(2) Records

"Records" means original papers, official books, documents, files, dockets, electronic recordings of testimony and court proceedings, and exhibits in the custody of the court.

(c) Circuit Court Records

(1) Duty of Clerk and County Administrative Judge

Each custodian of records of a circuit court and the county administrative judge of that court shall dispose of those records in accordance with the procedures, schedules, forms, and exhibits set forth in the Records Retention and Disposal Schedule for the Circuit Courts of Maryland most recently adopted by the Records Management Division of the Department of General Services and approved by the Chief Judge of the Court of Appeals.

(2) Duty of State Court Administrator

The State Court Administrator shall assure that a copy of the most recently adopted and approved Schedule is delivered to each county administrative judge and each clerk of a circuit court, along with any appropriate instructions regarding its use.

(d) District Court Records

The Chief Clerk of the District Court and the Chief Judge of the District Court shall dispose of records of the District Court in accordance with the procedures, schedules, forms, and exhibits set forth in the District Court Records Retention and Storage Manual most recently adopted by the Chief Judge of the District Court and approved by the Chief Judge of the Court of Appeals.

**Cross reference: See Code, Courts Article, §2-205 and Code, State Government Article, §10-616 (b) concerning destruction of records.**

Source: This Rule is ~~derived from former Rules 16-505 and 16-818 (2015)~~ new.

The Chair explained that when Part I of the 178th Report, which was a complete reorganization of the Rules pertaining to

court administration, was completed, one of the Rules in Part 1 was Rule 16-205 dealing with the disposition of court records. The Rule was a combination of two current Rules, Rule 16-505 and 16-818, both entitled "Disposition of Records." In 2013, the Committee combined the two Rules and restyled them, but they did not change very much substantively. All of the procedures for disposing of court records that were in the current Rules were put in proposed Rule 16-205. This was all done before the Maryland Electronic Court Initiative ("MDEC") started. In part, as a result of MDEC, proposed Rule 16-205 was reviewed. The Rule is before the Court of Appeals now. In light of MDEC and two statutes governing the disposition of court records that were handed out at the meeting, Code, Courts Article, §2-205 and Code, State Government Article, §10-616 (b), Rule 16-205 needs to be looked at again.

The Chair noted that there had been a review of the proposed Rule that had been sent to the Court as part of Part I of the 178th Report in light of actual retention and disposition manuals that exist for the District Court and the circuit courts. The District Court manual is prepared and adopted by the Chief Judge of the District Court. The circuit court manual is prepared by units in the Maryland Department of General Services. The State Archivist is involved in preparing the manual. That schedule is subject to approval by the County Administrative Judge, the clerk, and others for each county. The manuals are far more

detailed than the Rules. They include several schedules, and this is what the clerks use for retention and disposition of records. After discussions with the Chair, Chief Judge Barbera, and Ms. Pamela Harris, State Court Administrator, the decision was to get rid of all of the detail that is in the Rule. Instead the clerks will be directed to follow the manuals, which they are required to do and which they already do.

The Chair pointed out that the current manuals are out of date, and they need to be revised. They are currently being worked on by a committee of the Judicial Council and a subcommittee of that committee. The Subcommittee is headed by the Honorable James Eyler, a retired judge of the Court of Special Appeals. The Honorable Gary Everngam, a District Court judge, was present at the meeting. He had been very involved in this process and would address the Committee soon.

The Chair said that, based upon the discussions with Chief Judge Barbera and Ms. Harris, the main goal for the Committee is to try to get all of the detail out of Rule 16-205. Rules are being modified all of the time because of MDEC. As MDEC rolls out, the retention issues will require more changes, because there are very different situations with retention and disposition of electronic records as opposed to paper records.

The Chair noted that one of the concerns that had already been expressed by Judge Eyler's group pertains to MDEC. This is what Judge Eyler calls the "backscanning" of paper records. In

Title 20, several provisions relate to the situation when someone files in paper form. If the paper can be scanned, the clerk scans it and gives the paper back. It never really was a court record. The official record is the electronic record. This is true for exhibits filed with the court or any paper filed that can be scanned.

When MDEC goes into force in a particular county, there are already many court files of cases, and Rule 20-106, When Electronic Filing Required; Exceptions, permits the clerk to scan the paper files in, with the approval of the County Administrative Judge of a circuit court, or the Chief Judge of the District Court, and approval by the State Court Administrator.

The Chair noted that the point of this was that the file may have been opened only two weeks before with just a complaint and an answer to a motion, so that is easy to scan. However, there could be a protracted case with boxes and boxes of papers, and it would be very difficult to scan all of this. The Rules try to provide some flexibility, so that the clerks do not have to deal with a file that has both paper and electronic files. The question of what happens to the paper arose with respect to those kinds of files that existed in paper form and were then scanned. Does it fall under the retention schedule that requires that it be retained until a certain point in time, or can it just be disposed of? As a result of a conference call, the conclusion was that as to that "backscanning," those papers do not fall

within the retention schedule. The papers can be disposed of or given back to the filer. This is in the proposed amendment to Rule 16-205. The rest of the Rule has been stricken. All of the details about the retention and disposal of records have been taken out. The Rule essentially provides that court records are disposed of in accordance with the manuals. One limitation in the manuals and in the statutes is that the records cannot be destroyed without the approval of the Archivist of the State Archives and the County Administrative Judge or the Chief Judge of the District Court. That limitation has been preserved.

Judge Everngam explained that the problem arose, because once someone has a document that is important, the person usually would like to keep it. Even after it becomes unimportant, the person may still want to keep it. One of the benefits of MDEC is that space that had been used for storing papers can be used for other purposes. Early on, the Executive Committee and its predecessor, the Advisory Board, had realized that it is not a good idea to rely on paper, and paper needed to be eliminated from the system as quickly as possible. What to do with the paper caused a great deal of consternation. Judge Eyler's report pointed out that there may be some ambiguities.

Judge Everngam said that he had spoken with Ms. Harris and with the Honorable John P. Morrissey, Chief Judge of the District Court, who are very interested in this. They feel that the proposed amendment to subsection (a)(1) of Rule 16-205 makes it

clear that the electronic record is the official record, and the paper form of it is unnecessary. Some papers were required to be retained. The Rule is important, so that the Judiciary can move on with MDEC, and the papers that do not have to be kept can be disposed of. The Executive Committee is in favor of the amendment to subsection (a)(1). They hope that the Court of Appeals will adopt proposed Rule 16-205.

The Chair said that a motion would be necessary to approve Rule 16-205, because it had not been considered by a Subcommittee. Mr. Frederick moved to approve Rule 16-205, the motion was seconded, and it passed unanimously.

The Chair told the Committee that Agenda Items 10 and 11 would be considered next.

Agenda Item 10. Reconsideration of proposed amendments to: Rule 1-321 (Service of Pleadings and Papers Other than Original Pleadings) and Rule 2-613 (Default Judgment)

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Mr. Dunn presented Rules 1-321, Service of Pleadings and Papers Other than Original Pleadings, and 2-613, Default Judgment, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-321 (b) to require service of a request for entry of judgment arising out of an order of default, as follows:

Rule 1-321. SERVICE OF PLEADINGS AND PAPERS OTHER THAN ORIGINAL PLEADINGS

(a) Generally

Except as otherwise provided in these rules or by order of court, every pleading and other paper filed after the original pleading shall be served upon each of the parties. If service is required or permitted to be made upon a party represented by an attorney, service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivery of a copy or by mailing it to the address most recently stated in a pleading or paper filed by the attorney or party, or if not stated, to the last known address. Delivery of a copy within this Rule means: handing it to the attorney or to the party; or leaving it at the office of the person to be served with an individual in charge; or, if there is no one in charge, leaving it in a conspicuous place in the office; or, if the office is closed or the person to be served has no office, leaving it at the dwelling house or usual place of abode of that person with some individual of suitable age and discretion who is residing there. Service by mail is complete upon mailing.

(b) Party in Default - Exceptions

No pleading or other paper after the original pleading need be served on a party in default for failure to appear except:

(1) a pleading asserting a new or additional claim for relief against the party shall be served in accordance with the rules for service of original process; and

(2) a request for entry of judgment arising out of an order of default under Rule 2-613 shall be served in accordance with section (a) of this Rule.

(c) Requests to Clerk - Exception

A request directed to the clerk for the issuance of process or any writ need not be served on any party.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 306 a 1 and c and the 1980 version of Fed. R. Civ. P. 5 (a).
Section (b) is derived from former Rule 306 b and the 1980 version of Fed. R. Civ. P. 5 (a).
Section (c) is new.

Rule 1-321 was accompanied by the following Reporter's note.

An order of default under Rule 2-613 is an interlocutory determination of liability. It is not a judgment for a specific amount of money damages or for other relief. In some cases, after an order of default has been entered, it may be necessary for the court to consider additional evidence before entering a judgment. Even after an order of default has been entered, the defendant has the right to participate in any further proceedings in the action on the issue of damages or other relief to be granted. See *Banegura v. Taylor*, 312 Md. 609 (1988) and *Greer v. Inman*, 79 Md. App. 350 (1989).

The General Provisions Subcommittee recommends that Rule 1-321 (b) be amended by the addition of the requirement for service of a request for entry of judgment arising out of an order of default under Rule 2-613 to make clear that a request for entry of judgment arising out of an order for default under Rule 2-613 is to be served on the defendant. The Subcommittee also recommends that Rule 2-613 be amended by the addition of a cross reference to the new subsection of Rule 1-321 (b).

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 600 - JUDGMENT

AMEND Rule 2-613 by adding a cross reference after section (f), as follows:

Rule 2-613. DEFAULT JUDGMENT

. . .

(f) Entry of Judgment

If a motion was not filed under section (d) of this Rule or was filed and denied, the court, upon request, may enter a judgment by default that includes a determination as to the liability and all relief sought, if it is satisfied (1) that it has jurisdiction to enter the judgment and (2) that the notice required by section (c) of this Rule was mailed. If, in order to enable the court to enter judgment, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any matter, the court, may rely on affidavits, conduct hearings, or order references as appropriate and, if requested, shall preserve to the plaintiff the right to trial by jury.

Cross reference: For the requirement that a request for entry of judgment under section (f) of this Rule be served on the defendant, see Rule 1-321 (b)(2).

. . .

Rule 2-613 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 1-321.

Mr. Dunn explained that this item pertains to default judgments and the notice to defaulting parties. It involves the

interplay between Rules 1-321 and 2-613. A circuit court judge had alerted the Committee that on occasion, a plaintiff who requests a judgment under Rule 2-613 (f) does not serve the request upon the defendant, and the plaintiff will cite Rule 1-321 (b) to support this. The judge had said that his practice and the practice of many other judges is that they deny the request and insist that the defendant be served. The General Provisions Subcommittee has suggested adding a new subsection (b)(2), which reads: "a request for entry of judgment arising out of an order of default under Rule 2-613 shall be served in accordance with section (a) of this Rule." The Subcommittee also recommends a cross reference to subsection (b)(2) after section (f) of Rule 2-613.

By consensus, the Committee approved the changes to Rules 1-321 and 2-613 as presented.

Agenda Item 11. Consideration of proposed amendments to: Rule 2-321 (Time for Filing Answer)

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Mr. Dunn presented Rule 2-321, Time for Filing Answer, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 2-321 (c) to add language referring to matters that have been remanded from certain courts, as follows:

Rule 2-321. TIME FOR FILING ANSWER

. . .

(c) Automatic Extension

When a motion is filed pursuant to Rule 2-322 or when a matter is remanded from an appellate court or a federal court, the time for filing an answer is extended without special order to 15 days after entry of the court's order on the motion or remand or, if the court grants a motion for a more definite statement, to 15 days after the service of the more definite statement.

. . .

Rule 2-321 was accompanied by the following Reporter's note.

An attorney pointed out that the Maryland Rules do not provide for the time for filing a paper following a remand from a federal court or a State appellate court. The attorney suggested amending Rule 1-203 (e). The General Provisions Subcommittee recommends amending Rule 2-321 (c) to address this gap in the Rules.

Mr. Dunn told the Committee that an attorney had written to the Chair asking that language be added to Rule 2-321 to clarify when an answer is due after a case has been remanded from an appellate or a federal court. The Subcommittee had not been sure when that issue would ever come up. In a State court, a plaintiff files a complaint, and the defendant, instead of filing an answer, files a motion for lack of venue or for forum non conveniens. The trial judge grants the motion. If it is granted, the plaintiff has a right to an automatic appeal. If the motion is denied, the defendant does not have that right. If the plaintiff files that appeal, it would go up to the appellate

court, and no answer would be filed. If the case is remanded, the question is when the answer is due. This is very rare in federal court. Mr. Dunn said that when he files a petition for removal, he files an answer and an automatic stay in State court, and the petition for removal is filed in federal court along with all of the pleadings. This is what most practitioners do. Technically, the attorney can file the motion to stay without filing an answer.

The attorney who wrote the letter suggested that language be added to Rule 1-203, Time. However, the Subcommittee felt that it would be better to add language to Rule 2-321 (c), which provides for 15 days to file an answer after a motion is filed pursuant to Rule 2-322. The new language would refer to matters that are remanded, so that the answer would be filed 15 days after entry of the court's order on the remand.

By consensus, the Committee approved the change to Rule 2-321 (c) as presented.

Agenda Item 1. Consideration of proposed amendments to: Rule 1-311 (Signing of Pleadings and Other Papers), Rule 20-107 (Electronic Signatures), Rule 20-203 (Review by Clerk; Striking of Submission; Delinquency Notice; Correction; Enforcement), and Rule 20-106 (When Electronic Filing Required; Exceptions)

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Mr. Carbine explained that the issue of using an attorney's Client Protection Fund number as the identification number for MDEC had been discussed at the May, 2015 Rules Committee meeting. The MDEC Subcommittee discussed it over the summer, and they came

up with some suggestions for tweaking some of the MDEC Rules. None of the Judicial Information Systems ("JIS") employees who work with MDEC were present, so Mr. Carbine said he would explain the technological limitations of MDEC from a layman's point of view. He explained that MDEC consists of two separate systems. The filing system is entitled "File and Serve." The case management system that takes over after filing and does all of the case management work is entitled "Odyssey."

Mr. Carbine noted that, as had been discussed last May, the File and Serve system and the Odyssey system do not communicate with each other. The clerks have to manually take the filing information out of the File and Serve system and enter it into the Odyssey system. Lost in that translation, because it is deep in the part of the computer software that is in cyberspace, is the unique attorney identification number for the Client Protection Fund ("CPF"). All Maryland attorneys have a CPF number.

Mr. Carbine said that he had surveyed the members of the Rules Committee last May, and not one member knew what his or her number was. The proposed Rules will require every attorney in Maryland in MDEC and outside of MDEC to supply the CPF number below the attorney's signature on papers along with the list of other information that is required. This change was a policy issue decided by the Committee. The question arose last May. The purpose of having the unique identifier for attorneys is to

make sure that the system can distinguish between attorneys with similar names, or can determine that two different papers filed by the same person but under a different name, such as John Jones and John C. Jones, belong to that one person.

Mr. Carbine remarked that the question was asked as to how this would relate to non-attorneys filing papers. The Subcommittee had learned that although it is mandated in Rule 20-104, User Registration, JIS does not generate a unique identification number for registered users. It will be necessary to discuss this again, because the same problem exists for non-attorneys, except there is no unique identifier for those individuals. JIS is not issuing the numbers Rule 20-104 requires. The Chair said that JIS has claimed that they cannot issue the numbers. Mr. Carbine remarked that there are reasonable grounds for debate as to whether JIS will not, cannot, or does not want to issue the numbers.

Mr. Carbine said that the proposed Rule change is an interim step. At a minimum, it will take care of the vast majority of registered users who are attorneys.

Mr. Carbine presented Rule 1-311, Signing of Pleadings and Other Papers, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-311 to require that every pleading or paper signed by an attorney pursuant to Rule 20-107 contain the attorney's Client Protection Fund ID number, as follows:

Rule 1-311. SIGNING OF PLEADINGS AND OTHER PAPERS

(a) Requirement

Every pleading and paper of a party represented by an attorney shall be signed by at least one attorney who has been admitted to practice law in this State and who complies with Rule 1-312. Every pleading and paper of a party who is not represented by an attorney shall be signed by the party. Every pleading or paper filed shall contain (1) the signer's address, telephone number, facsimile number, if any, and e-mail address, if any, and (2) if the pleading or paper is signed by an attorney pursuant to Rule 20-107, the attorney's Client Protection Fund ID number.

Committee note: The requirement that a pleading contain a facsimile number, if any, and e-mail address, if any, does not alter the filing or service rules or time periods triggered by the entry of a judgment. See *Blundon v. Taylor*, 364 Md. 1 (2001).

(b) Effect of Signature

The signature of an attorney on a pleading or paper constitutes a certification that the attorney has read the pleading or paper; that to the best of the attorney's knowledge, information, and belief there is good ground to support it; and that it is not interposed for improper purpose or delay.

(c) Sanctions

If a pleading or paper is not signed as required (except inadvertent omission to sign, if promptly corrected) or is signed with intent to defeat the purpose of this Rule, it may be stricken and the action may proceed as though the pleading or paper had

> not been filed. For a wilful violation of this Rule, an attorney is subject to appropriate disciplinary action.
>
> Source: This Rule is derived as follows:
> Section (a) is derived from former Rules 302 a, 301 f, and the 1937 version of Fed. R. Civ. P. 11.
> Section (b) is derived from former Rule 302 b and the 1937 version of Fed. R. Civ. P. 11.
> Section (c) is derived from the 1937 version of Fed. R. Civ. P. 11.

Rule 1-311 was accompanied by the following Reporter's note.

> At the request of the Judicial Information Systems and the State Court Administrator, an amendment is proposed to Rule 1-311 to require that every pleading or paper signed by an attorney pursuant to Rule 20-107 contain the attorney's Client Protection Fund ID number. Requiring an attorney to include the Client Protection Fund ID number, a unique identifier, will assist clerks if there is any confusion over an attorney's identity.

Mr. Carbine explained that the change to Rule 1-311 requires that the CPF ID number be added to the list of information that is given below the signature lines on a filing. The importance of Rule 1-311 is that the Rule applies to all pleadings and papers and not only those filed under MDEC. The bar will have to be informed of this change. It will require a great amount of attorney education. The Committee is fairly comfortable with the fact that if the CPF ID number is not on a paper filing, the filing will not be rejected. Mr. Carbine said that he felt very strongly about the policy issue concerning the miscreant who fails to put his or her CPF ID number below the person's signature. Without the changes being proposed at the meeting,

the submission would be subject to rejection by the clerk. Mr. Carbine expressed the opinion that it should not be rejected; it should be subject to a deficiency notice that is sent to the person filing.

Mr. Carbine presented Rule 20-107, Electronic Signatures, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILINGS AND CASE MANAGEMENT

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 20-107 to divide section (a) into subsections and to require that an attorney filer who electronically signs a submission under MDEC include the attorney's Client Protection Fund ID number, as follows:

Rule 20-107. ELECTRONIC SIGNATURES

(a) Signature by Filer; Generally

(1) Subject to sections (b), (c), (d), and (e) of this Rule, when a filer is required to sign a submission, the filer shall electronically sign the submission by inserting a ~~(1)~~ (A) facsimile signature or ~~(2)~~ (B) typographical signature.

(2) The filer shall insert the ~~electronic~~ signature above the filer's typed name, address, e-mail address, and telephone number and, if the filer is an attorney, the attorney's Client Protection Fund ID number. An electronic signature on an electronically filed submission constitutes and has the same force and effect as a signature required under Rule 1-311.

(b) Signature by Judge or Judicial

Appointee

A judge or judicial appointee shall sign a submission electronically by (1) personally affixing the judge's or judicial appointee's digital signature or (2) hand-signing a paper version of the submission and scanning or directing an assistant to scan the hand-signed submission to convert the handwritten signature to a facsimile signature in preparation for electronic filing.
Cross reference: For delegation by an attorney, judge, or judicial appointee to file a signed submission, see Rule 20-108.

(c) Signature by Clerk

When a clerk is required to sign a submission electronically, the clerk's signature shall be a digital signature or a facsimile signature.

(d) Multiple Signatures on a Single Document

When the signature of more than one person is required on a document, the filer shall (1) confirm that the content of the document is acceptable to all signers; (2) obtain the handwritten, facsimile, or digital signatures of all signers; and (3) file the document electronically, indicating the signers in the same manner as the filer's signature. Filers other than judges, judicial appointees, clerks, and judicial personnel shall retain the signed document until the action is concluded.

(e) Signature Under Oath, Affirmation, or with Verification

When a person is required to sign a document under oath, affirmation, or with verification, the signer shall hand-sign the document. The filer shall scan the hand-signed document, converting the signer's handwritten signature to a facsimile signature, and file the scanned document electronically. The filer shall retain the

original hand-signed document until the action is concluded or for such longer period ordered by the court. At any time prior to the conclusion of the action, the court may order the filer to produce the original hand-signed document.

(f) Verified Submissions

When a submission is verified or attaches a document under oath, the electronic signature of the filer constitutes a certification by the filer that (1) the filer has read the entire document; (2) the filer has not altered, or authorized the alteration of, the text of the verified material; and (3) the filer has either personally filed the submission or has authorized a designated assistant to file the submission on the filer's behalf pursuant to Rule 20-108.

Cross reference: For the definition of "hand-signed," see Rule 20-101.

Source: This Rule is new.

Rule 20-107 was accompanied by the following Reporter's note.

The amendments proposed to Rule 20-107 would accomplish two things.

First, in conjunction with proposed amendments to Rule 1-311, an attorney who is filing submission under MDEC must include the attorney's Client Protection Fund ID number, which is the unique user identification number that MDEC has been using. The amendments require that the Client Protection Fund ID number be placed beneath the attorney's signature, which will assist clerks if there is confusion over an attorney's identity.

The second purpose of the proposed amendments is to modify the responsibilities of the clerk to strike a non-conforming pleading or paper. Presently, Rule 20-203

> (c) requires a clerk to strike a submission if it fails to comply with Rule 20-201 (d). Rule 20-101 (d) requires that a submission be signed in accordance with Rule 20-107 if a signature is required. In the proposed amendment to Rule 20-107 (a) the signature requirement is broken into two parts: subsection (a)(1) will require an electronic signature by facsimile signature or typographic signature, and subsection (a)(2) will require that the electronic signature be placed above the filer's typed name, address, e-mail address, and telephone number. The proposed amendment adds the requirement that if the filer is an attorney, the submission must contain the attorney's Client Protection Fund ID number.
>
> Conforming changes are proposed to Rule 20-106 (d)(2), to substitute the phrase, "and that the pleading is signed" for the current reference to Rule 20-201 (d).
>
> In conjunction with the proposed amendments, Rule 20-203 (c) is being changed to require a clerk to strike a submission if it fails to comply with the requirements of Rule 20-107 (a)(1). Therefore, a pleading that contains a facsimile or a typographical signature will not be stricken automatically, even if it does conform with the requirements of subsection (a)(2). Instead, under Rule 20-203 (d)(1), the clerk will send a deficiency notice and under subsection (d)(2), "If the deficiency is not corrected within two business days of the notice, any party may move to strike the submission."

Mr. Carbine explained that section (a) of Rule 20-107 had been broken into two parts, subsections (a)(1) and (a)(2). Subsection (a)(1) provides that the filer has to sign the paper being filed. Subsection (a)(2) lists all of the information that goes along with the paper. There is a typographical error in subsection (a)(2). The word "electronic," which is shown with a

strikeout line through it, should not have been deleted. The CPF ID number is now part of the information that the filer includes below the signature.

Mr. Carbine presented Rule 20-203, Review by Clerk; Striking of Submission; Delinquency Notice; Correction; Enforcement, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILINGS AND CASE MANAGEMENT

CHAPTER 200 - FILING AND SERVICE

AMEND Rule 20-203 (c) to delete references to Rule 20-201 (d) and to add two references to Rule 20-107 (a)(1), as follows:

Rule 20-203. REVIEW BY CLERK; STRIKING OF SUBMISSION; DELINQUENCY NOTICE; CORRECTION; ENFORCEMENT

(a) Time and Scope of Review

As soon as practicable, the clerk shall review a submission, other than a submission filed by a judge or judicial appointee, for compliance with Rule 20-201 (d), (e), (f)(1)(B), and (i) and the published policies and procedures for acceptance established by the State Court Administrator. Until the submission is accepted by the clerk, it remains in the clerk's queue and shall not be docketed.

(b) Docketing

(1) Generally

The clerk shall promptly correct errors of non-compliance that apply to the form and language of the proposed docket

entry for the submission. The docket entry as described by the filer and corrected by the clerk shall become the official docket entry for the submission.

(2) Submission Signed by Judge or Judicial Appointee

The clerk shall enter on the docket each judgment, order, or other submission signed by a judge or judicial appointee.

(3) Submission Generated by Clerk

The clerk shall enter each writ, notice, or other submission generated by the clerk into the MDEC system for docketing in the manner required by Rule 16-305.

(c) Striking of Certain Non-compliant Submissions

If, upon review pursuant to section (a) of this Rule, the clerk determines that a submission, other than a submission filed by a judge or judicial appointee, fails to comply with the requirements of Rule 20-107 (a)(1) or Rule 20-201 ~~(d),~~ (e)~~,~~ or (f)(1)(B), the clerk shall (1) strike the submission, (2) notify the filer and all other parties of the striking and the reason for it, and (3) enter on the docket that the submission was received, that it was stricken for non-compliance with the applicable section of Rule 20-107 (a)(1) or Rule 20-201 ~~(d),~~ (e)~~,~~ or (f)(1)(B), and that notice pursuant to this section was sent. The filer may seek review of the clerk's action by filing a motion with the administrative judge having direct administrative supervision over the court.

(d) Deficiency Notice

(1) Issuance of Notice

If, upon review, the clerk concludes that a submission is not subject to striking under section (c) of this Rule but materially violates a provision of the Rules in Title 20

or an applicable published policy or procedure established by the State Court Administrator, the clerk shall send to the filer with a copy to the other parties a deficiency notice describing the nature of the violation.

(2) Correction; Enforcement

If the deficiency is not corrected within two business days after the date of the notice, any party may move to strike the submission.

(e) Restricted Information

(1) Shielding Upon Issuance of Deficiency Notice

If, after filing, a submission is found to contain restricted information, the clerk shall issue a deficiency notice pursuant to section (d) of this Rule and shall shield the submission from public access until the deficiency is corrected.

(2) Shielding of Unredacted Version of Submission

If, pursuant to Rule 20-201 (f)(2), a filer has filed electronically a redacted and an unreadacted submission, the clerk shall docket both submissions and shield the unredacted submission from public access. Any party and any person who is the subject of the restricted information contained in the unredacted submission may file a motion to strike the unredacted submission. Upon the filing of a motion and any timely answer, the court shall enter an appropriate order.

Source: This Rule is new.

Rule 20-203 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 20-107.

Mr. Carbine explained that the clerk would review an

original submission to be sure it complied with section (d) of Rule 20-201, Requirements for Electronic Filing, which encompasses all of Rule 20-107 and would require including the CPF ID number. This was kept in section (a) of Rule 20-203, because the clerk has to review the filing for the presence of the CPF ID number. However, in section (c), the references to section (d) of Rule 20-201 were deleted, and in its place is a reference to Rule 20-107 (a)(1), which applies only to the signature of the filer. The only way that a pleading can be rejected by the clerk is if the person filing it does not sign it. If the filing does not have an e-mail address or the CPF ID number on it, the filer gets a deficiency notice.

Mr. Carbine presented Rule 20-106, When Electronic Filing Required; Exceptions, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILINGS AND CASE MANAGEMENT

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 20-106 (d) to delete references to Rule 20-201 (d) and to add the phrase "and that the submission is signed," as follows:

Rule 20-106. WHEN ELECTRONIC FILING REQUIRED; EXCEPTIONS

. . .

(d) Paper Submissions

(1) Compliance with MDEC Rules

A paper submission shall comply with Rule 20-201 (f) and (i). If applicable, a paper submission also shall comply with Rule 20-201 (g).

(2) Review by Clerk; Scanning

(A) Except as provided in subsection (d)(2)(B) of this Rule, upon receipt of a submission in paper form, the clerk shall review the submission for compliance with Rule 20-107 (a)(1) and Rule 20-201 ~~(d),~~ (e), (f)(1)(B), and (I) and that the submission is signed. If the submission is in compliance, the clerk shall scan it into the MDEC system, verify that the electronic version of the submission is legible, and docket the submission. If the submission is not in compliance, the clerk shall decline to scan it and promptly notify the filer in person or by first class mail that the submission was rejected and the reason for the rejection. Committee note: The clerk's pre-scanning review is a ministerial function, limited to ascertaining whether any required fee has been paid (Rule 20-201 (i)) and the presence of the filer's signature ~~(Rule 20-201 (d))~~; a certificate of service if one is required (Rule 20-201 (e)); and a certificate as to the absence or redaction of restricted information (Rule 20-201 (f)(1)(B)).

(B) Upon receipt of a submission in paper form that is required by the Rules in this Title to be filed electronically, the clerk shall (i) decline to scan the submission, (ii) notify the filer electronically that the submission was rejected because it was required to be filed electronically, and (iii) enter on the docket that the submission was received and that it was not entered into the MDEC system because of non-compliance with Rule 20-106. The filer may seek review of the clerk's action by filing a motion with the administrative judge having direct administrative supervision over the court.

Committee note: Subsection (d)(2)(B) of this Rule is necessary to enforce the electronic filing requirement of Rule 20-106. It is intended to be used only when it is clear that the filer is a registered user who is required to file submissions electronically and that none of the exceptions in sections (b) or (c) of this Rule appear to be applicable.

(3) Destruction of Paper Submission

Subject to subsections (d)(4) and (e)(2) of this Rule, the clerk may destroy a paper submission after scanning it and verifying the legibility of the electronic version of it.

(4) Optional Return of Paper Document

The State Court Administrator may approve procedures for identifying and, where feasible, returning paper documents that must be preserved in their original form.

*[Amendment to subsection (d)(5) was approved at the June 2015 meeting]*

(5) Public Notice

~~Prior to the date specified in Rule 20-102 (a)(1)(A), the~~ The State Court Administrator shall provide public notice alerting the public to the procedure set forth in subsections (d)(2), (3), and (4) of this Rule.

Committee note: If submissions properly filed in paper form are to be destroyed by the clerk following their being scanned into MDEC, the public must be given reasonable notice of that policy. Notice may be given in a variety of ways, including on the Judiciary website, on on-line and pre-printed forms prepared by the Judiciary, on summonses or other notices issued by the clerks, and by postings in the clerks' offices.

. . .

Rule 20-106 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 20-107.

Mr. Carbine explained that section (d) of Rule 20-106 applies to non-registered users who file papers. These people bring the submission to the clerk, who scans it and gets rid of the paper form. It is in the system as a submission, and it is part of MDEC. Subsection (d)(1) of Rule 20-106 provides that a paper submission shall comply with Rule 20-201 (g). Subsection (d)(2) pertains to review by the clerk. The proposed change is not grammatically correct. Mr. Carbine and the Reporter worked together to reword this provision. It should read: "Except as provided in subsection (d)(2)(B) of this Rule, upon receipt of a submission in paper form, the clerk shall review the submission for the presence of a signature and for compliance with Rule 20-107 (a)(1) and Rule 20-201 (e), (f)(1)(B), and (I)." Judge Eaves asked whether the reference to section "(I)" should be a reference to section "(i)." Judge Nazarian answered that it should be a lower case (i).

Mr. Shellenberger inquired whether people can publicly access the CPF ID number and get an attorney's personal information. The Assistant State's Attorneys who work with him would not like the public to have access to their home addresses. Mr. Carbine responded that this is a problem that had been discussed. The CPF publishes the information. The Reporter

added that it is on the Internet. She said that the attorneys can use their office addresses, so their home addresses are not public. The attorneys can ask the CPF to keep the home address confidential. Judge Everngam pointed out that the CPF website now has the CPF ID numbers added to it. Whatever address the attorney gives the CPF would be the contact address. If the attorney gave the CPF his or her home address, that will be the main address. Mr. Carbine noted that this is a problem that already exists. Mr. Frederick remarked that it is simple to get personal information that is on the Internet.

By consensus, the Committee approved Rules 1-311, 20-107, and 20-203 as presented and Rule 20-106 as amended.

Agenda Item 3. Consideration of proposed amendments to: Rule 6-456 (Modified Administration - Extension of Time to File a Final Report and to Make Distribution), Rule 10-106 (Appointment of Attorney or Investigator), Rule 10-201 (Petition for Appointment of a Guardian of the Person), and Rule 10-206 (Annual Report - Guardianship of a Minor or Disabled Person)

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Because Mr. Allen, Chair of the Probate/Fiduciary Subcommittee was not present, the Chair asked Ms. Margaret Phipps, Register of Wills for Calvert County, to help with the presentation of the Rules.

The Chair presented Rule 6-456, Modified Administration - Extension of Time to File a Final Report and to Make Distribution, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-456 by adding a new section (c) that permits a further extension, by adding a new section (d), containing a new form, and by making a stylistic change, as follows:

Rule 6-456. MODIFIED ADMINISTRATION - EXTENSION OF TIME TO FILE A FINAL REPORT AND TO MAKE DISTRIBUTION

(a) Generally

The initial time periods for filing a final report and for making distribution to each legatee and heir may be extended for 90 days if the personal representative and each interested person sign the form set out in section (b) of this Rule and file the form within 10 months of the date of appointment of the personal representative.

(b) Form

A consent to an extension of time to file a final report and to make distribution in a modified administration shall be in substantially the following form:

BEFORE THE REGISTER OF WILLS FOR _____, MARYLAND

IN THE ESTATE OF _____ Estate No. _____

Date of Death _____

Date of Appointment of Personal Representative _____

CONSENT TO EXTEND TIME TO FILE FINAL REPORT AND TO MAKE DISTRIBUTION IN A MODIFIED ADMINISTRATION

We, the Personal Representative and Interested Persons in the above-captioned estate, consent to extend for 90 days the time to file a final report and to make distribution in the modified administration of the estate. We acknowledge that this consent must be filed within 10 months of the date of appointment of the personal representative.

Personal Representative(s)

(Type or Print Names)

| | |
|---|---|
| _____ | _____ |
| Name | Signature |
| _____ | _____ |
| Name | Signature |
| _____ | _____ |
| Name | Signature |

Interested Persons
(Type or Print Names)

| | |
|---|---|
| _____ | _____ |
| Name | Signature |
| _____ | _____ |
| Name | Signature |
| _____ | _____ |
| Name | Signature |

(c) Further Extension

A register of wills is permitted to extend the time periods

for filing a final report and for making distribution to each legatee and heir for an additional period not to exceed 90 days if a prior request for an additional extension had been filed, and the time periods have already been extended as permitted by section (a) of this Rule. The request shall be signed by the personal representative and consented to by each interested person. The request shall be delivered to the register of wills before the date for filing a final report as extended under section (a) of this Rule.

(d) Form

A request for and consent to an additional extension of the time period to file a final report and to make distribution to each legatee and heir in a modified administration shall be in substantially the following form:

BEFORE THE REGISTER OF WILLS FOR _____, MARYLAND

IN THE ESTATE OF _____ Estate No. _____

Date of Death _____

Date Final Report was Due After First Extension_____

REQUEST FOR AND CONSENT TO FURTHER EXTEND TIME TO FILE A FINAL REPORT AND TO MAKE DISTRIBUTION IN A MODIFIED ADMINISTRATION

I, the Personal Representative, in the above-captioned estate request an additional extension of time, not to exceed 90

days, to file a final report and make distribution to each legatee and heir in the modified administration of the estate.

Personal Representative(s)
(Type or Print Names)

| | |
|---|---|
| _____ | _____ |
| Name | Signature |
| _____ | _____ |
| Name | Signature |
| _____ | _____ |
| Name | Signature |

We, the Interested Persons, in the above-captioned estate consent to further extend for _____ days (not to exceed 90) the time to file a final report and to make distribution to each legatee and heir in the modified administration of the estate.

We acknowledge that this consent has been delivered to the register of wills before the expiration of the first extension period for filing the final report.

Interested Persons
(Type or Print Names)

| | |
|---|---|
| _____ | _____ |
| Name | Signature |
| _____ | _____ |
| Name | Signature |
| _____ | _____ |
| Name | Signature |

_____
Register of Wills

Source: The Rule is new.

Rule 6-456 was accompanied by the following Reporter's note.

> Chapter 30, Laws of 2015 (SB 418) amended Code, Estates and Trusts Article, §5-703 to provide for a further extension of the time periods for filing a final report and for making distribution to each legatee and heir after the first extension of 90 days in a modified administration. The Probate/Fiduciary Subcommittee recommends amending Rule 6-456, including the addition of a new form, to conform to the statutory changes.

The proposed amendment to Rule 6-456 was to add a new section (c) and (d). Their purpose is to conform the Rule to Chapter 30, Laws of 2015 (SB 418). Ms. Phipps said that in a modified administration probate, the personal representative and the interested persons can ask for a 90-day extension for filing a final report and making distribution to each legatee and heir. This happens automatically. However, this may not always solve the problem, so the personal representative and interested persons may need another extension, but this one cannot exceed 90 days. It has to be approved by the Register of Wills. The second extension is not automatic and has to be requested.

The Chair said that he had a style issue pertaining to Rule 6-456. He referred to the language in section (a) that read: "...file the form within 10 months of the date...". Should this language be: "...within 10 months after the date..."? Ms. Phipps responded that this means 10 months before the date.

The Chair presented Rule 10-106, Appointment of Attorney or

Investigator, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 10-106 by deleting language from and adding language to section (a), by adding a new subsection (a)(2) pertaining to disabled persons, and by making stylistic changes, as follows:

Rule 10-106. APPOINTMENT OF ATTORNEY OR INVESTIGATOR

(a) Appointment of Attorney by the Court

(1) Minor Persons

Upon the filing of a petition for guardianship of the person or property of a disabled person or minor who is not represented by an attorney, the court ~~shall promptly~~ may appoint an attorney ~~for the disabled person and may appoint an attorney~~ for the minor. The fee of an appointed attorney shall be fixed by the court and shall be paid out of the fiduciary estate or as the court shall direct. ~~To the extent the estate is insufficient, the fee of an attorney appointed for a disabled person shall be paid by the State.~~

(2) Disabled Persons

Upon the filing of a petition for guardianship of the person or property of a disabled person who is not represented by an attorney, the court shall promptly appoint an attorney for the disabled person and may require the deposit of an appropriate sum into the court registry or the appointed attorney's escrow account within 30 days after the order of appointment has been entered, subject to further order of the court. If the person is indigent, the State shall pay a reasonable attorney's fee. The court may not require the deposit of an

appropriate sum into the court registry or the appointed attorney's escrow account under this section if payment for the services of the court-appointed attorney for the alleged disabled person is the responsibility of (A) a government agency paying benefits to the disabled person, (B) a local department of Social Services, or (C) an agency's eligible to serve as the guardian of the disabled person under Code, Estates and Trusts Article, §13-707.

Cross reference: Code, Estates and Trusts Article, §§13-211 (b) and 13-705 (d). See also Rule 1.14 of the Maryland Lawyers' Rules of Professional Conduct with respect to the attorney's role and obligations.

(b) Automatic Termination of Appointment; Continuation of Representation if Public Guardian Appointed

If no appeal is taken from a judgment dismissing the petition or appointing a guardian other than a public guardian, the attorney's appointment shall terminate automatically upon expiration of the time for filing an appeal unless the court orders otherwise. If a public guardian has been appointed for the disabled person, the court shall either continue the attorney's appointment or appoint another attorney to represent the disabled person before the Adult Public Guardianship Review Board.

Cross reference: Code, Family Law Article, §14-404 (c)(2).

(c) Investigator

The court may appoint an independent investigator to investigate the facts of the case and report written findings to the court. The fee of an appointed investigator shall be fixed by the court and shall be paid out of the fiduciary estate or as the court shall direct. To the extent the estate is insufficient, the fee of an independent investigator appointed by the court shall be paid by the State.

Source: This Rule is derived in part from former Rules R76 and V71 and is in part new.

Rule 10-106 was accompanied by the following Reporter's note.

Chapter 400, Laws of 2015 (HB 109) amended Code, Estates and Trusts Article, §13-705 to add a provision that an attorney who has been appointed by the court to represent an alleged disabled person in a guardianship of the person proceeding may be required to deposit money into the court registry or into the attorney's escrow account. The Probate/Fiduciary Subcommittee recommends amending Rule 10-106 (a) to conform to the amended statute.

The Chair told the Committee that subsection (a)(2) of Rule 10-106 is intended to conform the Rule to Chapter 400, Laws of 2015 (HB 109). The Chair noted that there was a typographical error towards the end of subsection (a)(2). The word "agency's" should be "agency." Judge Bryant pointed out that in subsection (a)(1), the language "disabled person or" should be taken out, because disabled persons are covered in subsection (a)(2). By consensus, the Committee agreed with these suggestions.

The Chair presented Rule 10-201, Petition for Appointment of a Guardian of the Person, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 200 - GUARDIAN OF PERSON

AMEND Rule 10-201 by adding a new section (b) pertaining to the form of petition, by deleting current section (c), by

adding a new section (d) pertaining to attorney's fees, by adding a cross reference after section (d), by adding a new section (e) containing a form for designation of a guardian of the person by a minor, by adding a cross reference at the end of the Rule, and by making stylistic changes, as follows:

Rule 10-201. PETITION FOR APPOINTMENT OF A GUARDIAN OF THE PERSON

(a) Who May File

An interested person may file a petition requesting a court to appoint a guardian of a minor or alleged disabled person.

(b) Form of Petition

The petition for a guardianship of the person of a minor shall be filed in substantially the form set forth in Rule 10-111. The petition for a guardianship of the person of an alleged disabled person shall be filed in substantially the form set forth in Rule 10-112.

~~(b)~~ (c) Venue

(1) Resident

If the minor or alleged disabled person is a resident of Maryland, the petition shall be filed in the county where (A) the minor or alleged disabled person resides or (B) the person has been admitted for the purpose of medical care or treatment to either a general or a special hospital which is not a State facility as defined in Code, Health-General Article, §10-406 or a licensed private facility as defined in Code, Health-General Article, §§10-501 to 10-511.

(2) Nonresident

If the minor or alleged disabled person does not reside in this State, a petition for guardianship of the person may

be filed in any county in which the person is physically present.

~~(c) Contents~~

~~The petition shall be captioned, "In the Matter of . . ." [stating the name of the minor or alleged disabled person]. It shall be signed and verified by the petitioner, may contain a request for the guardianship of property, and shall contain at least the following information:~~

~~(1) The petitioner's name, address, age, and telephone number.~~

~~(2) The petitioner's familial or other relationship to the minor or alleged disabled person.~~

~~(3) Whether the person who is the subject of the petition is a minor or alleged disabled person, and, if an alleged disabled person, a brief description of the alleged disability and how it affects the alleged disabled person's ability to function.~~

~~(4) The reasons why the court should appoint a guardian of the person and, if the subject of the petition is a disabled person, allegations demonstrating an inability of that person to make or communicate responsible decisions concerning the person, including provisions for health care, food, clothing, or shelter, because of mental disability, disease, habitual drunkenness or addiction to drugs, and a description of less restrictive alternatives that have been attempted and have failed.~~

~~Cross reference: Code, Estates and Trusts Article, §13-705 (b).~~

~~(5) An identification of any instrument nominating a guardian or constituting a durable power of attorney, with a copy attached to the petition, if possible, and, if not, an explanation of its absence.~~
~~Cross reference: Code, Estates and Trusts Article, §13-701.~~

~~(6) If a guardian or conservator has been appointed for the alleged disabled person in another proceeding, the name and address of the guardian or conservator and the court that appointed the guardian or conservator. If a guardianship or conservatorship proceeding was previously filed in any other court, the name and address of the court, the case number, if known, and whether the proceeding is still pending in that court.~~

~~(7) A list of (A) the name, age, sex, and address of the minor or alleged disabled person, (B) the name and address of the persons with whom the minor or disabled person resides, and (C) if the minor or alleged disabled person resides with the petitioner, the name and address of another person on whom service can be made.~~

~~(8) The name, address, telephone number, and nature of interest of all other interested persons and all other persons exercising control of the minor or alleged disabled person, to the extent known or reasonably ascertainable.~~

~~(9) If the minor or alleged disabled person is represented by an attorney, the name and address of the attorney.~~

~~(10) A statement that the certificates required by Rule 10-202 are attached, or, if not, an explanation of their absence.~~

~~(11) If the petition also seeks a guardianship of the property, the additional information required by Rule 10-301.~~

~~(12) A statement of the relief sought.~~

**(d) Attorney's Fees**

**If a petition for attorney's fees is filed by an interested person or an attorney employed by the interested person, the court may order reasonable and necessary attorney's fees incurred in bringing a petition for the appointment of a guardian of the person of a disabled person to be paid from the estate of**

**the disabled person. The court shall consider the financial resources and needs of the disabled person and whether there was substantial justification for the filing of the petition for guardianship. The court may not award attorney's fees if the petition for guardianship is brought by (1) a government agency paying benefits to the disabled person, (2) a local department of Social Services, or (3) an agency eligible to serve as the guardian of the disabled person under Code, Estates and Trusts Article, §13-707.**

**Cross reference: Code, Estates and Trusts Article, §13-704.**

**(e)** Designation of a Guardian of the Person by a Minor

After a minor's 14th birthday, a minor may designate a guardian of the minor's person substantially in the following form:

[CAPTION]

DESIGNATION OF A GUARDIAN OF THE PERSON BY A MINOR

I, _____, a minor child, having attained my 14th birthday, declare:

1. I am aware of the Petition of _____ (petitioner's name) to become the guardian of my person.

2. I hereby designate _____ as the Guardian of my person.

3. I understand that I have the right to revoke this designation at any time up to the granting of the guardianship.

I solemnly affirm under the penalties of perjury that the contents of this document are true based upon my personal

knowledge.

_____
Signature of Minor Date

Cross reference: See Code, Estates and Trusts Article, §13-702.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule R71 a.
Section (b) is new.
Section ~~(b)~~ (c) is derived from former Rule R72 a and b.
~~Section (c) is derived in part from former Rule R73 a and in part from former Rule V71 c.~~
**Section (d) is new.**
Section (e) is new.

Rule 10-201 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 10-111 as to the form of the petition and to explain the deletion of section (c) of this Rule.

The Chair said that Chapter 400, Laws of 2015 (HB 109) amends Code, Estates and Trusts Article, §13-704 and provides a mechanism for an interested person or an attorney employed by the interested person to receive attorney's fees incurred in bringing a petition for appointment of the guardian of the person of a disabled person. The Probate/Fiduciary Subcommittee recommends amending Rule 10-201 to add a new section (d) setting out the procedure for obtaining attorney's fees pursuant to Code, Estates and Trusts Article, §13-704.

The Chair noted that the Subcommittee recommends the

addition of a form, "Designation of a Guardian of the Person by a Minor" to be consistent with Code, Estates and Trusts Article, §13-702. This form is based upon a draft submitted by a committee of registers of wills, Orphans' Court judges and members of the bar, including members of the Estate and Trust Law Section of the Maryland State Bar Association.

Ms. Phipps commented that section (d) had been added to Rule 10-201 to conform to Chapter 400, Laws of 2015 (HB 109). The Reporter pointed out that the statute goes into effect on October 1, 2015.

The Chair presented Rule 10-206, Annual Report - Guardianship of a Minor or Disabled Person, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 200 - GUARDIAN OF PERSON

AMEND Rule 10-206 to change the title of the Rule, to amend the cross reference after section (a), to provide that the current "Annual Report of Guardian" form applies to guardianships of disabled persons, to add the word "caption" before the "Order" section of the form, to conform the affirmation clauses to other affirmation clauses in Title 10, and to make stylistic changes, as follows:

Rule 10-206. ANNUAL REPORT - GUARDIANSHIP OF A <u>MINOR OR</u> DISABLED PERSON

(a) Report Required

~~A guardian, other~~ <u>Other</u> than a

temporary guardian, a guardian of the person of a minor or disabled person shall file an annual report in the action. The reporting year shall end on (1) the anniversary of the date the court assumed jurisdiction over the person or (2) any other date approved by the trust clerk or the court.

Cross reference: **See** Code, Estates and Trusts Article, §13-708 (b)(7)**, which provides that the court may appoint a guardian of the person of a disabled person for a limited period of time, and that the annual report may be filed biannually**.

(b) Time for Filing

The report shall be filed not later than 60 days after the end of the reporting year, unless the court for good cause shown shall extend the time.

(c) Copies to Interested Persons

The guardian shall furnish a copy of the report to any interested person requesting it, unless the court orders otherwise.

(d) Court Approval

The court shall review the report and either enter an order accepting the report and continuing the guardianship or take other appropriate action.

(e) Form of Annual Report of Guardian of Disabled Person

The guardian's report shall be in substantially the following form:

[CAPTION]

ANNUAL REPORT OF _____,

GUARDIAN OF THE PERSON OF _____,

WHO IS DISABLED

1. The name and permanent residence of the disabled person are:_____.

2. The disabled person currently resides or is physically present in:

____ own home

____ guardian's home

____ nursing home

____ hospital or medical facility

____ foster or boarding home

____ relative's home: _____ relationship

____ other

(If other than disabled person's permanent home, state the name and address of the place where the disabled person lives _____ _____.)

3. The disabled person has been in the current location since _____. If the person has moved within the past year, the (date) reasons for the change are: _____ _____.

4. The physical and mental condition of the disabled person is as follows: _____ _____.

5. During the past year, the disabled person's physical or mental condition has changed in the following respects: _____ _____ _____.

6. The disabled person is presently receiving the following care: _____ _____.

7. I have applied funds as follows from the estate of the disabled person for the purpose of support, care, or education: _____

_____.

8. The plan for the disabled person's future care and well-being, including any plan to change the person's location, is: _____

_____.

9. [ ] I have no serious health problems that affect my ability to serve as guardian.

[ ] I have the following serious health problems that may affect my ability to serve as guardian: _____

_____.

10. This guardianship

[ ] should be continued.

[ ] should not be continued, for the following reasons:

_____

_____.

11. My powers as guardian should be changed in the following respects and for the following reasons: _____

_____

_____.

12. The court should be aware of the following other matters relating to this guardianship: _____

_____

_____.

I solemnly affirm under the penalties of perjury that the contents of this ~~report~~ document are true to the best of my knowledge, information, and belief.

_____ _____
Date Guardian's Signature

_____
Guardian's Name (typed or printed)

_____
Street Address or Box Number

_____
City and State

_____
Telephone Number

[CAPTION]

ORDER

The foregoing Annual Report of a Guardian having been filed and reviewed, it is by the Court, this ___ day of _____, _____.
(month) (year)

ORDERED, that the report is accepted, and the guardianship is continued.

(or)

ORDERED, that a hearing shall be held in this matter on _____.
(date)

_____
JUDGE

(f) Form of Annual Report of Guardian of Minor

[CAPTION]

ANNUAL REPORT OF _____, GUARDIAN OF THE PERSON OF _____, WHO IS A MINOR

1. The name and permanent residence of the minor are:

_____.

2. The minor currently resides or is physically present in:

____ own home

____ foster or boarding home

____ guardian's home

____ hospital or medical facility

____ relative's home: _____ relationship

____ other

(If other than minor's permanent home, state the name and address of the place where the minor lives _____

_____.)

3. The minor has been in the current location since _____. If the person has moved within the past year, the (date)

reasons for the change are: _____

_____.

4. The physical and mental condition of the minor is as follows: _____

_____.

5. During the past year, the minor's physical or mental condition has changed in the following respects: _____

_____

_____.

6. The minor is presently receiving the following care:

_____

_____.

7. I have applied funds as follows from the estate of the minor for the purpose of support, care, or education:

_____

_____.

8. The plan for the minor's future care and well-being, including any plan to change the person's location, is:

_____

_____.

9. [ ] I have no serious health problems that affect my ability to serve as guardian.

[ ] I have the following serious health problems that may affect my ability to serve as guardian: _____

_____.

10. This guardianship

[ ] should be continued.

[ ] should not be continued, for the following reasons:

_____

_____.

11. My powers as guardian should be changed in the following respects and for the following reasons: _____

_____

_____.

12. The court should be aware of the following other matters relating to this guardianship: _____

_____

_____.

I solemnly affirm under the penalties of perjury that the contents of this document are true to the best of my knowledge, information, and belief.

_____ _____
Date Guardian's Signature

_____
Guardian's Name (typed or printed)

_____
Street Address or Box Number

_____
City and State

_____
Telephone Number

[CAPTION]

ORDER

The foregoing Annual Report of a Guardian having been filed and reviewed, it is by the Court, this ___ day of _____, _____,
(month) (year)

ORDERED, that the report is accepted, and the guardianship is continued.

(or)

ORDERED, that a hearing shall be held in this matter on

_____.
(date)

_____
JUDGE

Source: This Rule is new and is derived as follows:
Section (a) is derived from Code, Estates and Trusts Article, §13-708 (b)(7) and former Rule V74 c 2 (b).
Section (b) is derived from former Rule V74 c 2 (b).
Section (c) is patterned after Rule 6-417 (d).
Sections (d) and (e) are new.
Section (f) is new.

Rule 10-206 was accompanied by the following Reporter's note.

> Guardians of disabled persons had been required by statute to file an annual report informing the court of the status of the guardianship. Chapter 412, Laws of 2015 (HB 293) amended the statute, Code, Estates and Trusts Article, §13-708, to provide that the court may appoint a guardian of the person of a disabled person for a limited period of time and that the report may be filed biannually. The Probate/Fiduciary Subcommittee recommends that the cross reference after section (a) of Rule 10-206 be amended to refer to this change in the statute.
>
> An attorney had suggested that there be a similar report for minor persons who are the subject of a guardianship, noting that the court should also be monitoring guardianship of minors. The Rules Committee had approved amending Rule 10-206 to make it applicable to guardianship of minors and to add a form parallel to the report form for guardianships of disabled persons.
>
> A clerk has suggested that the word "Caption" be added before the word "Order" in the order forms. The addition of the word

indicates that the order should be on a separate piece of paper, making it more convenient for the clerks to use and docket the form separately.

See the Reporter's note to the deletion of Rule 6-123 for the change to the affirmation clause.

Judge Nazarian pointed out that section (a) of Rule 10-206 refers to an annual report, but the cross reference after section (a) states that the report can be filed biannually to track the statute, Chapter 412, Laws of 2015 (HB 293). Or is the "annual report" a term of art that now by statute means that it could be biannual? Ms. Phipps explained that if a guardian dies and another one needs to be appointed, the biannual report is to catch what happens in between the two guardianships, so the report could be biannual or annual.

By consensus, the Committee approved Rules 6-456, 10-201, and 10-206 as presented and Rule 10-106 as amended.

Agenda Item 4. Consideration of proposed amendments to: Rule 16-1005 (Case Records - Required Denial of Inspection - In General), Rule 16-1006 (Required Denial of Inspection - Certain Categories of Case Records), and Rule 16-1009 (Court Order Denying or Permitting Inspection of Case Record)

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The Chair presented Rule 16-1005, Case Records - Required Denial of Inspection - In General, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 1000 - ACCESS TO COURT RECORDS

AMEND Rule 16-1005 by adding a cross reference following section (b), as follows:

Rule 16-1005. CASE RECORDS - REQUIRED DENIAL OF INSPECTION - IN GENERAL

. . .

(b) Unless inspection is otherwise permitted by the Rules in this Chapter, a custodian shall deny inspection of a case record or any part of a case record if inspection would be contrary to a statute enacted by the Maryland General Assembly, other than the Maryland Public Information Act (Code, General Provisions Article, Title 4), that expressly or by necessary implication applies to a court record.

Cross reference: For an example of a statute enacted by the General Assembly that restricts inspection of a case record, see Code, Criminal Procedure Article, Title 10, Subtitle 3.

Committee note: Subsection (a)(5) allows a court to seal a record or otherwise preclude its disclosure. So long as a court record is under seal or subject to an order precluding or limiting disclosure, it may not be disclosed except in conformance with the order. The authority to seal a court record must be exercised in conformance with the general policy of these Rules and with supervening standards enunciated in decisions of the United States Supreme Court and the Maryland Court of Appeals.

Source: This Rule is new.

Rule 16-1005 was accompanied by the following Reporter's note.

A proposed amendment to Rule 16-1005 adds a cross reference to Code, Criminal Procedure Article, Title 10, Subtitle 3, which requires that certain criminal case records be shielded, and which also provides

for certain exceptions where inspection is to be permitted.

A comparable change will be proposed for Rule 16-905 (Case Records - Required Denial of Inspection - In General), which is currently before the Court as part of the 178th Report, Part I.

The Chair told the Committee that a cross reference to Chapter 313, Laws of 2015 (HB 244), the Second Chance Act, had been added after section (b) of Rule 16-1005. The statute provides for the shielding of certain criminal records, but it is not part of the Public Information Act (Code, General Provisions Article, Title 4, Subtitle 3). Under the Access Rules, if the legislature provides for shielding by statute other than the PIA, the record is shielded. Rule 16-1005 does not incorporate all of the PIA, because that Act provides for shielding subject to court rules. But if the legislature passes another statute to shield, then the record or records are shielded. The cross reference is added to Rule 16-1005 to draw attention to the statute.

By consensus, the Committee approved the proposed change to Rule 16-1005 as presented.

The Chair presented Rule 16-1006, Required Denial of Inspection - Certain Categories of Case Records, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 1000 - ACCESS TO COURT RECORDS

AMEND Rule 16-1006 by adding a new subsection (h)(7), as follows:

Rule 16-1006. REQUIRED DENIAL OF INSPECTION - CERTAIN CATEGORIES OF CASE RECORDS

. . .

(h) The following case records in criminal actions or proceedings:

(1) A case record that has been ordered expunged pursuant to Rule 4-508.

(2) The following case records pertaining to search warrants:

(A) The warrant, application, and supporting affidavit, prior to execution of the warrant and the filing of the records with the clerk.

(B) Executed search warrants and all papers attached thereto filed pursuant to Rule 4-601.

(3) The following case records pertaining to an arrest warrant:

(A) A case record pertaining to an arrest warrant issued under Rule 4-212 (d) and the charging document upon which the warrant was issued until the conditions set forth in Rule 4-212 (d)(3) are satisfied.

(B) Except as otherwise provided in Code, General Provisions Article, §4-316, a case record pertaining to an arrest warrant issued pursuant to a grand jury indictment or conspiracy investigation and the charging document upon which the arrest warrant was issued.

(4) A case record maintained under Code, Courts Article, §9-106, of the refusal of a person to testify in a criminal action against the person's spouse.

(5) A presentence investigation report

prepared pursuant to Code, Correctional Services Article, §6-112.

(6) A case record pertaining to a criminal investigation by (A) a grand jury, (B) a State's Attorney pursuant to Code, Criminal Procedure Article, §15-108, (C) the State Prosecutor pursuant to Code, Criminal Procedure Article, §14-110, or (D) the Attorney General when acting pursuant to Article V, §3 of the Maryland Constitution or other law.

Committee note: Although this Rule shields only case records pertaining to a criminal investigation, there may be other laws that shield other kinds of court records pertaining to such investigations. This Rule is not intended to affect the operation or effectiveness of any such other law.

(7) A case record required to be shielded by Code, Criminal Procedure Article, Title 10, Subtitle 3.

. . .

Rule 16-1006 was accompanied by the following Reporter's note.

A new subsection (h)(7) is proposed to be added to Rule 16-1006 to add to the category of criminal case records that are required to be shielded by Code, Criminal Procedure Article, Title 10, Subtitle 3. Those provisions require the shielding of certain criminal records, but also set forth exceptions to permit inspection for certain purposes.

A comparable change will be proposed for Rule 16-906 (Required Denial of Inspection - Certain Categories of Case Records), which is currently before the Court as part of the 178th Report, Part I.

The Chair explained that the change to Rule 16-1006, which adds subsection (h)(7), implements Chapter 313, Laws of 2015 (HB

244), the Second Chance Act.

By consensus, the Committee approved the proposed change to Rule 16-1006 as presented.

The Chair presented Rule 16-1009, Court Order Denying or Permitting Inspection of Case Record, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 1000 -ACCESS TO COURT RECORDS

AMEND Rule 16-1009 by specifying that a motion to shield a court record pursuant to Code, Criminal Procedure Article, Title 10, Subtitle 3 be filed in the county where the judgment of conviction was entered; by requiring that service be provided in accordance with the statute; by specifying that subsection (b)(1) does not apply to petitions filed under the statute; by requiring that a final order granting relief under the statute include the applicable provisions of the statute; by adding certain provisions pertaining to actions that were removed pursuant to Rule 4-254; by providing that a certain order not be open to public inspection if otherwise provided by law; and by making stylistic changes, as follows:

Rule 16-1009. COURT ORDER DENYING OR PERMITTING INSPECTION OF CASE RECORD

(a) Motion

(1) A party to an action in which a case record is filed, including a person who has been permitted to intervene as a party, and a person who is the subject of or is specifically identified in a case record may file a motion:

(A) to seal or otherwise limit inspection of a case record filed in that action that is not otherwise shielded from inspection under the Rules in this Chapter or Title 20; or

(B) to permit inspection of a case record filed in that action that is not otherwise subject to inspection under the Rules in this Chapter or Title 20.

(2) ~~The~~ Except as provided in subsection (a)(3) of this Rule, the motion shall be filed with the court in which the case record is filed and shall be served on:

(A) all parties to the action in which the case record is filed; and

(B) each identifiable person who is the subject of the case record.

(3) A petition to shield a court record pursuant to Code, Criminal Procedure Article, Title 10, Subtitle 3 shall be filed in the county where the judgment of conviction was entered, and service shall be provided in accordance with the statute.

(b) Shielding Upon Motion or Request

(1) Preliminary Shielding upon Motion

Subsection (b)(1) of this Rule does not apply to a petition filed pursuant to Code, Criminal Procedure Article, Title 10, Subtitle 3. Upon the filing of a motion to seal or otherwise limit inspection of a case record pursuant to section (a) of this Rule, the custodian shall deny inspection of the case record for a period not to exceed five business days, including the day the motion is filed, in order to allow the court an opportunity to determine whether a temporary order should issue.

(2) Shielding upon Request

If a request to shield information in a case record is filed by or on behalf of a

person entitled to request the shielding under Code, Courts Article, Title 3, Subtitle 15 (peace orders) or Code, Family Law Article, Title 4, Subtitle 5 (domestic violence), and the request is granted, or if a request to shield the address or telephone number of a victim, victim's representative, or witness is filed in a criminal action, and the request is granted, a custodian shall deny inspection of the shielded information. The shield remains in effect until terminated or modified by order of court. If the request is denied, the person seeking to shield information may file a motion under section (a) of this Rule.

Committee note: If a court or District Court Commissioner grants a request to shield information under subsection (b)(2) of this Rule, no adversary hearing is held unless a person seeking inspection of the shielded information files a motion under section (a) of this Rule.

(c) Temporary Order Precluding or Limiting Inspection

(1) The court shall consider a motion filed under this Rule on an expedited basis.

(2) In conformance with the provisions of Rule 15-504 (Temporary Restraining Order), the court may enter a temporary order precluding or limiting inspection of a case record if it clearly appears from specific facts shown by affidavit or other statement under oath that (A) there is a substantial basis for believing that the case record is properly subject to an order precluding or limiting inspection, and (B) immediate, substantial, and irreparable harm will result to the person seeking the relief if temporary relief is not granted before a full adversary hearing can be held on the propriety of a final order precluding or limiting inspection.

(3) A court may not enter a temporary order permitting inspection of a case record that is not otherwise subject to inspection

under the Rules in this Chapter in the absence of an opportunity for a full adversary hearing.

(d) Final Order

(1) After an opportunity for a full adversary hearing, the court shall enter a final order:

(A) precluding or limiting inspection of a case record that is not otherwise shielded from inspection under the Rules in this Chapter;

(B) permitting inspection, under such conditions and limitations as the court finds necessary, of a case record that is not otherwise subject to inspection under the Rules in this Chapter; or

(C) denying the motion.

(2) A final order shall include findings regarding the interest sought to be protected by the order.

(3) A final order that precludes or limits inspection of a case record shall be as narrow as practicable in scope and duration to effectuate the interest sought to be protected by the order.

(4) A final order granting relief under Code, Criminal Procedure Article, Title 10, Subtitle 3 shall include the applicable provisions of the statute. If the order pertains to a judgment of conviction in an action that was removed pursuant to Rule 4-254, the order shall apply to the records of each court in which there is a record of the action, and the clerk shall transmit a copy of the order to each such court.

~~(4)~~ (5) In determining whether to permit or deny inspection, the court shall consider:

(A) if the motion seeks to preclude or limit inspection of a case record that is otherwise subject to inspection under the

Rules in this Chapter, whether a special and compelling reason exists to preclude or limit inspection of the particular case record; and

(B) if the motion seeks to permit inspection of a case record that is otherwise not subject to inspection under the Rules in this Chapter, whether a special and compelling reason exists to permit inspection.

(C) if the motion seeks to permit inspection of a case record that has been previously sealed by court order under subsection (d)(1)(A) of this Rule and the movant was not a party to the case when the order was entered, whether the order satisfies the standards set forth in subsections (d)(2), (3), and (4)(A) of this Rule.

~~(5)~~ (6) Unless the time is extended by the court on motion of a party and for good cause, the court shall enter a final order within 30 days after a hearing was held or waived.

(e) Filing of Order

A copy of any ~~preliminary~~ temporary or final order shall be filed in the action in which the case record in question was filed and, except as otherwise provided by law, shall be subject to public inspection.

(f) Non-exclusive Remedy

This Rule does not preclude a court from exercising its authority at any time to enter an order that seals or limits inspection of a case record or that makes a case record subject to inspection.

Source: This Rule is new.

Rule 16-1009 was accompanied by the following Reporter's note.

The Maryland Second Chance Act of 2015 ("the Act"), Chapter 313, Laws of 2015, effective October 1, 2015, will permit a person to petition a court to shield the person's court records relating to one or more shieldable convictions, subject to certain restrictions and exceptions. The intent of the amendments proposed to Rule 16-1009 is to harmonize the Rule to the statute.

New subsection (a)(3) is proposed to provide that a petition to shield a court record pursuant to the Act shall be filed in the county where the judgment of conviction was entered. It was anticipated that there may be some confusion in cases where an action had been removed from one county to another. Also, subsection (a)(3) specifies that service shall be provided in accordance with the Act. This proposal is necessary because Code, Criminal Procedure Article, §10-303 (e)(1) conflicts with the Rule by requiring that "the Court shall have a copy of the petition for shielding served on the State's Attorney," and §10-303 (f) requires the court to send written notice of the proposed action to all listed victims to advise them of the right to offer information relevant to the shielding. In contrast, Rule 16-1009 (a)(2) imposes on the movant the duty to serve the motion on all parties to the action and each identifiable person who is the subject of the case record.

New subsection (d)(4) of Rule 16-1009 requires that an order granting relief under the Act include the applicable provisions of the statute. As such, the court will be "order[ing] the shielding of all police records and court records relating to the conviction or convictions" pursuant to Code, Criminal Procedure Article, §10-303 (f)(2), and the records, although shielded, are to remain "fully accessible by" the person listed in Code, Criminal Procedure Article, §10-302 (b). Subsection (d)(4) also addresses a gap in the statute by providing that, if the order pertains to a judgment of conviction in an action that was removed pursuant to Rule 4-254, the order shall apply

to the records of each court in which there is a record of the action, and by requiring the clerk to transmit a copy of the order to each such court.

Two changes are proposed to section (e). First, the word "temporary" is proposed to substitute for the word "preliminary," for the sake of consistency between sections (c) and (e). Second, an amendment is proposed to state that a copy of a temporary or final order shall be subject to public inspection, *except as otherwise provided by law*. The exception that is added reflects that, in addition to the Second Chance Act, there are other laws that direct that the shielding of court records must include the court orders in the case. In Code, Criminal Procedure Article, §10-301(b) the term "court record" is defined to have the meaning stated in Code, Criminal Procedure Article, §10-101. Section 10-101 (c)(2)(ii) defines a court record to include "an index, docket entry, charging document, pleading, memorandum, transcription of proceedings, electronic recording, order, and judgment." Similarly, in two other shielding statutes, Code, Courts Article, §3-1510 (a)(2)(ii)2 and Code, Family Law Article, §4-512 (a)(2)(ii)1, the term "court record" is defined to include "an index, a docket entry, a petition, a memorandum, a transcription of proceedings, an electronic recording, an order, and a judgment."

A comparable change will be proposed to Rule 16-909 (Court Order Denying or Permitting Inspection of Case Record), which is currently before the Court as part of the 178th Report, Part I.

The Chair pointed out that the statute, Chapter 313, Laws of 2015 (HB 244), the Second Chance Act, does not directly shield the criminal records listed. It requires a petition to shield, and the court has some discretion. The question was where to put this petition procedure. Rule 16-1009 is an existing Access Rule

that provides that if a record is not shielded by law, and someone would like for it to be shielded, the person can file a petition to shield. The reverse is true. If a record is already shielded, and someone would like for it to be opened, the person can follow the procedure set out in Rule 16-1009. This seemed to be the best approach for bringing in the procedure in the Second Chance Act.

The Chair noted that there was one problem that the legislature did not address. It probably will never happen given the fact that the crimes for the convictions for which can be shielded are relatively minor (although they are not all District Court offenses; some are felonies that are tried in the circuit court).

This is not a problem in the District Court, because even if the record is not shielded, the person has to file a petition in the District Court in the county where the case was tried. There are no removals in the District Court according to Ms. Roberta Warnken, the Chief Clerk of the District Court. If a case is filed in Carroll County District Court, and a person does not like the judge assigned to the case, as long as the assigned judge agrees, another judge will be brought in to sit in place of the assigned judge, but the case is not sent out to another county. It is called "reassignment," not "removal."

The Chair said that in the circuit court, a case can be removed to another county. Under Rule 4-254, Reassignment and

Removal, which applies in the circuit court, if a case starts in the Circuit Court for Carroll County, and a petition to remove it is granted, the case could be moved to Baltimore County, and the State's Attorney for Carroll County will come to Baltimore County to try that case. The Carroll County court will have a file, because that is where the case was started. Carroll County will send whatever is in the file to Baltimore County, but Carroll County will still have a file.

The Chair commented that according to Rule 4-254, if there is a conviction in Baltimore County, that county will open its own file for the case, so there will be a Baltimore County file and a Carroll County file. Whatever happens in Baltimore County, whether it is a conviction, a dismissal, or an acquittal, will get recorded in the Baltimore County file, and the clerk in Baltimore County is required by Rule 4-254 to then send a certified copy of the docket entries back to Carroll County. The clerk of Carroll County will then file that certificate of the docket entries, so that both courts have a file, and both files will reflect a conviction, if the defendant was convicted.

The Chair commented that the statute provides that someone can only file a petition to shield the record in one county. In that rare situation where there has been a removal in the circuit court, two courts will have a record of the conviction, but the defendant can file a petition in only one county. This is the small glitch. The likelihood of this happening is rather remote

simply because the crimes for which the petitions can be filed are not likely to be ones where someone would get a removal, but it is theoretically possible.

The Chair said that he had spoken with Robin Coffin, Esq., Deputy State's Attorney for Baltimore County, about how Baltimore County handles this removal situation. She confirmed that this has been the procedure there. The Rule was drafted so that the defendant files the petition in the court where the case started. If the case has been removed and tried in another county, the petition is filed in that county, because they will have the entire record, since the case was tried there. If the defendant was convicted, and the judge in the county where the case was tried decides that the matter falls within the statute and the record is shieldable, that county will shield their file and send the order back to the original county. It will be a kind of res judicata situation, and the original county will shield whatever record it has. It is only a docket entry, but it shows the conviction.

The Chair explained that the theory is that it is the same parties, the same State's Attorney, and the same defendant. The original county should be bound by the judgment in the county to which the case was removed. This was the only way that the drafters of Rule 16-1009 could think of to get around the fact that the defendant cannot file the petition in both courts. The legislature could fix this if it so chooses.

A comparable change will have to be made to proposed Rule 16-910, Procedures for Compliance, which is the revision of Rule 16-1009 that is in Part I of the 178th Report to the Court of Appeals. What the Committee does with Rule 16-1009 will be reflected in proposed Rule 16-910.

The Chair noted that there is one more glitch. The statute has certain procedural provisions in it that have to be followed. The Criminal Subcommittee will have to discuss this. In subsection (a)(3), a period should be added after the word "entered." The next sentence should be: "Service shall be provided and proceedings shall be held as directed in that Subtitle." This would leave no ambiguity.

The Chair commented that one of the problems that the legislature did not address is the issue of victims. The statute is a little vague about victims. It requires that the court serve the petition on the State's Attorney, and there is a provision in the statute that in the final order that the judge makes, the judge has to consider anything that the victim might want to say. This assumes that the victim has been informed about this proceeding. The statute contains no provision for actual service on the victim, but only on the State's Attorney. The theory is probably that the victim has filed a request for notice. The State's Attorney will have a copy of this, and so will the clerk. The Chair said that he was not sure how many of the crimes listed in the statute would even have victims. A few

crimes may have victims, including the crime of malicious destruction of property where there is a right of restitution.

Judge Ellinghaus-Jones referred to the issue of cases that are removed to the circuit court. She asked whether language should be added to Rule 16-1009 to include cases that are appealed from the District Court to the circuit court. The conviction would be in the circuit court, but the District Court would still have a record. The appeals are usually all de novo, so the conviction would be in the circuit court. By analogy, when an expungement is filed, it has to be filed in the circuit court if it is an expungeable offense. She explained that when an offense is expunged in the circuit court, that court's order directs the District Court to expunge the offense also when the case had been appealed from the District Court. The Chair agreed that cases that had been appealed from the District Court to the circuit court should be included in the scope of Rule 16-1009. The Style Subcommittee can find a way to draft this. The Reporter noted that language could be added to subsection (d)(4) to address it.

By consensus, the Committee approved the proposed changes to Rule 16-1009, subject to the change suggested by Judge Ellinghaus-Jones to add language to cover appeals from the District Court to the circuit court.

Agenda Item 5. Reconsideration of proposed revised Rules to be included in the 178th Report, Part III - Rule 19-102 (State Board of Law Examiners), Rule 19-103 (Character Committees), Rule 19-104 (Subpoena Power), Rule 19-105 (Confidentiality),

Rule 19-202 (Application for Admission and Preliminary Determination of Eligibility), Rule 19-203 (Character Review), Rule 19-204 (Petition to Take a Scheduled Examination), and Rule 19-206 (Bar Examination)

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Mr. Frederick presented Rules 19-102, State Board of Law Examiners; 19-103, Character Committees; 19-104, Subpoena Power; 19-105, Confidentiality; 19-202, Application for Admission and Preliminary Determination of Eligibility; 19-203, Character Review; 19-204, Petition to Take a Scheduled Examination; and 19-206, Bar Examination, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 100 – STATE BOARD OF LAW EXAMINERS

AND CHARACTER COMMITTEES

Rule ~~20.~~ 19-102. ~~THE~~ STATE BOARD OF LAW EXAMINERS

(a) Appointment

There is a State Board of Law Examiners. The Board shall consist of seven members appointed by the Court. Each member shall have been admitted to practice law in Maryland. The terms of members shall be as provided in Code, Business Occupations and Professions Article, §10-202 (c).

(b) Quorum

A majority of the authorized membership of the Board is a quorum.

~~(a)~~ (c) Authority ~~**to Adopt Rules**~~

**(1) Generally**

**The Board shall exercise the authority and perform the duties assigned to**

**it by the Rules in this Chapter and Chapter 200 of this Title, including general supervision over the character and fitness requirements and procedures set forth in those Rules and the operations of the character committees.**

**(2) Adoption of Rules**

The Board may adopt rules to carry out the requirements of ~~**these Rules and to facilitate the conduct of examinations**~~ **this Chapter and Chapter 200 of this Title**. The Rules of the Board shall be published in ~~**the Code, Maryland Rules**~~ **this Chapter**, following ~~**these Rules**~~ **Rule 19-220**.

~~(b)~~ (d) Amendment of Board Rules - Publication

Any amendment of the Board's rules shall be ~~**published at least once in a daily newspaper of general circulation in this State. The amendment shall be published**~~ **posted on the Judiciary website** at least 45 days before the examination at which it is to become effective, except that an amendment that substantially increases the area of subject-matter knowledge required for any examination shall be ~~**published**~~ **posted** at least one year before the examination.

~~(c)~~ (e) **Professional** Assistants

The Board may appoint the **professional** assistants necessary for the proper conduct of its business. Each **professional** assistant shall be an attorney admitted by the Court of Appeals and shall serve at the pleasure of the Board.

**Committee note: Professional assistants primarily assist in writing and grading the bar examination. Section (e) does not apply to the Secretary or administrative staff.**

~~(d)~~ (f) Compensation of Board Members and Assistants

The members of the Board and assistants shall receive the compensation fixed ~~from time to time~~ by the Court.

~~(e)~~ (g) Secretary to the Board

The Court may appoint a secretary to the Board, to hold office ~~during~~ at the pleasure of the Court. The secretary shall have the administrative powers and duties ~~that~~ prescribed by the Board ~~may prescribe~~ and shall serve as the administrative director of the Office of the State Board of Law Examiners.

(h) Fees

The Board shall prescribe the fees, subject to approval by the Court, to be paid by applicants under Rules ~~2~~ 19-202 and ~~7~~ 19-206 and by petitioners under Rule ~~13~~ 19-212.

Cross reference: See Code, Business Occupations and Professions Article, §10-208 (b) for maximum examination fee allowed by law.

Source: This Rule is derived as follows:
Section (a) is ~~derived from former Rule 7 h and 9 a~~ new.
Section (b) is new.
Sections (c) through (g) are derived from former Rule 20 of the Rules Governing Admission to the Bar of Maryland (2015).
Section (h) is derived from former Rule 18 of the Rules Governing Admission to the Bar of Maryland (2015).
~~Section (b) is derived from former Rule 7 h and i.~~
~~Section (c) is derived from former Rule 9 c.~~
~~Section (d) is derived from former Rule 16.~~

~~Section (e) is derived from former Rule 17.~~

Rule 19-102 was accompanied by the following Reporter's note.

Rule 19-102 is derived from current RGAB 20 and 18, with style changes. Sections (a) and (b) are new and include the provisions of Code, Business Occupations and Professions Article, §10-202 concerning the composition of the Board and quorum requirements.

**Subsection (c)(1) is new. It implements a recommendation of the Maryland Professionalism Center Bar Admission Task Force that the character and fitness procedure be put under the purview of the Board.**

Section (d) is updated to require posting on the Judiciary website, rather than publication in a newspaper.

Section (e) is clarified by the addition of the word "professional" in the tagline and text and by the addition of a Committee note.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 100 – STATE BOARD OF LAW EXAMINERS

AND CHARACTER COMMITTEES

Rule ~~17.~~ 19-103. CHARACTER COMMITTEES

The Court shall appoint a Character Committee for each of the seven Appellate Judicial Circuits of the State. Each Character Committee shall consist of not less than five members whose terms shall be five years each, except that in the Sixth Appellate Judicial Circuit the term of each member shall be two years. The terms shall be staggered. The Court shall designate the chair of each Committee and vice chair, if any~~, and may provide compensation to the members~~. **For each application referred to a Character Committee, the Board shall remit to**

**the Committee a sum to defray some of the expense of the investigation.**

Cross reference: See Rule 19-203 for the Character Review Procedure.

Source: This Rule is derived from former Rule ~~4 a and e~~ 17 of the Rules Governing Admission to the Bar of Maryland (2015).

Rule 19-103 was accompanied by the following Reporter's note.

Rule 19-103 is derived from current RGAB 17, with the addition of a reference to a vice chair, if any, and a cross reference to the Rule concerning the character review procedure itself. The reference to "compensation" is replaced by a sentence that more accurately describes the sums paid by the Board to the Character Committees.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 100 – STATE BOARD OF LAW EXAMINERS

AND CHARACTER COMMITTEES

Rule ~~22.~~ 19-104. SUBPOENA POWER ~~OF BOARD AND CHARACTER COMMITTEES~~

(a) Subpoena

(1) Issuance

In any proceeding before the Board or a Character Committee pursuant to ~~Bar Admission~~ Rule ~~5~~ 19-203 or ~~Bar Admission~~ Rule ~~13~~ 19-212, the Board or Committee, on its own ~~motion~~ initiative or the motion of an applicant, may cause a subpoena to be issued

by a clerk pursuant to Rule 2-510. The subpoena shall issue from the Circuit Court for Anne Arundel County if incident to Board proceedings or from the circuit court in the county in which the Character Committee proceedings ~~are~~ is pending~~, and the~~. The proceedings ~~may~~ shall **~~not~~** be docketed in **the issuing** court **and shall be sealed and shielded from public inspection**.

(2) Name of Applicant

The subpoena shall not divulge the name of the applicant, except to the extent this requirement is impracticable.

(3) Return

The sheriff's return shall be made as directed in the subpoena.

(4) Dockets and Files

The Character Committee or the Board, as applicable, shall maintain dockets and files of all papers filed in the proceedings.

(5) Action to Quash or Enforce

Any action to quash or enforce a subpoena shall be filed under seal and docketed as a miscellaneous action in the court from where the subpoena was issued.

Cross reference: See Rule 16-906 (e)(3).

(b) Sanctions

If a person ~~is~~ subpoenaed to appear and give testimony or to produce books, documents, or other tangible things ~~and~~ fails to do so, the party who requested the subpoena, by motion that does not divulge the name of the applicant, ~~(~~except to the extent that this requirement is impracticable~~)~~, may request the court to issue an attachment pursuant to Rule 2-510 (j), or to cite the person for contempt pursuant to Title 15, Chapter 200 of the Maryland Rules, or both. Any such motion shall be filed under seal.

(c) Court ~~Rules~~ Costs

All court costs in proceedings under this Rule shall be assessable to and paid by the State.

Source: This Rule is ~~new~~ derived from former Rule 22 of the Rules Governing Admission to the Bar of Maryland (2015).

Rule 19-104 was accompanied by the following Reporter's note.

Rule 19-104 is derived from current RGAB 22 with style changes and the addition of provisions concerning sealing, shielding, quashing, and enforcing subpoenas.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 100 – STATE BOARD OF LAW EXAMINERS AND CHARACTER COMMITTEES

Rule ~~19.~~ 19-105. CONFIDENTIALITY

(a) Proceedings Before ~~Committee or Board; General Policy~~ Accommodations Review Committee; Character Committee; or Board

Except as provided in sections (b), (c), and (d) of this Rule, the proceedings before the Accommodations Review Committee and its panels, a Character Committee, and the Board, ~~and the~~ including related papers, evidence, and information, are confidential and shall not be open to public inspection or subject to court process or compulsory disclosure.

(b) Right of Applicant

(1) Right to Attend Hearings and Inspect Papers

~~Except as provided in paragraph (2) of this section, an~~ An applicant has the right to attend all hearings before a panel of the Accommodations Review Committee, a Character Committee, ~~and~~ the Board, and the Court pertaining to his or her application and, except as provided in subsection (b)(2) of this Rule, to be informed of and inspect all papers, evidence, and information received or considered by the panel, Committee or the Board pertaining to the applicant.

(2) Exclusions

~~This section~~ Subsection (b)(2) of this Rule does not apply to (A) papers or evidence received, ~~or~~ considered, or prepared by the National Conference of Bar Examiners, a Character Committee, ~~of~~ or the Board if the Committee or Board, without a hearing, recommends the applicant's admission; (B) personal memoranda, notes, and work papers of members or staff of the National Conference of Bar Examiners, a Character Committee, or the Board; (C) correspondence between or among members or staff of the National Conference of Bar Examiners, a Character Committee, or the Board; ~~or (D) character reports prepared by the National Conference of Bar Examiners;~~ or (D) an applicant's bar examination grades and answers, except as authorized in Rule ~~8~~ 19-207 and Rule ~~13~~ 19-212.

(c) When Disclosure Authorized

The Board may disclose:

(1) statistical information that does not reveal the identity of an individual applicant;

(2) the fact that an applicant has passed the bar examination and the date of the examination;

(3) if the applicant has consented in writing, any material pertaining to ~~an~~ the applicant that the applicant would be entitled to inspect under section (b) of this Rule ~~if the applicant has consented in writing to the disclosure~~;

(4) for use in a pending disciplinary proceeding against the applicant as an attorney or judge, a pending proceeding for reinstatement of the applicant as an attorney after **suspension or** disbarment, or a pending proceeding for original admission of the applicant to the Bar, any material pertaining to an applicant requested by:

(A) a court of this State, another state, or the United States;

(B) Bar Counsel, the Attorney Grievance Commission, or the attorney disciplinary authority in another state;

(C) the authority in another ~~**jurisdiction**~~ **State** responsible for investigating the character and fitness of an applicant for admission to the bar of that jurisdiction, or

(D) Investigative Counsel, the Commission on Judicial Disabilities, or the judicial disciplinary authority in another jurisdiction ~~for use in~~;

~~(i) a pending disciplinary proceeding against the applicant as an attorney or judge;~~

~~(ii) a pending proceeding for reinstatement of the applicant as an attorney after disbarment; or~~

~~(iii) a pending proceeding for original admission of the applicant to the Bar;~~

(5) any material pertaining to an applicant requested by a judicial nominating commission or the Governor of this or any other State, a committee of the Senate of

Maryland, the President of the United States, or a committee of the United States Senate in connection with an application by or nomination of the applicant for judicial office;

(6) to a law school, the names of ~~persons~~ individuals who graduated from that law school who took a bar examination, ~~and~~ whether they passed or failed the examination, and the number of bar examination attempts by each individual;

(7) to the Maryland State Bar Association and any other bona fide bar association in the State of Maryland, the name and address of ~~a person~~ an individual recommended for bar admission pursuant to Rule ~~10~~ 19-209;

**NOTE: Delete or amend subsection (c)(8) as needed, depending on the Court's determinations re: the Professionalism Center and Course.**

(8) to each entity selected to give the course on legal professionalism required by Rule ~~11~~ 19-210, the name and address of ~~a person~~ an individual recommended for bar admission pursuant to Rule ~~10~~ 19-209;

(9) to the National Conference of Bar Examiners, the following information regarding ~~persons~~ individuals who have filed applications for admission pursuant to Rule ~~2~~ 19-202 or petitions to take the attorney's examination pursuant to Rule ~~13~~ 19-213: the applicant's name and any aliases, applicant number, birthdate, Law School Admission Council number, law school, date that a juris doctor **or equivalent** degree was conferred, bar examination results and pass/fail status, and the number of bar examination attempts;

(10) to any member of a Character Committee, the report of any Character Committee or the Board following a hearing on an application; and

(11) to the Child Support Enforcement Administration, upon its request, the name,

Social Security number, and address of ~~a person~~ an individual who has filed an application pursuant to Rule ~~2~~ 19-202 or a petition to take the attorney's examination pursuant to Rule ~~13~~ 19-213.

Unless information disclosed pursuant to ~~paragraphs~~ subsections (c)(4) and (5) of this ~~section~~ Rule is disclosed with the written consent of the applicant, an applicant shall receive a copy of the information and may rebut, in writing, any matter contained in it. Upon receipt of a written rebuttal, the Board shall forward a copy to the ~~person~~ individual or entity to whom the information was disclosed.

(d) Proceedings and Access to Records in the Court of Appeals

(1) Subject to reasonable regulation by the Court of Appeals, Bar Admission ceremonies shall be open.

(2) Unless the Court otherwise orders in a particular case:

(A) hearings in the Court of Appeals shall be open, and

(B) if the Court conducts a hearing regarding a bar applicant, any report by the Accommodations Review Committee, a Character Committee, or the Board filed with the Court, but no other part of the applicant's record, shall be subject to public inspection.

(3) The Court of Appeals may make any of the disclosures that the Board may make pursuant to section (c) of this Rule.

(4) Except as provided in ~~paragraphs~~ subsections (d)(1), (2), and (3) of this ~~section~~ Rule or as otherwise required by law, proceedings before the Court of Appeals and the related papers, evidence, and information are confidential and shall not be open to public inspection or subject to court process or compulsory disclosure.

Source: This Rule is ~~new~~ derived from former Rule 19 of the Rules Governing Admission to the Bar of Maryland (2015).

Rule 19-105 was accompanied by the following Reporter's note.

This Rule is derived from former RGAB 19 with style changes. The State Board of Law Examiners recommends that more references to the National Conference of Bar Examiners be included in the Rule. References to the judicial nominating commission of other States, governors of other States, and the President of the United States are added. At the request of law schools, added to subsection (c)(6) is the permitted disclosure to a law school of the number of times an individual graduate of that law school took the bar examination.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 200 – ADMISSION TO THE BAR

Rule ~~2.~~ 19-202. APPLICATION FOR ADMISSION AND PRELIMINARY DETERMINATION OF ELIGIBILITY

(a) By Application

~~A person~~ An individual who meets the requirements of ~~Rules 3 and 4~~ Rule 19-201 or had the requirement of Rule 19-201 (a)(2) waived pursuant to Rule 19-201 (b) may apply for admission to the Bar of this State by filing with the Board an application for admission, accompanied by the prescribed fee~~, with the Board~~.

~~Committee note: The application is the first step in the admission process. These steps include application for admission, proof of character, proof of graduation from an~~

~~approved law school, application to take a particular bar examination, and passing of that examination.~~

(b) Form of Application

The application shall be on a form prescribed by the Board and shall be under oath. The form shall elicit the information the Board considers appropriate concerning the applicant's character, education, and eligibility to become a candidate for admission. The application shall require the applicant to provide the applicant's Social Security number and shall include an authorization ~~for~~ to release ~~of~~ confidential information pertaining to **the applicant's** character and fitness for the practice of law to a Character Committee, the Board, and the Court.

(c) Time for Filing

(1) Without Intent to Take Particular Examination

At any time after the completion of pre-legal studies, ~~a person~~ an individual may file an application ~~for the purpose of determining~~ to determine whether there are any existing impediments, including reasons pertaining to the individual's character and the sufficiency of pre-legal education, to the applicant's qualifications for admission.

~~Committee note: Subsection (c)(1) of this Rule is particularly intended to encourage persons whose eligibility may be in question for reasons pertaining to character and sufficiency of pre-legal education to seek early review by the Character Committee and Board.~~

(2) With Intent to Take Particular Examination

An applicant who intends to take the examination in July shall file the application no later than ~~**the preceding January 16 or, upon payment of the required**~~

~~late fee, no later than~~ the preceding May 20. An applicant who intends to take the examination in February shall file the application ~~no later than the preceding September 15 or, upon payment of the required late fee,~~ no later than the preceding December 20.

(3) Acceptance of Late Application

Upon written request of the applicant and for good cause shown, the Board may accept an application filed after the applicable deadline ~~for a late filing~~ prescribed in subsection (c)(2) of this Rule. If the applicant intends to take a particular bar examination, the applicant shall also show good cause under Rule 19-204 (c) for late filing of a petition. If the Board rejects the application for lack of good cause for the untimeliness, the applicant may file an exception with the Court within five business days after notice of the rejection is mailed.

(d) Preliminary Determination of Eligibility

On receipt of an application, the Board shall determine whether the applicant has met the pre-legal education requirements set forth in Rule ~~3~~ 19-201 (a) and in Code, Business Occupations and Professions Article, §10-207. If the Board concludes that the requirements have been met, it shall forward the character questionnaire portion of the application to a Character Committee. If the Board concludes that the requirements have not been met, it shall promptly notify the applicant in writing.

(e) Updated Application

If an application has been pending for more than three years since the date of the applicant's most recent application or updated application, the applicant shall file with the Board an updated application prior to filing a petition to take a scheduled examination. The updated application shall

be under oath, filed on the form prescribed by the Board, and accompanied by the prescribed fee.

~~(e)~~ (f) Withdrawal of Application

At any time, an applicant may withdraw as a candidate for admission by filing with the Board written notice of withdrawal ~~with the Board~~. No fees will be refunded.

~~(f)~~ (g) Subsequent Application

~~A person~~ An applicant who reapplies for admission after an earlier application has been withdrawn or rejected pursuant to Rule ~~5~~ 19-203 must retake and pass the bar examination even if the ~~person~~ applicant passed the examination when the earlier application was pending. If the ~~person~~ applicant failed the examination when the earlier application was pending, the failure ~~will~~ shall be counted under Rule ~~9~~ 19-208.

Source: This Rule is derived ~~as follows:~~

~~Section (a) is in part derived from the first sentence of former Rule 2 b and in part new.~~

~~Section (b) is new.~~

~~Section (c) is derived from former Rule 2 a, 2 b, and f.~~

~~Section (d) is in part derived from former Rule 2 g and in part new.~~

~~Section (e) is derived from former Rule 2 h.~~

~~Section (f) is new.~~ from former Rule 2 of the Rules Governing Admission to the Bar of Maryland (2015).

Rule 19-202 was accompanied by the following Reporter's note.

Rule 19-202 is derived from current RGAB 2 with some changes. The Committee note following current Rule 2 (a) is deleted as superfluous. The Committee note following current Rule 2 (c) is deleted, but the examples of "impediments" are added to the text of the Rule.

In subsection (c)(2), the concept of a deadline followed by a "late" deadline is replaced by one deadline per examination.

The reference to lack of good cause for untimeliness is added to subsection (c)(3) for clarity, and to distinguish this rejection from any other rejection of an application. The time for filing an exception is clarified to read, "within five business days after notice of the rejection is mailed."

Section (e) is new. It requires the applicant to file an updated application if the applicant's most recent application has been pending for more than three years.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 200 – ADMISSION TO THE BAR

Rule ~~5.~~ 19-203. CHARACTER REVIEW

~~(b)~~ (a) Investigation and Report of Character Committee

(1) On receipt of a character questionnaire forwarded by the Board pursuant to Rule ~~2~~ 19-202 (d), the Character Committee shall (A) through one of its members, personally interview the applicant, (B) verify the facts stated in the questionnaire, contact the applicant's references, and make any further investigation it finds necessary or desirable, (C) evaluate the applicant's character and fitness for the practice of law, and (D) transmit to the Board a report of its investigation and a recommendation as to the approval or denial of the application for admission.

(2) If the Committee concludes that

there may be grounds for recommending denial of the application, it shall notify the applicant and schedule a hearing. ~~The hearing shall be conducted on the record and the~~ The hearing shall be recorded verbatim by shorthand, stenotype, mechanical or electronic audio recording methods, electronic word or text processing methods, or any combination of those methods. The applicant shall have the right to testify, to present witnesses, and to be represented by ~~counsel~~ an attorney. A transcript of the hearing shall be transmitted by the Committee to the Board along with the Committee's report. The Committee's report shall set forth findings of fact on which the recommendation is based and a statement supporting the conclusion. The Committee shall mail a copy of its report to the applicant, and a copy of the hearing transcript shall be furnished to the applicant upon payment of reasonable ~~charges~~ costs.

~~(c)~~ (b) Hearing by Board

If the Board concludes after review of the Character Committee's report and the transcript that there may be grounds for recommending denial of the application, it shall promptly afford the applicant the opportunity for a hearing on the record made before the Committee. **The Board, in its discretion, may permit additional evidence to be submitted.** The Board shall mail a copy of its report and recommendation to the applicant and the Committee. If the Board decides to recommend denial of the application in its report to the Court, the Board shall first give the applicant an opportunity to withdraw the application. If the applicant withdraws the application, the Board shall retain the records. **~~Otherwise, it~~ If the applicant elects not to withdraw the application, the Board** shall transmit to the Court a report of its proceedings and a recommendation as to the approval or denial of the application together with all papers relating to the matter.

~~(d)~~ (c) Review by Court

(1) ~~**If the applicant elects not to withdraw the application, after**~~ **After** the Board submits its report and adverse recommendation the Court shall require the applicant to show cause why the application should not be denied.

(2) If the Board recommends approval of the application contrary to an adverse recommendation by the Character Committee, within 30 days after the filing of the Board's report, the Committee may file with the Court exceptions to the Board's recommendation. The Committee shall mail copies of its exceptions to the applicant and the Board.

(3) Proceedings in the Court under ~~this~~ section (c) of this Rule shall be on the ~~records~~ record made before the Character Committee and the Board. If the Court denies the application, the Board shall retain the records.

~~(a)~~ (d) Burden of Proof

The applicant bears the burden of proving to the Character Committee, the Board, and the Court the applicant's good moral character and fitness for the practice of law. Failure or refusal to answer fully and candidly any question ~~set forth~~ in the application or any relevant question asked by a member of the Character Committee, the Board, or the Court is sufficient cause for a finding that the applicant has not met this burden.

(e) Continuing Review

All applicants remain subject to further Character Committee and Board review and report until admitted to the Bar.

Source: This Rule is derived ~~as follows: Section (a) is in part derived from the first sentence of former Rule 2 d and in part new.~~

~~Section (b) is in part derived from former Rule 4 b and in part new.~~

~~Section (c) is in part derived from former Rule 4 c and in part new.~~

~~Section (d) is in part derived from former Rule 4 c and in part new.~~

~~Section (e) is in part derived from former Rule 4 d.~~ from former Rule 5 of the Rules Governing Admission to the Bar of Maryland (2015).

Rule 19-203 was accompanied by the following Reporter's note.

Rule 19-203 is derived from current RGAB 5 with style changes and a clarification of the existing requirement that a hearing conducted by a Character Committee be on the record **supplemented by any additional evidence that the Board, in its discretion, may allow.**

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 200 – ADMISSION TO THE BAR

Rule ~~6.~~ 19-204. PETITION TO TAKE A SCHEDULED EXAMINATION

(a) Filing

An applicant may file a petition to take a scheduled bar examination if (1) the applicant ~~(1)~~ is eligible under Rule ~~4~~ 19-201 to take the bar examination, ~~and~~ (2) the applicant has applied for admission pursuant to Rule ~~2~~ 19-202, and (3) the application has not been withdrawn or rejected pursuant to Rule ~~5~~ 19-203. The petition shall be under oath, ~~and shall be~~ filed on the form prescribed by the Board, and accompanied by

the prescribed fee.

(b) Request for Test Accommodation

An applicant who seeks a test accommodation under the ADA for the bar examination shall file with the Board an "Accommodation Request" on a form prescribed by the Board, together with ~~any~~ **the** supporting documentation that the Board requires. The form and documentation shall be filed no later than the deadline stated in section (c) of this Rule for filing a petition to take a scheduled bar examination. **The Board may reject an accommodation request that is (1) substantially incomplete or (2) filed untimely if the untimeliness makes the granting of the accommodation impracticable.**

Committee note: An applicant who may need a test accommodation is encouraged to file an Accommodation Request as early as possible.

Cross reference: See Rule ~~6.1~~ 19-205 for the procedure to appeal a denial of a request for a test accommodation.

(c) Time for Filing

~~A petitioner~~ An applicant who intends to take the examination in July shall file the petition no later than the preceding May 20. ~~A petitioner~~ An applicant who intends to take the examination in February shall file the petition no later than the preceding December 20. Upon written request of ~~a petitioner~~ an applicant and for good cause shown, the Board may accept a petition filed after that deadline. If the Board rejects the petition for lack of good cause for the untimeliness, the ~~petitioner~~ applicant may file an exception with the Court within five business days after notice of the rejection is mailed.

(d) Affirmation and Verification of Eligibility

The petition to take an examination shall contain a signed, notarized statement

affirming that the ~~petitioner~~ applicant is eligible to take the examination. No later than the first day of September following an examination in July or the fifteenth day of March following an examination in February, the ~~petitioner~~ applicant shall cause to be sent to the Office of the State Board of Law Examiners ~~a~~ **an official** transcript that reflects the date of the award to the applicant of a ~~Juris Doctor degree to the petitioner~~ qualifying degree under Rule 19-201.

(e) Voiding of Examination Results for Ineligibility

If an applicant who is **determined by the Board** not **to be** eligible under Rule ~~4~~ 19-201 takes an examination, the applicant's petition ~~will~~ shall be deemed invalid and the applicant's examination results ~~will~~ shall be voided. No fees ~~will~~ shall be refunded.

(f) Certification by Law School

Promptly following each bar examination, the Board shall submit a list of ~~petitioners~~ applicants who identified themselves as graduates of a particular law school and who sat for the most recent bar examination to the law school for certification of graduation and good moral character. Not later than 45 days after each examination, the law school dean or other authorized official shall certify to the Board in writing (1) the date of graduation of each of its graduates on the list or shall state that the ~~petitioner~~ applicant is unqualifiedly eligible for graduation at the next commencement exercise, naming the date; and (2) that each of the ~~petitioners~~ applicants on the list, so far as is known to that official, has not been guilty of any criminal or dishonest conduct other than minor traffic offenses and is of good moral character, except as otherwise noted.

(g) Refunds

If ~~a petitioner~~ an applicant withdraws

the petition or fails to attend and take the examination, the examination fee ~~will~~ shall not be refunded except for good cause shown. The examination fee may not be applied to a subsequent examination unless the ~~petitioner~~ applicant is permitted by the Board to defer taking the examination **or the applicant establishes good cause for the withdrawal or failure to attend**.

Source: This Rule is ~~new, except that section (a) is derived from former Rule 5 (a)~~ derived from former Rule 6 of the Rules Governing Admission to the Bar of Maryland (2015).

Rule 19-204 was accompanied by the following Reporter's note.

Amendments to current Rules 6 and 9 of the Rules Governing Admission to the Bar of Maryland were proposed at the request of the State Board of Law Examiners.

To allow the Board sufficient time to process a petition to take an examination, in light of increases in the number of candidates and the number of requests for accommodation under the Americans With Disabilities Act, the time for filing the petition was changed from 20 days before the scheduled examination to no later than the preceding May 20th for the July examination or the preceding December 20th for a February examination. A sentence permitting the Board to reject an incomplete or untimely request is added.

In section (c), the time for filing an exceptions is clarified to read, "within five business days after notice of the rejection is mailed."

The requirement set forth in current Rule 6 (f) that a certain certification by the applicant's law school be included in the petition was deleted. In its place were added new sections (d) and (e). New section (d) requires the applicant to affirm the

applicant's eligibility to take the examination and provide an official law school transcript to the Board within a certain time after the examination. New section (e) voids the examination results of any applicant who is found to have been ineligible to take the examination.

In section (g), Refunds, a provision pertaining to good cause for withdrawal of the petition or failure to attend the examination is added.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 200 – ADMISSION TO THE BAR

Rule ~~7.~~ 19-206. BAR EXAMINATION

(a) Scheduling

The Board shall administer a written examination twice annually, once in February and once in July. The examination shall be held on two successive days. The total duration of the examination shall be not more than 12 hours nor less than nine hours, unless extended at the candidate's request pursuant to Rules 19-204 and 19-205. At least 30 days before an examination, ~~The~~ the Board shall publish and have posted on the Judiciary website notice of the dates, times, and place or places of the examination ~~no later than the preceding December 1 for the February examination and no later than the preceding May 1 for the July examination~~.

(b) Purpose of Examination

**The purpose of the bar examination is to enable candidates for admission to demonstrate their capacity to achieve mastery of foundational legal doctrines, proficiency**

**in fundamental legal skills, and competence in applying both to solve legal problems consistent with the highest ethical standards.** It is the policy of the Court that no quota of successful ~~examiners~~ applicants be set~~,~~ but that each ~~examinee~~ applicant be judged for fitness to be a member of the Bar as demonstrated by the examination answers. ~~**To this end, the examination shall be designed to test the examinee's knowledge of legal principles in the subjects on which examined and the examinee's ability to recognize, analyze, and intelligibly discuss legal problems and to apply that knowledge in reasoning their solution. The examination will not be designed primarily to test information, memory, or experience.**~~

(c) Format and Scope of Examination

The Board shall prepare the examination and may adopt the MBE and the MPT as part of it. The examination shall include an essay test. The Board shall define by rule the subject matter of the essay test, but the essay test shall include at least one question dealing in whole or in part with professional conduct.

(d) Grading

(1) The Board shall grade the examination and, ~~shall~~ by rule, shall establish a passing grade~~s~~ for the examination. The Board, by rule, may provide ~~by rule~~ that an ~~examinee~~ applicant may satisfy the MBE part of the Maryland examination requirement by applying a grade on an MBE taken in another ~~jurisdiction~~ state at the same examination.

(2) At any time before ~~it notifies examinees~~ notifying applicants of the results, the Board, in its discretion and in the interest of fairness, may lower, but not raise, the passing grade~~s~~ it has established for any particular administration of the examination.

Source: This Rule is derived ~~as follows:~~
~~Section (a) is derived from former Rule 7 a, and b.~~
~~Section (b) is derived from former Rule 7 c.~~
~~Section (c) is derived from former Rule 7 d and e.~~
~~Section (d) is derived from former Rule 7 e.~~ from former Rule 7 of the Rules Governing Admission to the Bar of Maryland (2015).

Rule 19-206 was accompanied by the following Reporter's note.

Rule 19-206 is derived from current RGAB 7 with style changes. **Section (b), Purpose of Examination, is revised in accordance with Recommendation 8 of the Professionalism Center Bar Admission Task Force.**

Mr. Frederick told the Committee that Rule 19-102 was proposed to be changed as a result of the recommendations of the Maryland Professionalism Center Bar Admission Task Force. A modification should be made to subsection (c)(4)(C) of Rule 19-105. The word "jurisdiction" has been stricken, and the word "State" has been inserted. He had discussed this issue with Jeffrey Shipley, Esq., Secretary of the Board of Law Examiners, and Mr. Armstrong. The reason for the change is that if someone applies for admission to the federal bar, it is not unusual for there to be an investigation as to the person's fitness for practice in the federal bar. It may not be on the person's initial application, but it may well be on his or her subsequent application. Mr. Frederick had represented people who had been in those circumstances, and Mr. Shipley would be in a difficult position in responding to that without having the broader

language in subsection (c)(4)(C). The broader language would be consistent with the rest of the language in the Rule.

The Chair asked whether anyone had an objection to this change. By consensus, the Committee approved of the change to subsection (c)(4)(C).

Mr. Frederick pointed out that the remainder of the changes of the Rules in Agenda Item 5 are derived from the Bar Admission Task Force Report of the Commission on Professionalism. By consensus, the Committee approved Rules 19-102, 19-103, 19-104, 19-202, 19-204, and 19-206 as presented and Rule 19-105 as amended.

Agenda Item 6. Consideration of proposed new Rule 19-753 (Duty of Clerk of Court of Appeals Upon Attorney's Suspension, Termination, or Reinstatement) and Related Issues

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Mr. Frederick presented Rule 19-753, Duty of Clerk of Court of Appeals Upon Attorney's Suspension, Termination, or Reinstatement, for the Committee's consideration.

**MEMORANDUM**

| | | |
|---|---|---|
| TO | : | Members of the Rules Committee |
| FROM | : | Sandra F. Haines, Esq., Reporter |
| DATE | : | September 1, 2015 |
| SUBJECT | : | (1) Proposed Rule 19-753<br>(2) "Relation back" Issue |

The Style Subcommittee observed that the Rules in proposed new Title 19 contain numerous inconsistent provisions pertaining

to notices given by the Clerk of the Court of Appeals when an attorney has been suspended, disbarred, reinstated, decertified, or recertified. The Style Subcommittee suggested that there be one Rule governing all such notices and that, as applicable, other Rules in Title 19 contain a provision requiring the Clerk to comply with that Rule.

Proposed new Rule 19-753 is recommended by the Attorneys and Judges Subcommittee to implement that proposal.

The overarching philosophy of Rule 19-753 is that, for the protection of the public, whenever an attorney becomes ineligible to practice law, notice of the ineligibility should be promptly and widely disseminated. When the attorney is permitted to practice again, prompt notice should be given to all recipients of the prior notice.

In the course of the Attorneys and Judges Subcommittee's consideration of Rule 19-753, two additional issues arose:

(1) Should Rule 19-753 also include notification of an injunction issued by a circuit court judge under the Title 19 equivalent of current Rule 16-776, even though the injunction is not an order of the Court of Appeals?

(2) In conjunction with the Subcommittee's recommendation that notification of an attorney's decertification for failure to file an IOLTA or pro bono reporting form be included in Rule 19-753, the Subcommittee discussed the issue of whether there should be a "relation back" provision included in Title 19 so that any actions taken by a recertified attorney during the time the attorney was decertified would not be considered the unauthorized practice of law. The Subcommittee was evenly split on this question and requests guidance from the full Committee.

SFH:cdc

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

Rule 19-753. ~~NOTICE OF~~ DUTY OF CLERK OF COURT OF APPEALS UPON ATTORNEY'S SUSPENSION, TERMINATION, OR REINSTATEMENT

(a) Register of Attorneys

(1) Striking Name of Attorney

Upon the entry of an Order of the Court of Appeals suspending~~,~~ or terminating~~, or reinstating~~ an attorney's authority to practice law in this State, ~~including a suspension or reinstatement or reinstatement pursuant to~~ except an Order of Decertification ~~or Recertification~~ pursuant to Rule 19-409 or 19-503 or a suspension pursuant to Rule 19-606 ~~[19-215, 19-216, or 19-217]~~ the Clerk of the Court of Appeals shall ~~(1)~~ strike the name of the attorney from the register of attorneys maintained by the Clerk.

(2) Replacing Name of Attorney

Upon the entry of an Order of the Court of Appeals reinstating an attorney's authority to practice law, the Clerk shall replace the name of the attorney on the register as of the date of or specified in the Order.

(b) Notice

Upon the entry of an order of the Court of Appeals suspending, terminating, or reinstating an attorney's authority to practice law in this State, including a suspension or reinstatement pursuant to an Order of Decertification or Recertification under Rule 19-409 or 19-503 or a suspension or reinstatement under Rule 19-606, the Clerk shall:

~~(2)~~ (1) send a copy of the order to the attorney;

~~(3)~~ (2) post notice of the order on the Judiciary website; and

~~(4)~~ (3) send notice of the order to:

(A) the Clerk of the Court of Special Appeals;

(B) the Clerk of each Circuit Court;

(C) the Chief Clerk of the District Court;

(D) the Clerk of the United States Supreme Court;

(E) the Clerk of the U.S. Court of Appeals for the Fourth Circuit;

(F) the Clerk of the U.S. District Court for the District of Maryland;

(G) the Register of Wills for each county;

(H) the State Court Administrator;

(I) the trustees of the Client Protection Fund;

(J) the Office of Administrative Hearings; and

(K) unless the suspension, termination, or reinstatement is solely pursuant to Rule [19-215, 19-216, or 19-217]:

(i) the National Lawyer Regulatory Data Bank of the American Bar Association; and

(ii) the disciplinary authority of every other jurisdiction in which the Clerk knows the attorney is admitted to practice.

~~(b)~~ (c) Notice Upon Request

In addition to the persons listed in subsection ~~(a)(4)~~ (b)(3) of this Rule, the

Clerk may send notice of the order to other persons who have requested such notice.

~~(c)~~ (d) Form of Notice

The Clerk may send the notice under subsection ~~(a)(4)~~ (b)(3) of this Rule in electronic or paper form.

Source: This Rule is new.

Mr. Frederick said that the memorandum from the Reporter pertaining to Rule 19-753 raises an interesting question. The changes to the Rule are not controversial and essentially address the question of whom the Clerk of the Court of Appeals is required to inform if an attorney's privilege to practice law is in some way inhibited. The question raised in the Attorneys and Judges Subcommittee that drew a split was what are the consequences to the client for an act made by an attorney, while the attorney's privilege to practice law was inhibited and then restored.

Mr. Frederick said that he would give the Committee some examples of this situation. When an attorney changes his or her address, the attorney needs to notify two separate entities. One is the Court of Appeals of Maryland, and one is the Client Protection Fund. If an attorney only notifies one out of the two, this is a problem. Not everyone knows about the dual notification. In many cases, the attorneys will notify the Court of Appeals. The problem is that the Client Protection Fund sends the bills for the money that has to be paid to the Fund. It also sends the questionnaire pertaining to Interest on Lawyers' Trust Accounts ("IOLTA") and the questionnaire pertaining to the

attorney's pro bono activities based on the addresses that the Fund has. If a young attorney leaves a law firm on bad terms, and the firm throws away that attorney's mail, the young attorney being so new may not realize that he or she has not gotten any bills from the Fund, or the law firm had always paid those bills for the young attorney, so the attorney did not even know that these bills were being sent to him or her. The young attorney's privilege to practice law is suspended.

Mr. Frederick noted that this is not a difficult problem to correct. The attorney pays the money that is owed, including the interest accrued, files a petition, and on the next Thursday, the Clerk of the Court either presents the petition to the senior Judge or has the authority from the senior Judge to reinstate the attorney and restore the attorney to the practice of law. However, if the attorney who had been unknowingly suspended from the practice of law files a complaint in the Circuit Court for Montgomery County on the last day before the statute of limitations runs, the defense attorney may move to strike the complaint. The question is whether some kind of retroactivity would be available for first-time miscreants who are suspended for other than a violation under section (c) of Rule 8.4, Misconduct. If an attorney had been through this previously, the attorney would have no excuse if it happened again. However, should the position be that everyone is supposed to know and follow the Rules?

Judge Mosley hypothesized the same situation, but instead of

the attorney being in a civil case, it is a criminal case, and the judge sentences the miscreant attorney's client to the Department of Corrections. Mr. Frederick responded that this is another example of what has happened. Another example is deeds that are prepared. Deeds are self-correcting, but they self-correct in six months, so for 179 days, if something odd happens, it could cause a problem. Mr. Frederick expressed the view that this Rule is more for the protection of the public than the attorney, although the cases that he had seen almost always had been attorneys who were new to the practice of law and who got caught in snags between law firms that had either fired the attorney or were angry at the attorney for leaving the law firm. This does not happen if the firm is of a higher caliber or if the attorney uses his or her home address when the attorney originally registers unless the attorney has moved. The problem pointed out by Judge Mosley is a real one. A whole series of bad results could happen to the client.

The Chair said that there are different scenarios in which an attorney's authority to practice law can be suspended or terminated. One scenario involves a case of pure discipline of the attorney that goes to the Attorney Grievance Commission ("AGC"). One scenario is not paying the necessary money to the Client Protection Fund or not reporting one's Social Security number. Ms. Bessie Decker, Clerk of the Court of Appeals, had told the Chair that in a case that goes through the AGC where the attorney is suspended or disbarred, Ms. Decker strikes the name

from the registry of attorneys. She said that she does not actually erase the name; she puts a red circle around it, noting that the person is disbarred or suspended. She does not do this for Client Protection Fund suspensions. She sends a notice. She strikes the attorney's name or puts it back only for cases that have gone through the AGC. If the attorney has not paid his or her Client Protection Fund dues, Rule 16-811.6, Enforcement of Obligations, provides that the attorney is suspended, but she does not handle that suspension in the same manner as cases involving discipline by the AGC.

The Chair commented that now there are two more violations -- failure to file IOLTA reports and Pro Bono reports -- that also result in the removal of the attorney's authorization to practice law. The term "suspension" is not used for these. If an attorney does not file his or her IOLTA or Pro Bono report, the attorney is sent a notice of default. It is amazing how many hundreds of attorneys every year get those notices. As soon as they get the notice, most of the attorneys file the missing report, because if they do not, then the attorney is decertified. This is what is in Rule 16-608, Interest on Funds in Attorney Trust Accounts, and Rule 16-903, Reporting Pro Bono Legal Services. Although it is not called a "suspension," the Rules provide that upon the entry of the order of decertification, the attorney's authority to practice law is suspended. An attorney who is under this order may not practice even though it is not called a "suspension." When the attorney corrects the problem,

the Court issues an order of recertification that restores the attorney's authority to practice law. The Clerk does not put a circle around the name of the attorney unless he or she is being disciplined by the AGC.

The Chair said that another Rule that removes the authority of an attorney to practice law is Rule 16-778, Referral from Child Support Enforcement Administration. The entire system is inconsistent and disorganized, certainly with respect to terminology, because decertifications have the same effect as suspensions. Rules 16-608 and 16-903 are clear that the attorney's authority to practice law ends until that authority is restored. It is exactly the same as a suspension, but it is called something different.

The Chair remarked that any time that an attorney's practice is suspended or terminated, the Clerk of the Court of Appeals sends notice of that to a list of people. The problem is that some of the Rules that pertain to this specify who the Clerk is to notify, and some do not. The ones that do specify are not consistent as to who gets notice. The Clerk would like the notice aspect of this to be uniform. The attorney's authority to practice is suspended, and everyone gets notice of it - the United States Supreme Court Clerk, the Clerk of the U.S. Court of Appeals for the Fourth Circuit, the Clerk of the U.S. District Court for the District of Maryland, the Clerk of the Court of Special Appeals, the clerks of the Maryland circuit and district courts, the bar, and all of the other entities listed in section

(a) of Rule 19-753. Part of the purpose of Rule 19-753 is to make the notice uniform.

Mr. Frederick remarked that if the privilege to practice law is suspended, he understood that the administrative judge gets the list of who is authorized to practice and who is not, and if an unauthorized person happens to be at a trial, a phone call can easily be made to Bar Counsel. Occasionally, Mr. Frederick has gotten a call from a judge asking him what he is supposed to do, which is usually to contact Bar Counsel. The other problem is that even if an attorney is not a trial attorney, if the attorney continues to practice after inadvertently having become decertified, the attorney has a duty under Rule 8.3, Reporting Professional Misconduct, to self-report to the appropriate professional authority.

Mr. Frederick said that he had researched this issue, and, in some instances, the attorney's actions are validated *nunc pro tunc*, provided that the attorney is reinstated. It is not clear or consistent anywhere. What would happen if the day before trial a defense attorney realizes that the plaintiff's attorney was not authorized to practice law at the time the plaintiff's attorney filed the complaint the day before the statute of limitations ran, and the defense attorney files a motion for summary judgment? What is the trial judge supposed to do? Is this the time to blaze new trails? Should the Committee take a position and recommend to the Court of Appeals how to proceed?

The Chair pointed out that the Subcommittee had looked at

this issue as substantive law. If the attorney whose authority to practice has been suspended for any reason performs some act as an attorney, what is the impact on the case? This could impact the client's rights. Mr. Zarbin asked what the impact would be on a criminal case. What if an attorney had been decertified but tries a Driving While Intoxicated (DWI) case in the District Court. Is there not an impact on the defendant's constitutional right to assistance of counsel? The Chair responded that there may be an impact. Mr. Zarbin remarked that the decertification may be the result of a harmless mistake, but it has to be repaired. One of his colleagues had filled out the IOLTA form incorrectly. The deadline came, and the colleague was about to be decertified because he had not given the correct information. He found out about the situation in time, and he was able to address the problem the day before he would have been decertified.

Mr. Frederick noted that when an attorney has been suspended as a result of the Attorney Grievance process, there are Rules that state what the attorney may and may not do, and how much time the attorney has to do it. All of the Attorney Grievance procedures are laid out. What Mr. Frederick had called "inadvertent suspensions" at the Subcommittee meeting, because the attorney failed to take an action, such as to not pay money or file a report on time, are violations that could be remedied *nunc pro tunc*. It is a ministerial reinstatement. The attorney pays the money or files the report. On the next Thursday that

the Court of Appeals is open, the senior judge, the Clerk, or the Deputy Clerk will automatically enter the reinstatement. The Chair commented that this falls into a fuzzy area, because Ms. Decker looks at those decertifications and CPF suspensions as administrative suspensions, as opposed to disciplinary suspensions. The Chair and Ms. Decker have had many discussions about this. The problem is that a suspension is a suspension. Rules 16-608 and 16-903 state that the attorney's authority to practice law is suspended until the deficiency is fixed. If an attorney continues to practice during the period in which he or she has been decertified, not only can the State's Attorney go after the attorney for barratry, the AGC can also go after him or her.

The Chair agreed with Mr. Frederick that this issue should be looked at again. The decertification procedure was used, because the only other option was to send these cases to Bar Counsel. The Chair said that he sat on the Court of Appeals when these Rules first went into effect, and there were times when as many as 900 attorneys received notices of default. The attorneys had not filed one or both of the required IOLTA or a Pro Bono reports. Once the attorneys were notified, the number shrunk to about 100 attorneys in default. About 100 attorneys actually were decertified. Some of them were out-of-state attorneys, who were barred in Maryland, but they did not practice in this State, so they did not pay attention to these notices until they found out that they had been decertified or suspended. These notices

are sent to the Bar Counsel in the state where the attorneys are practicing. This can be considered in a global context. The proposed change to Rule 19-753 was to straighten out who gets notices of these somewhat ministerial suspensions or terminations.

Mr. Frederick remarked that one way to straighten this out would be to give a circuit court judge by rule the discretion to make a determination as to whether reinstatement should be *nunc pro tunc*. There have to be certain factors. Anyone who received a notice and did not pay it is practicing law without a license and is in the zone of danger. There are, however, a fair number of attorneys who, because of inadvertence, the failure to notify the correct person, or the existence of a mail delivery problem, may have a good faith reason that the attorney did not know that he or she was suspended. Upon finding out, the attorney acts promptly to correct the problem. Bar Counsel could have an opportunity to weigh in, and the court could make reinstatement *nunc pro tunc*. The Chair pointed out that the only problem is that the order of suspension is an order of the Court of Appeals. The Rule can only permit the Court of Appeals to reinstate. The Chair was not sure this could be delegated to a trial judge to do. If the Committee would like to change Rule 19-753 this way, the Rule should be referred back to the Attorneys and Judges Subcommittee to take a look more globally at how all of this should work. In the meantime for the purposes of Ms. Decker, as to whom to send notices, Rule 19-753 could be approved as

presented, without prejudice as to further review of the entire procedure.

Mr. Frederick suggested that the Rule be sent back to the Subcommittee, but that the version presented at the meeting be approved to accommodate the request of Ms. Decker. The Reporter noted that the version being approved is the one that had been distributed at the meeting, rather than the version originally in the meeting materials. By consensus, the Committee approved Rule 19-753 as presented.

Mr. Durfee inquired about the Reporter's question in the memorandum as to whether Rule 19-753 should also include notification of an injunction issued by a circuit court judge under the Title 19 equivalent of Rule 16-776, Injunction; Expedited Disciplinary or Remedial Action, even though the injunction is not an order of the Court of Appeals. Mr. Frederick said that technically the attorney still has the right to practice, but if he or she does, the attorney can be held in contempt. The Court of Appeals gave this right to issue an injunction to the circuit court judge. The Chair noted that the injunction does not change the authority of the attorney to practice law. This issue can also be considered by the Subcommittee.

Agenda Item 7. Reconsideration of proposed revised Rules to be included in a Supplement to the 178th Report, Part I: Rule 16-502 (In District Court) and Rule 16-504 (Electronic Recording in Circuit Court Proceedings)

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The Chair presented Rules 16-502, In District Court, and 16-

504, Electronic Recording of Circuit Court Proceedings, for the Committee's consideration.

**MEMORANDUM**

| | | |
|---|---|---|
| TO | : | Members of the Rules Committee |
| FROM | : | Sandra F. Haines, Esq., Reporter |
| DATE | : | September 1, 2015 |
| SUBJECT | : | Rules 16-502 and 16-504 |

Versions of proposed revised Rules 16-502 and 16-504 are currently pending before the Court of Appeals as part of the 178th Report, Part I. The Court made some preliminary determinations regarding the Rules, and redrafted versions of the Rules were on the agenda of the June 2015 meeting of the Rules Committee.

During the summer, representatives from the District Court and at least one circuit court requested further revisions to the Rules with respect to (1) listening to and obtaining copies of audio and audio-video recordings, and (2) viewing audio-video recordings.

Both Rules contain a list of people entitled to obtain access to and copies of unredacted recordings, which this memorandum will refer to as the "unredacted list."

For the Committee's reconsideration are draft Rules containing the following features:

District Court [Rule 16-502]

- For a fee, anyone may obtain a copy of the redacted audio reocrding.
- Persons on the "unredacted list" may

obtain a copy of the unredacted audio recording.

- Because the District Court has no facilities where a person may listen to an audio recording, and because a copy of the recording easily can be obtained, the Rule contains no provisions for listening.

- Currently, no audio-video recordings are made in the District Court; any audio-video recording of proceedings must be authorized by the Chief Judge of the District Court, and the applicable provisions of the circuit court audio-video Rules would apply to recording and access.

Circuit Court [Rule 16-504]

- In courts that use audio recording:

  (1) anyone [for a fee] may obtain a copy of the redacted audio recording, and

  (2) persons on the "unredacted list" may obtain a copy of the unredacted audio recording.

- There are no provisions for listening to an audio recording or to the audio portion of an audio-video recording.

- In courts that use audio-video recording:

  (1) anyone may view and listen to the redacted audio video-recording, under the supervision of court personnel,

  (2) if practicable and for a fee, anyone may obtain a redacted copy of the audio portion of the recording, and

  (3) persons on the "unredacted list"

may obtain a copy of the unredacted audio-video recording.

SFH:cdc

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 500 - RECORDING OF PROCEEDINGS

Rule ~~16-501~~ 16-502. IN DISTRICT COURT

(a) Proceedings to be Recorded

In the District Court, all trials, hearings, testimony, and other judicial proceedings held in a courtroom in the presence of a judge shall be recorded verbatim in their entirety.

Committee note: Section (a) of this Rule does not apply to ADR proceedings conducted pursuant to Title 17, Chapter 300 of these Rules.

(b) Method of Recording

(1) Generally

Proceedings shall be recorded by an audio recording device provided by the court.

(2) As Authorized By Chief Judge

The Chief Judge of the District Court may authorize recording by additional means, including audio-video recording. Audio-video recording of a proceeding and access to an audio-video recording shall be in accordance with this Rule and Rules ~~16-502 and 16-503~~ 16-503 and 16-504.

(c) Control of and Direct Access to

Electronic Recordings

(1) Under Control of District Court

Electronic recordings made pursuant to this Rule shall be under the control of the District Court.

(2) Restricted Access or Possession

No person other than an authorized Court official or employee of the District Court may have direct access to or possession of an official electronic recording.

(d) Filing of Recordings

Subject to section (c) of this Rule, audio recordings and any other recording authorized by the Chief Judge of the District Court shall be maintained by the court in accordance with the standards specified in an administrative order of the Chief Judge of the Court of Appeals.

Cross reference: See Rule 16-505 (a) providing for an administrative order of the Chief Judge of the Court of Appeals.

(e) Court Reporters and Persons Responsible for Recording Court Proceedings

Regulations and standards adopted by the Chief Judge of the Court of Appeals pursuant to Rule ~~16-504~~ 16-505 (a) apply with respect to court reporters and persons responsible for recording court proceedings employed in or designated by the District Court.

(f) Safeguarding Confidential Portions of Proceedings

If a portion of a proceeding involves placing on the record matters that, on motion, the court finds should and lawfully may be shielded from public access and inspection, the court shall direct that appropriate safeguards be placed on that portion of the recording. The clerk shall

create a log listing the recording references for the beginning and end of the safeguarded portions of the recording. The log shall be kept in the court file, and a copy of the log shall be kept with the recording.

(g) Right to Obtain Copy of Audio Recording

(1) Generally

Except for (A) proceedings closed pursuant to law, ~~or~~ (B) as otherwise provided in this Rule, or (C) as ordered by the court, the authorized custodian of an official audio recording shall make a copy of the audio recording available to any person upon written request and, unless waived by the court, upon payment of the reasonable costs of making the copy.

(2) Redacted Portions of Recording

Unless otherwise ordered by the District Administrative Judge, the custodian of the recording shall assure that all portions of the recording that the court directed be safeguarded pursuant to section (f) of this Rule are redacted from any copy of a recording made for a person under subsection (g)(1) of this Rule. Delivery of the copy may be delayed for a period reasonably required to accomplish the redaction.

(3) Exceptions

Upon written request and subject to the conditions in ~~this~~ section (g) of this Rule, the custodian shall make available to the following persons a copy of the audio recording of proceedings that were closed pursuant to law or from which safeguarded portions have not been redacted:

(A) The Chief Judge of the Court of Appeals;

(B) The Chief Judge of the District Court;

(C) The District Administrative Judge having supervisory authority over the court;

(D) The presiding judge in the case;

(E) The Commission on Judicial Disabilities or, at its direction, Investigative Counsel;

(F) Bar Counsel;

(G) Unless otherwise ordered by the court, a party to the proceeding or the attorney for a party;

(H) A stenographer or transcription service designated by the court for the purpose of preparing an official transcript of the proceeding, provided that (i) the transcript of unredacted safeguarded portions of a proceeding, when filed with the court, shall be placed under seal or otherwise shielded by order of court and (ii) no transcript of a proceeding closed pursuant to law or containing unredacted safeguarded portions shall be prepared for or delivered to any person not listed in subsection (g)(3) of this Rule; and

(I) Any other person authorized by the District Administrative Judge.

~~(g) Right to Listen to or View Copy of Recording~~

~~(1) Generally~~

~~Except for proceedings closed pursuant to law or as otherwise provided in this Rule or ordered by the court, the authorized custodian of an official audio or audio-video recording, upon written request from any person, shall make a copy of the recording and permit the person to listen to the copy if it is an audio recording or to listen to and view the copy if it is an audio-video recording at a time and place designated by the court.~~

~~Committee note: It is intended that the~~

~~custodian need make only one copy of the electronic recording and have that copy available for any person who makes a request to listen to or listen to and view it. If space is limited and there are multiple requests, the custodian may require several persons to listen to or to listen to and view the recording at the same time or accommodate the requests in the order they were received.~~

~~(2) Redacted Portions of Recording~~

~~Unless otherwise ordered by the District Administrative Judge, the custodian of the recording shall assure that all portions of the recording that the court directed to be safeguarded pursuant to section (f) of this Rule are redacted from any copy of a recording made available for listening or listening and viewing. Access to the copy may be delayed for a period reasonably required to accomplish the redaction.~~

~~(3) Restrictions on Additional Copies~~

~~A person listening to or listening to and viewing a copy of an electronic recording may not make a copy of that copy or have in his or her possession any device that, by itself or in combination with any other device, can make a copy. The custodian or other designated court official or employee shall take reasonable steps to enforce this prohibition, and any willful violation of it may be punished as a contempt.~~

~~(h) Right to Copy of Recording~~

~~(1) Who May Obtain Copy~~

~~Upon written request and subject to the conditions in this section, the custodian shall make available to the following persons a copy of the audio or audio-video recording, including a recording of proceedings that were closed pursuant to law or from which safeguarded portions have not been redacted:~~

~~(A) The Chief Judge of the Court of~~

~~Appeals;~~

~~(B) The Chief Judge of the District Court;~~

~~(C) The District Administrative Judge having supervisory authority over the court;~~

~~(D) The presiding judge in the case;~~

~~(E) The Commission on Judicial Disabilities or, at its direction, Investigative Counsel;~~

~~(F) Bar Counsel;~~

~~(G) Unless otherwise ordered by the court, a party to the proceeding or the attorney for a party;~~

~~(H) A stenographer or transcription service designated by the court for the purpose of preparing an official transcript of the proceeding, provided that, if the recording is of a proceeding closed pursuant to law or from which safeguarded portions have not been redacted, (i) the transcript or the portions of the transcript containing unredacted safeguarded portions of a proceeding, when filed with the court, shall be placed under seal or otherwise shielded by order of the court and (ii) no transcript of a proceeding closed pursuant to law or containing unredacted safeguarded portions shall be prepared for or delivered to any person not listed in subsection (h)(1) of this Rule; and~~

~~(I) Any other person authorized by the District Administrative Judge.~~

~~(2) Restrictions on Use~~

~~Unless authorized by an order of court, a person who receives a copy of an electronic recording under this section shall not:~~

~~(A) make or cause to be made any additional copy of the recording; or~~

~~(B) except for a non-sequestered witness or an agent, employee, or consultant of the party or attorney, give or electronically transmit the recording to any person not entitled to it under this section.~~

~~(3) Violation of Restriction on Use~~

~~A willful violation of subsection (h)(2) of this Rule may be punished as a contempt.~~

Cross reference: See Rule ~~16-504~~ 16-505 (a) concerning regulations and standards applicable to court reporting in all courts of the State.

Source: This Rule is derived from former Rule 16-504 (2015).

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 500 – RECORDING OF PROCEEDINGS

Rule ~~16-502~~ 16-503. IN CIRCUIT COURT

(a) Proceedings to be Recorded

(1) Proceedings in the Presence of Judge

In a circuit court, all trials, hearings, testimony, and other proceedings before a judge in a courtroom shall be recorded verbatim in their entirety, except that, unless otherwise ordered by the court, a court reporter need not report or separately record an audio or audio-video recording offered as evidence at a hearing or trial.

Committee note: An audio or audio-video recording offered at a hearing or trial must be marked for identification and made part of the record, so that it is available for future transcription. See Rules 2-516 (b)(1)(A) and 4-322 (c)(1)(A). Section (a) does not apply to ADR proceedings conducted pursuant to Rule 9-205 or Title 17 of these Rules.

(2) Proceedings Before ~~Master~~ Magistrate, Examiner, or Auditor

Proceedings before a ~~master~~ magistrate, examiner, or auditor shall be recorded verbatim in their entirety, except that:

(A) the recording of proceedings before a ~~master~~ magistrate may be waived in accordance with Rules 2-541 (d)(3) or 9-208 (c)(3);

(B) the recording of proceedings before an examiner may be waived in accordance with Rule 2-542 (d)(4); and

(C) the recording of proceedings before an auditor may be waived in accordance with Rule 2-543 (d)(3).

(b) Method of Recording

Proceedings may be recorded by any reliable method or combination of methods approved by the County Administrative Judge. If proceedings are recorded by a combination of methods, the County Administrative Judge shall determine which method shall be used to prepare a transcript.

Source: This Rule is derived in part from former Rule 16-404 (2015).

Rule ~~16-503~~ 16-504. ELECTRONIC RECORDING OF CIRCUIT COURT PROCEEDINGS

(a) Control of and Direct Access to Electronic Recordings

(1) Under Control of Court

Electronic recordings made pursuant to Rule ~~16-502~~ 16-503 and this Rule are under the control of the court.

(2) Restricted Access or Possession

No person other than a duly authorized official or employee of the circuit court shall have direct access to or possession of an official electronic recording.

(b) Filing of Recordings

Audio and audio-video recordings shall be maintained by the court in accordance with standards specified in an administrative order of the Chief Judge of the Court of Appeals.

(c) Court Reporters

Regulations and standards adopted by the Chief Judge of the Court of Appeals under Rule ~~16-504~~ 16-505 (a) apply with respect to court reporters employed in or designated by a circuit court.

(d) Presence of Court Reporters Not Necessary

If circuit court proceedings are recorded by audio or audio-video recording, which is otherwise effectively monitored, a

court reporter need not be present in the courtroom.

(e) Identification Label

Whenever proceedings are recorded by electronic audio or audio-video means, the clerk or other designee of the court shall affix to each electronic audio or audio-video recording a label containing the following information:

(1) the name of the court;

(2) the docket reference of each proceeding included on the recording;

(3) the date on which each proceeding was recorded; and

(4) any other identifying letters, marks, or numbers necessary to identify each proceeding recorded.

(f) Information Required to be Kept

(1) Duty to Keep

The clerk or other designee of the court shall keep the following items:

(A) a proceeding log identifying (i) each proceeding recorded on an audio or audio-video recording, (ii) the time the proceeding commenced, (iii) the time of each recess, and (iv) the time the proceeding concluded;

(B) an exhibit list;

(C) a testimonial log listing (i) the recording references for the beginning and end of each witness's testimony and (ii) each portion of the audio or audio-video recording that has been safeguarded pursuant to section (g) of this Rule.

(2) Location of Exhibit List and Logs

The exhibit list shall be kept in the

court file. The proceeding and testimonial logs shall be kept with the audio or audio-video recording.

(g) Safeguarding Confidential Portions of Proceeding

If a portion of a proceeding involves placing on the record matters that, on motion, the court finds should and lawfully may be shielded from public access and inspection, the court shall direct that appropriate safeguards be placed on that portion of the recording. For audio and audio-video recordings, the clerk or other designee shall create a log listing the recording references for the beginning and end of the safeguarded portions of the recording.

(h) Right to Obtain Copy of Audio Recording

(1) Generally

Except for (A) proceedings closed pursuant to law, ~~or~~ (B) as otherwise provided in this Rule, or (C) as ordered by the court, the authorized custodian of an audio recording shall make a copy of the audio recording or, if practicable, the audio portion of an audio-video recording, available to any person upon written request and, unless waived by the court, upon payment of the reasonable costs of making the copy.

(2) Redacted Portions of Recording

Unless otherwise ordered by the County Administrative Judge, the custodian of the recording shall assure that all portions of the recording that the court has directed be safeguarded pursuant to section (g) of this Rule are redacted from any copy of a recording made for a person under subsection (h)(1) of this Rule. Delivery of the copy may be delayed for a period reasonably required to accomplish the redaction.

(3) Exceptions

Upon written request and subject to the conditions in ~~this~~ section (h) of this Rule, the custodian shall make available to the following persons a copy of the audio recording or, if practicable, the audio portion of an audio-video recording of proceedings that were closed pursuant to law or from which safeguarded portions have not been redacted:

(A) The Chief Judge of the Court of Appeals;

(B) The County Administrative Judge;

(C) The Circuit Administrative Judge having supervisory authority over the court;

(D) The presiding judge in the case;

(E) The Commission on Judicial Disabilities or, at its direction, Investigative Counsel;

(F) Bar Counsel;

(G) Unless otherwise ordered by the court, a party to the proceeding or the attorney for a party;

(H) A stenographer or transcription service designated by the court for the purpose of preparing an official transcript of the proceeding, provided that (i) the transcript of unredacted safeguarded portions of a proceeding, when filed with the court, shall be placed under seal or otherwise shielded by order of court, and (ii) no transcript of a proceeding closed pursuant to law or containing unredacted safeguarded portions shall be prepared for or delivered to any person not listed in subsection (h)(3) of this Rule;

(I) If the recording is an audio-video recording, the Court of Appeals or the Court of Special Appeals pursuant to Rule 8-415 (c); and

(J) Any other person authorized by the

County Administrative Judge.

~~(h)~~ (i) Right to Listen to ~~or~~ and View ~~Copy of~~ Audio-video Recording

(1) Generally

Except for proceedings closed pursuant to law or as otherwise provided in this Rule or ordered by the Court, the authorized custodian of an ~~audio or~~ audio-video recording, upon written request from any person, shall ~~make a copy of the recording and~~ permit the person ~~to listen to the copy if it is an audio recording or~~ to listen to and view the ~~copy if it is an audio-video~~ recording at a time and place designated by the court, under the supervision of the custodian or other designated court official or employee.

Committee note: ~~It is intended that the custodian need make only one copy of the electronic recording and have that copy available for any person who makes a request to listen to or to listen to and view it.~~ If space is limited and there are multiple requests, the custodian may require several persons ~~to listen to or~~ to listen to and view the recording at the same time or accommodate the requests in the order they were received.

(2) ~~Redacted~~ Safeguarded Portions of Recording

Unless otherwise ordered by the County Administrative Judge, the custodian of the recording shall assure that all portions of the recording that the court directed to be safeguarded pursuant to section (g) of this Rule are ~~redacted from any copy of a recording made~~ not available for ~~listening or~~ listening ~~and~~ or viewing. Access to the ~~copy~~ recording may be delayed for a period reasonably necessary to accomplish the ~~redaction~~ safeguarding.

(3) ~~Restrictions on Additional Copies~~ Copying Prohibited

A person ~~listening to or~~ listening to and viewing ~~a copy of an electronic~~ the recording may not make a copy of ~~that copy~~ it or have in his or her possession any device that, by itself or in combination with any other device, can make a copy. The custodian or other designated court official or employee shall take reasonable steps to enforce this prohibition, and any willful violation of ~~it~~ the prohibition may be punished as a contempt.

~~(i)~~ (j) ~~Right to Copy of Recording~~ Right to Obtain Copy of Audio-Video Recording

(1) Who May Obtain Copy

Upon written request and subject to the conditions in this section, the custodian shall make available to the following persons a copy of the ~~audio or~~ audio-video recording, including a recording of proceedings that were closed pursuant to law or from which safeguarded portions have not been redacted:

(A) The Chief Judge of the Court of Appeals;

(B) The County Administrative Judge;

(C) The Circuit Administrative Judge having supervisory authority over the court;

(D) The presiding judge in the case;

(E) The Commission on Judicial Disabilities or, at its direction, Investigative Counsel;

(F) Bar Counsel;

(G) Unless otherwise ordered by the court, a party to the proceeding or the attorney for a party;

(H) A stenographer or transcription service designated by the court for the purpose of preparing an official transcript of the proceeding, provided that, (i) if the recording is of a proceeding closed pursuant

to law or from which safeguarded portions have not been redacted, the transcript, when filed with the court, shall be placed under seal or otherwise shielded by order of the court, and (ii) no transcript of a proceeding closed pursuant to law or containing unredacted safeguarded portions shall be prepared for or delivered to any person not listed in subsection ~~(i)(1)~~ (j)(1) of this Rule; and

(I) Any other person authorized by the County Administrative Judge.

(2) Restrictions on Use

Unless authorized by an order of court, a person who receives a copy of an electronic recording under this section shall not:

(A) make or cause to be made any additional copy of the recording; or

(B) except for a non-sequestered witness or an agent, employee, or consultant of the party or attorney, give or electronically transmit the recording to any person not entitled to it under subsection ~~(i)(1)~~ (j)(1) of this Rule.

(3) Violation of Restriction on Use

A willful violation of subsection ~~(i)(2)~~ (j)(2) of this Rule may be punished as a contempt.

Cross reference: See Rule ~~16-504~~ 16-505 (a) concerning regulations and standards applicable to court reporting in all courts of the State.

Source: This Rule is derived form former Rules 16-404, 16-405, and 16-406 (2015).

The Chair said that the Committee had discussed Rules 16-502 and 16-504 previously but had sent them back to the General Court

Administration Subcommittee to look at one issue. When the Rules were revised, the ability of the Circuit Court for Baltimore City to allow the public to view audio-video recordings or listen to an audio recording had been inadvertently removed from the Rules. The Chair was not sure that any other circuit court in Maryland does this. The question had been whether the public should be able to purchase audio disks or only be able listen to them. This issue had been debated in the Committee. The issue was sent to the Court of Appeals in alternative forms. The Court held a hearing on this and decided that the public should be able to buy the audio recordings. This is the current Rule. However, the public was not entitled to the video recording. Only certain people could obtain the video. What the Court had decided was then brought back to the Committee. The Rules were restructured.

The Chair commented that the Honorable W. Michel Pierson, of the Circuit Court of Baltimore City, who was then a member of the Committee, had pointed out that that court permits people to watch and listen to the videotapes. A room in the courthouse has a TV monitor, and a clerk is present when someone watches the TV monitor. This had been dropped from Rule 16-504. The version of the Rule in front of the Committee has this ability to view and listen to the videotapes restored. It makes clear that where there is videotaping, which apparently is only in Baltimore City, the public has the right to go to the courthouse and listen to or view the prerecorded tapes or disks.

By consensus, the Committee approved Rules 16-502 and 16-504 as presented.

Agenda Item 8. Consideration of proposed amendments to: Rule 1-402 (Filing and Approval), Rule 8-423 (Supersedeas Bond), and Rule 8-301 (Method of Securing Review – Court of Appeals)

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Judge Nazarian told the Committee that the proposed changes to the Rules in Agenda Item 8 are as a result of 2015 legislation.

Judge Nazarian presented Rules 1-402, Filing and Approval, and 8-423, Supersedeas Bond, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 400 - BOND

AMEND Rule 1-402 to add a cross reference following section (d) and to delete a cross reference following section (g), as follows:

Rule 1-402. FILING AND APPROVAL

. . .

(d) Increase of Decrease in Face Amount of Bond

At anytime for good cause shown, the court may require an increase or decrease in the face amount of a bond. The approval of a new bond does not discharge a bond previously filed from any liability which accrued before the change was approved.

Cross reference: For limits on the amount of a supersedeas bond and remedies pertaining to dissipation or diversion of assets, *see* Code, Courts Article, §12-301.1.

. . .

(g) Recording

Every approved bond shall be recorded by the clerk.

~~Cross-reference: Code, Courts Article, §2-502.~~

. . .

Rule 1-402 was accompanied by the following Reporter's note.

A new cross reference to Code, Courts Article, §12-301.1 has been added following section (d) of Rule 1-402 to reflect Chapter 225, Laws of 2015 (HB 164).

The reference to Code, Courts Article, §2-502 is deleted as obsolete. Section 2-502 was amended by Chapter 454, Laws of 2002, (SB 199) to remove the requirement that a clerk "record, index, or maintain . . . [a]ll bonds of every nature and kind . . ."

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 400 - PRELIMINARY PROCEDURES

AMEND Rule 8-423 (b)(1) to provide that the amount of a bond shall be subject to Code, Courts Article, §12-301.1, as follows:

Rule 8-423. SUPERSEDEAS BOND

. . .

(b) Amount of Bond

> Unless the parties otherwise agree, the amount of the bond shall be as follows:
>
> (1) Money Judgment Not Otherwise Secured
>
> ~~When~~ Subject to Code, Courts Article, §12-301.1, when the judgment is for the recovery of money not otherwise secured, the amount of the bond shall be the sum that will cover the whole amount of the judgment remaining unsatisfied plus interest and costs, except that the court, after taking into consideration all relevant factors, may reduce the amount of the bond after making specific findings justifying the amount.
>
> . . .

Rule 8-423 was accompanied by the following Reporter's note.

> Code, Courts Article, §12-301.1 provides that a supersedeas bond may not exceed $100,000,000 unless a court determines that the appellant has dissipated or diverted assets outside the course of business or is in the process of doing so. A proposed amendment to Rule 8-423 makes subsection (b)(1) subject to that provision.

Judge Nazarian said that the changes to Rules 1-402 and 8-423 are simply references to the changes to Code, Courts Article, §12-301.1 made by Chapter 225, Laws of 2015 (HB 164), which adds a new limit to the amount of a supersedeas bond. Rule 1-402 has an addition to the cross reference after section (d) and a deletion of the cross reference after section (g), which is obsolete. The proposed amendment to Rule 8-423 (b) is the addition of a reference to the same Code provision that had been amended.

Judge Bryant pointed out that the tagline to section (d) of Rule 1-402 should read "Increase or Decrease in Face Amount of

Bond." The word "or" should be in place of the word "of" the first time that the word "of" appears. In the body of section (d), the word "anytime" should read "any time."

By consensus, the Committee approved the proposed changes to Rule 1-402 as amended, and to Rule 8-423 as presented.

Judge Nazarian presented Rule 8-301, Method of Securing Review -- Court of Appeals, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 300 - OBTAINING APPELLATE REVIEW IN COURT OF APPEALS

AMEND Rule 8-301 to delete a reference to Code, Criminal Law Article, §2-401, to add to the cross reference following subsection (a)(4) a reference to Code, Election Law Article, §16-1003 (f), and to delete a reference to the death penalty, as follows:

Rule 8-301. METHOD OF SECURING REVIEW -- COURT OF APPEALS

(a) Generally

Appellate review by the Court of Appeals may be obtained only:

(1) by direct appeal ~~or application for leave to appeal,~~ where allowed by law;

(2) pursuant to the Maryland Uniform Certification of Questions of Law Act;

(3) by writ of certiorari upon petition filed pursuant to Rules 8-302 and 8-303; or

(4) by writ of certiorari issued on the Court's own initiative.

Cross reference: For Code provisions governing direct appeals to the Court of Appeals, see ~~Code, Criminal Law Article, §2-401 concerning automatic review in death penalty cases;~~ Code, Election Law Article, §12-203 concerning appeals from circuit court decisions regarding contested elections; Code, Election Law Article, §16-1003 (f) concerning appeals from circuit court decisions regarding injunctive relief sought for violations of the elections law; and Code, Financial Institutions Article, §9-712 (d)(2) concerning appeals from circuit court decisions approving transfer of assets of savings and loan associations. For the Maryland Uniform Certification of Questions of Law Act, see Code, Courts Article, §§12-601 through 12-613. For the authority of the Court to issue a writ of certiorari on its own initiative, see Code, Courts Article, §12-201.

(b) Direct Appeals ~~or Applications~~ to Court of Appeals

~~(1) An appeal or application for leave to appeal to the Court of Appeals in a case in which a sentence of death was imposed is governed by Rule 8-306.~~

~~(2) Any other~~ A direct appeal to the Court of Appeals allowed by law is governed by the other rules of this Title applicable to appeals, or by the law authorizing the direct appeal. In the event of a conflict, the law authorizing the direct appeal shall prevail. Except as otherwise required by necessary implication, references in those rules to the Court of Special Appeals shall be regarded as references to the Court of Appeals.

(c) Certification of Questions of Law

Certification of questions of law to the Court of Appeals pursuant to the Maryland Uniform Certification of Questions of Law Act

is governed by Rule 8-305.

Source: This Rule is in part derived from Rule 810 and in part new.

Rule 8-301 was accompanied by the following Reporter's note.

Rule 8-301 is proposed to be amended to reflect recent statutory changes.

Language from subsection (a)(1) and from the cross reference following section (a) is stricken because the death penalty was abolished through Chapter 156, Laws of 2013 (SB 276).

A cross reference to Code, Elections Law Article, §16-1003 is added to reflect Chapter 396, Laws of 2015 (HB 73), which permits a direct, expedited appeal from a circuit court decision that involves certain election law violations to the Court of Appeals.

Judge Nazarian explained that the proposed changes to Rule 8-301 conform to Chapter 396, Laws of 2015 (HB 73), which permits a direct expedited appeal from circuit court decisions regarding election laws. The cross reference after subsection (a)(4) has an added reference to Code, Election Law Article, §16-1003 (f) because of this legislation. There are deletions in subsection (a)(1), the cross reference after subsection (a)(4), and subsections (b)(1) and (2) pertaining to death penalty appeals. The death penalty is no longer allowed in Maryland.

Mr. Sullivan told the Committee that he had just received a comment from Jeffrey Darsie, Esq., Assistant Attorney General, who represents the State Board of Elections, pertaining to the cross reference after subsection (a)(4). It would be better to

make the reference to the election law more specific, because the legislation does not apply to all election law violations, only those relating to voting. The Chair suggested that the wording of the new language in the cross reference could be "...injunctive relief sought for certain violations of the election law." Mr. Darsie had commented that the authorization for a direct appeal was more limited than that, and it might not be a good idea to suggest to people that there is a direct appeal for all violations of the election law. The language should be more specific. Using the Chair's suggested language would be appropriate. Judge Nazarian agreed with this suggested change.

By consensus, the Committee agreed to change the language in the cross reference to add the word "certain" before the words "violations of the election law."

By consensus, the Committee approved Rule 8-301 as amended.

Agenda Item 9. Consideration of proposed Rules changes pertaining to the Maryland Uniform Depositions and Discovery Act: Amendments to Rule 2-510 (Subpoenas - Court Proceedings and Depositions), New Rule 2-510.1 (Foreign Subpoenas in Conjunction With a Deposition), Amendments to Rule 2-422 (Discovery of Documents, Electronically Stored Information, and Property - From Party), and New Rule 2-422.1 (Inspection of Property - Of Nonparty or by Foreign Party - Without Deposition)

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Mr. Carbine presented Rules 2-510, Subpoenas - Court Proceedings and Depositions and 2-422, Discovery of Documents, Electronically Stored Information, and Property - From Party, as well as proposed new Rules 2-510.1, Foreign Subpoenas in

Conjunction With a Deposition, and 2-422.1, Inspection of Property - Of Nonparty or by Foreign Party - Without Deposition, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-510 to change the title of the Rule, to add clarifying language to subsection (a)(3), to add a Committee note following section (b), and to add a cross reference, as follows:

Rule 2-510. SUBPOENAS<u>- COURT PROCEEDINGS AND DEPOSITIONS</u>

(a) Required, Permissive, and Non-permissive Use

(1) A subpoena is required:

(A) to compel the person to whom it is directed to attend, give testimony, and produce designated documents, electronically stored information, or tangible things at a court proceeding, including proceedings before a master, auditor, or examiner; and

(B) to compel a nonparty to attend, give testimony, and produce and permit inspection, copying, testing, or sampling of designated documents, electronically stored information, or tangible things at a deposition.

(2) A subpoena may be used to compel a party over whom the court has acquired jurisdiction to attend, give testimony, and produce and permit inspection, copying, testing, or sampling of designated documents, electronically stored information, or tangible things at a deposition.

(3) ~~A~~ <u>Except as otherwise permitted by</u>

law, a subpoena may not be used for any other purpose. If the court, on motion of a party or on its own initiative, after affording the alleged violator an opportunity for a hearing, finds that a person has used or attempted to use a subpoena or a copy or reproduction of a subpoena form for a purpose other than one allowed under this Rule, the court may impose an appropriate sanction, including an award of a reasonable attorney's fee and costs, the exclusion of evidence obtained as a result of the violation, and reimbursement of any person inconvenienced for time and expenses incurred.

(b) Issuance

A subpoena shall be issued by the clerk of the court in which an action is pending in the following manner:

(1) On the request of any person entitled to the issuance of a subpoena, the clerk shall (A) issue a completed subpoena, or (B) provide to the person a blank form of subpoena, which the person shall fill in and return to the clerk to be signed and sealed by the clerk before service.

(2) On the request of a member in good standing of the Maryland Bar entitled to the issuance of a subpoena, the clerk shall issue a subpoena signed and sealed by the clerk, which the attorney shall fill in before service.

(3) An attorney of record in a pending action who is a registered user under Rule 20-101 may obtain from the clerk through MDEC, for use in that action, an electronic version of a blank form of subpoena containing the clerk’s signature and the seal of the court, which the attorney may download, print, and fill in before service.

(4) Except as provided in subsections (b)(2) and (b)(3) of this Rule, a person other than the clerk may not copy and fill in any blank form of subpoena for the purpose of serving the subpoena. A violation of this

section shall constitute a violation of subsection (a)(3) of this Rule.

Committee note: Rule 2-510 pertains only to subpoenas to be used to compel attendance at a court proceeding or deposition in a pending civil action in a Maryland circuit court.

Cross reference: For subpoenas under the Maryland Uniform Interstate Depositions and Discovery Act requiring attendance at a deposition in this State, see Rule 2-510.1. For discovery of documents, electronically stored information, and property from a party to an action pending in this State, other than in conjunction with a deposition, see Rule 2-422. For inspection of property of a nonparty in an action pending in this State and for discovery under the Maryland Uniform Interstate Depositions and Discovery Act that is not in conjunction with a deposition, see Rule 2-422.1.

(c) Form

Except as otherwise permitted by the court for good cause, every subpoena shall be on a uniform form approved by the State Court Administrator. The form shall contain: (1) the caption of the action, (2) the name and address of the person to whom it is directed, (3) the name of the person at whose request it is issued, (4) the date, time, and place where attendance is required, (5) a description of any documents, electronically stored information, or tangible things to be produced and if testing or sampling is to occur, a description of the proposed testing or sampling procedure, (6) when required by Rule 2-412 (d), a notice to designate the person to testify, (7) the date of issuance, and (8) a statement that the subpoena may be served within 60 days after its issuance and may not be served thereafter. A subpoena may specify the form in which electronically stored information is to be produced.

Committee note: A subpoena may be used to compel attendance at a court proceeding or deposition that will be held more than 60

days after the date of issuance, provided that the subpoena is served within the 60-day period. The failure to serve a subpoena within the 60-day period does not preclude the reissuance of a new subpoena.

(d) Service

A subpoena shall be served by delivering a copy to the person named or to an agent authorized by appointment or by law to receive service for the person named or as permitted by Rule 2-121 (a)(3). Service of a subpoena upon a party represented by an attorney may be made by service upon the attorney under Rule 1-321 (a). A subpoena may be served by a sheriff of any county or by any person who is not a party and who is not less than 18 years of age. Unless impracticable, a party shall make a good faith effort to cause a trial or hearing subpoena to be served at least five days before the trial or hearing. A person may not serve or attempt to serve a subpoena more than 60 days after its issuance. A violation of this provision shall constitute a violation of subsection (a)(3) of this Rule.

Cross reference: See Code, Courts Article, §6-410, concerning service upon certain persons other than the custodian of public records named in the subpoena if the custodian is not known and cannot be ascertained after a reasonable effort. As to additional requirements for certain subpoenas, see Code, Health-General Article, §4-306 (b)(6) and Code, Financial Institutions Article, §1-304.

(e) Objection to Subpoena for Court Proceedings

On motion of a person served with a subpoena to attend a court proceeding (including a proceeding before a master, auditor, or examiner) or a person named or depicted in an item specified in the subpoena filed promptly and, whenever practicable, at or before the time specified in the subpoena for compliance, the court may enter an order

that justice requires to protect the person from annoyance, embarrassment, oppression, or undue burden or cost, including one or more of the following:

(1) that the subpoena be quashed or modified;

(2) that the subpoena be complied with only at some designated time or place other than that stated in the subpoena;

(3) that documents, electronically stored information, or tangible things designated in the subpoena be produced only upon the advancement by the party serving the subpoena of the reasonable costs of producing them; or

(4) that documents, electronically stored information, or tangible things designated in the subpoena be delivered to the court at or before the proceeding or before the time when they are to be offered in evidence, subject to further order of court to permit inspection of them.

A motion filed under this section based on a claim that information is privileged or subject to protection as work product materials shall be supported by a description of the nature of each item that is sufficient to enable the demanding party to evaluate the claim.

(f) Objection to Subpoena for Deposition

A person served with a subpoena to attend a deposition may seek a protective order pursuant to Rule 2-403. If the subpoena also commands the production of documents, electronically stored information, or tangible things at the deposition, the person served or a person named or depicted in an item specified in the subpoena may seek a protective order pursuant to Rule 2-403 or may file, within ten days after service of the subpoena, an objection to production of any or all of the designated materials. The objection shall be in writing and shall state the reasons for the objection. If an

objection is filed, the party serving the subpoena is not entitled to production of the materials except pursuant to an order of the court from which the subpoena was issued. At any time before or within 15 days after completion of the deposition and upon notice to the deponent, the party serving the subpoena may move for an order to compel the production.

A claim that information is privileged or subject to protection as work product materials shall be supported by a description of each item that is sufficient to enable the demanding party to evaluate the claim.

(g) Duties Relating to the Production of Documents, Electronically Stored Evidence, and Tangible Things

(1) Generally

A person responding to a subpoena to produce documents, electronically stored information, or tangible things at a court proceeding or deposition shall:

(A) produce the documents or information as they are kept in the usual course of business or shall organize and label the documents or information to correspond with the categories in the subpoena; and

(B) produce electronically stored information in the form specified in the subpoena or, if a form is not specified, in the form in which the person ordinarily maintains it or in a form that is reasonably usable.

(2) Electronically Stored Information

A person responding to a subpoena to produce electronically stored information at a court proceeding or deposition need not produce the same electronically stored information in more than one form and may decline to produce the information on the ground that the sources are not reasonably

accessible because of undue burden or cost. A person who declines to produce information on this ground shall identify the sources alleged to be not reasonably accessible and state the reasons why production from each identified source would cause undue burden or cost. The statement of reasons shall provide enough detail to enable the demanding party to evaluate the burdens and costs of complying with the subpoena and the likelihood of finding responsive information in the identified sources. Any motion relating to electronically stored information withheld on the ground that it is not reasonably accessible shall be decided in the manner set forth in Rule 2-402 (b).

(h) Protection of Persons Subject to Subpoenas

A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or cost on a person subject to the subpoena.

Cross reference: For the availability of sanctions for violations of this section, see Rules 1-201 (a) and 1-341.

(i) Records Produced by Custodians

(1) Generally

A custodian of records served with a subpoena to produce records at trial may comply by delivering the records to the clerk of the court that issued the subpoena at or before the time specified for production. The custodian may produce exact copies of the records designated unless the subpoena specifies that the original records be produced. The records shall be delivered in a sealed envelope labeled with the caption of the action, the date specified for production, and the name and address of the person at whose request the subpoena was issued. The records shall be accompanied by a certificate of the custodian that they are the complete records requested for the period

designated in the subpoena and that the records are maintained in the regular course of business. The certification shall be prima facie evidence of the authenticity of the records.

Cross reference: Code, Health-General Article, §4-306 (b)(6); Code, Financial Institutions Article, §1-304.

(2) During Trial

Upon commencement of the trial, the clerk shall release the records only to the courtroom clerk assigned to the trial. The courtroom clerk shall return the records to the clerk promptly upon completion of trial or at an earlier time if there is no longer a need for them. Upon final disposition of the action the clerk shall return the original records to the custodian but need not return copies.

(3) Presence of Custodian

When the actual presence of the custodian of records is required, the subpoena shall state with specificity the reason for the presence of the custodian.

Cross reference: Code, Courts Article, §10-104 includes an alternative method of authenticating medical records in certain cases transferred from the District Court upon a demand for a jury trial.

(j) Attachment

A witness served with a subpoena under this Rule is liable to body attachment and fine for failure to obey the subpoena without sufficient excuse. The writ of attachment may be executed by the sheriff or peace officer of any county and shall be returned to the court issuing it. The witness attached shall be taken immediately before the court if then in session. If the court is not in session, the witness shall be taken before a judicial officer of the District Court for a determination of appropriate

conditions of release to ensure the witness' appearance at the next session of the court that issued the attachment.

(k) Information Produced that is Subject to a Claim of Privilege or Work Product Protection

Within a reasonable time after information is produced in response to a subpoena that is subject to a claim of privilege or of protection as work product material, the person who produced the information shall notify each party who received the information of the claim and the basis for it. Promptly after being notified, each receiving party shall return, sequester, or destroy the specified information and any copies and may not use or disclose the information until the claim is resolved. A receiving party who wishes to determine the validity of a claim of privilege shall promptly file a motion under seal requesting that the court determine the validity of the claim. A receiving party who disclosed the information before being notified shall take reasonable steps to retrieve it. The person who produced the information shall preserve it until the claim is resolved.

Cross reference: For issuing and enforcing legislative subpoenas, see Code, State Government Article, §§2-1802 and 2-1803.

Source: This Rule is derived as follows:
Section (a) is new but the first and second sentences are derived in part from the 2006 version of Fed. R. Civ. P. 45 (a)(1)(C); the second sentence also is derived in part from former Rule 407 a.
Section (b) is new.
Section (c) is derived from former Rules 114 a and b, 115 a and 405 a 2 (b), and from the 2006 version of Fed. R. Civ. P. 45 (a)(1)(D).
Section (d) is derived from former Rules 104 a and b and 116 b. Section (e) is derived from former Rule 115 b and the 2006 version of Fed. R. Civ. P. 45 (d)(2)(A).
Section (f) is derived from the 1980

version of Fed. R. Civ. P. 45 (d)(1), and the 2006 version of Fed. R. Civ. P. 45 (d)(2)(A).

Section (g) is new and is derived from the 2006 version of Fed. R. Civ. P. 45 (d)(1).

Section (h) is derived from the 1991 version of Fed. R. Civ. P. 45 (c)(1).

Section (i) is new.

Section (j) is derived from former Rules 114 d and 742 e.

Section (k) is new and is derived from the 2006 version of Fed. R. Civ. P. 45 (d)(2)(B).

Rule 2-510 was accompanied by the following Reporter's note.

Amendments to Rule 2-510 are proposed to distinguish the issuance and use of a subpoena under Rule 2-510 -- i.e., only to compel attendance at a court proceeding or deposition in a pending civil action in a Maryland circuit court -- from the issuance and use of subpoenas under proposed new Rules 2-510.1 (Foreign Subpoenas in Conjunction with a Deposition) and 2-422.1 (Inspection of Property - Of Nonparty or by Foreign Party - without Deposition) and from certain discovery in a pending circuit court action that can be obtained without the issuance of a subpoena (Rule 2-422, Discovery of Documents, Electronically Stored Information, and Property - from Party).

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 400 - DISCOVERY

AMEND Rule 2-422 to change the title of the Rule, to add clarifying language to section (a), and to add a cross reference following section (a), as follows:

Rule 2-422. DISCOVERY OF DOCUMENTS, ELECTRONICALLY STORED INFORMATION, AND PROPERTY – FROM PARTY

(a) Scope

Any party to an action pending in this State may serve one or more requests to any other party (1) as to items that are in the possession, custody, or control of the party upon whom the request is served, to produce and permit the party making the request, or someone acting on the party's behalf, to inspect, copy, test or sample designated documents or electronically stored information (including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form) or to inspect and copy, test, or sample any designated tangible things which constitute or contain matters within the scope of Rule 2-402 (a); or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection, measuring, surveying, photographing, testing, or sampling the property or any designated object or operation on the property, within the scope of Rule 2-402 (a).

Cross reference: For inspection of property of a nonparty in an action pending in this State and for discovery under the Maryland Uniform Interstate Depositions and Discovery Act that is not in conjunction with a deposition, see Rule 2-422.1.

(b) Request

A request shall set forth the items to be inspected, either by individual item or by category; describe each item and category with reasonable particularity; and specify a reasonable time, place, and manner of making the inspection and performing the related

acts. The request may specify the form in which electronically stored information is to be produced.

(c) Response

The party to whom a request is directed shall serve a written response within 30 days after service of the request or within 15 days after the date on which that party's initial pleading or motion is required, whichever is later. The response shall state, with respect to each item or category, that (1) inspection and related activities will be permitted as requested, (2) the request is refused, or (3) the request for production in a particular form is refused. The grounds for each refusal shall be fully stated. If the refusal relates to part of an item or category, the part shall be specified. If a refusal relates to the form in which electronically stored information is requested to be produced (or if no form was specified in the request) the responding party shall state the form in which it would produce the information.

Cross reference: See Rule 2-402 (b)(1) for a list of factors used by the court to determine the reasonableness of discovery requests and (b)(2) concerning the assessment of the costs of discovery.

(d) Production

(1) A party who produces documents or electronically stored information for inspection shall (A) produce the documents or information as they are kept in the usual course of business or organize and label them to correspond with the categories in the request, and (B) produce electronically stored information in the form specified in the request or, if the request does not specify a form, in the form in which it is ordinarily maintained or in a form that is reasonably usable.

(2) A party need not produce the same

electronically stored information in more than one form.

Committee note: Onsite inspection of electronically stored information should be the exception, not the rule, because litigation usually relates to the informational content of the data held on a computer system, not to the operation of the system itself. In most cases, there is no justification for direct inspection of an opposing party's computer system. See *In re Ford Motor Co.*, 345 F.3d 1315 (11th Cir. 2003) (vacating order allowing plaintiff direct access to defendant's databases). To justify onsite inspection of a computer system and the programs used, a party should demonstrate a substantial need to discover the information and the lack of a reasonable alternative. The inspection procedure should be documented by agreement or in a court order and should be narrowly restricted to protect confidential information and system integrity and to avoid giving the discovering party access to data unrelated to the litigation. The data subject to inspection should be dealt with in a way that preserves the producing party's rights, as, for example, through the use of neutral court-appointed consultants. See, generally, The Sedona Conference, The Sedona Principles: Best Practices Recommendations and Principles for Addressing Electronic Document Production (2d ed. 2007), Comment 6. c.

Source: This Rule is derived from former Rule 419 and the 1980 and 2006 versions of Fed. R. Civ. P. 34.

Rule 2-422 was accompanied by the following Reporter's note.

Rule 2-422 is proposed to be amended to clarify that the discovery permitted under this Rule is from a party and that the party who requests the discovery is a party in an action pending in this State. As stated in the cross reference, Rule 2-422.1 governs inspection of property of a nonparty in an action pending in this State and discovery under the Uniform Interstate Depositions and

Discovery Act that is not in conjunction with a deposition.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 500 - TRIAL

ADD new Rule 2-510.1, as follows:

Rule 2-510.1. FOREIGN SUBPOENAS IN CONJUNCTION WITH A DEPOSITION

(a) Applicability

This Rule applies only to a subpoena issued under the Maryland Uniform Interstate Depositions and Discovery Act requiring a person to attend and give testimony at a deposition and, if applicable, produce at the deposition and permit inspection and copying of designated books, documents, records, electronically stored information, or tangible things in the possession, custody, or control of the person.

Cross reference: See Code, Courts Article, Title 9, Subtitle 4, Maryland Uniform Interstate Depositions and Discovery Act. For the issuance of a subpoena based on a foreign subpoena that does not require a person to attend a deposition, see Rule 2-422.1.

(b) Definitions

(1) Statutory Definitions

The definitions stated in Code, Courts Article, §9-401 apply in this Rule, to the extent relevant.

(2) Inspection

In this Rule, "Inspection" includes inspecting, measuring, surveying, photographing, testing, and sampling to the extent permitted by Rule 2-402 (a).

(c) Request for Issuance

A party to an action pending in a foreign jurisdiction may request issuance of a subpoena by a court of this State based on a foreign subpoena issued in that action by submitting a request to the clerk of the circuit court for the county in which discovery is sought to be conducted. The request shall be accompanied by the foreign subpoena and a written understanding, in a form approved by the State Court Administrator, signed by the party and the party's attorney, if any, by which the party and attorney submit to the jurisdiction of the circuit court for the purpose of adjudicating discovery disputes, motions to quash, enforcement of the subpoena, and sanctions for the improper use of the subpoena. A party or attorney who files a request or undertaking pursuant to this section does not, by so doing, submit to the jurisdiction of a court of this State for any other purpose.

Committee note: Section (c) of this Rule does not affect the jurisdiction of a court over a party or attorney who is otherwise subject to the court's jurisdiction.

(d) Issuance

If the request, the contents of the subpoena, and any attachments to the subpoena are in compliance with this Rule, the clerk promptly shall issue a subpoena for service upon the person to whom the foreign subpoena is directed. The subpoena shall:

(1) incorporate the terms used in the foreign subpoena;

(2) comply with the requirements of

section (e) of this Rule; and

(3) contain or be accompanied by the names, addresses, and telephone numbers of all attorneys of record in the proceeding to which the subpoena relates and of any party not represented by an attorney.

(e) Form

Except as otherwise permitted by the court for good cause, every subpoena shall be on a uniform form approved by the State Court Administrator. The form shall contain: (1) the caption of the action, including the civil action number for the Maryland court issuing the subpoena, (2) the name and address of the person to whom it is directed, (3) the name of the person at whose request it is issued, (4) the date, time, and place where attendance is required, (5) a description of any documents, electronically stored information, or tangible things to be produced and if testing or sampling is to occur, a description of the proposed testing or sampling procedure, (6) when required by Rule 2-412 (d), a notice to designate the person to testify, (7) the date of issuance, and (8) a statement that the subpoena may be served within 60 days after its issuance and may not be served thereafter. A subpoena may specify the form in which electronically stored information is to be produced.

Committee note: A subpoena may be used to compel attendance at a deposition that will be held more than 60 days after the date of issuance, provided that the subpoena is served within the 60-day period. The failure to serve a subpoena within the 60-day period does not preclude the re-issuance of a new subpoena.

(f) Service

A subpoena shall be served by delivering a copy to the person named or to an agent authorized by appointment or by law to receive service for the person named or as permitted by Rule 2-121 (a)(3). A subpoena

may be served by a sheriff of any county or by any person who is not a party and who is not less than 18 years of age. A person may not serve or attempt to serve a subpoena more than 60 days after its issuance.

Cross reference: See Code, Courts Article, §6-410, concerning service upon certain persons other than the custodian of public records named in the subpoena if the custodian is not known and cannot be ascertained after a reasonable effort. As to additional requirements for certain subpoenas, see Code, Health-General Article, §4-306 (b)(6) and Code, Financial Institutions Article, §1-304.

(g) Objection to Subpoena for Deposition

A person served with a subpoena to attend a deposition may seek a protective order pursuant to Rule 2-403. If the subpoena also commands the production of documents, electronically stored information, or tangible things at the deposition, the person served or a person named or depicted in an item specified in the subpoena may seek a protective order pursuant to Rule 2-403 or may file, within ten days after service of the subpoena, an objection to production of any or all of the designated materials. The objection shall be in writing and shall state the reasons for the objection. If an objection is filed, the party serving the subpoena is not entitled to production of the materials except pursuant to an order of the court from which the subpoena was issued. At any time before or within 15 days after completion of the deposition and upon notice to the deponent, the party serving the subpoena may move for an order to compel the production.

A claim that information is privileged or subject to protection as work product materials shall be supported by a description of each item that is sufficient to enable the demanding party to evaluate the claim.

(h) Duties Relating to the Production of Documents, Electronically Stored Evidence, and Tangible Things

(1) Generally

A person responding to a subpoena to produce documents, electronically stored information, or tangible things at a court proceeding or deposition shall:

(A) produce the documents or information as they are kept in the usual course of business or shall organize and label the documents or information to correspond with the categories in the subpoena; and

(B) produce electronically stored information in the form specified in the subpoena or, if a form is not specified, in the form in which the person ordinarily maintains it or in a form that is reasonably usable.

(2) Electronically Stored Information

A person responding to a subpoena to produce electronically stored information at a court proceeding or deposition need not produce the same electronically stored information in more than one form and may decline to produce the information on the ground that the sources are not reasonably accessible because of undue burden or cost. A person who declines to produce information on this ground shall identify the sources alleged to be not reasonably accessible and state the reasons why production from each identified source would cause undue burden or cost. The statement of reasons shall provide enough detail to enable the demanding party to evaluate the burdens and costs of complying with the subpoena and the likelihood of finding responsive information in the identified sources. Any motion relating to electronically stored information withheld on the ground that it is not reasonably accessible shall be decided in the manner set forth in Rule 2-402 (b).

(i) Protection of Persons Subject to Subpoenas

A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or cost on a person subject to the subpoena.

Cross reference: For the availability of sanctions for violations of this section, see Rules 1-201 (a) and 1-341.

(j) Permissive, and Non-permissive Use

(1) A subpoena may be used to compel a witness to attend, give testimony, and produce and permit inspection, copying, testing, or sampling of designated documents, electronically stored information, or tangible things at a deposition to the extent permitted by Rule 2-402 (a).

(2) A subpoena issued under this Rule may not be used for any other purpose. If the court, on motion of a party or on its own initiative, after affording the alleged violator an opportunity for a hearing, finds that a person has used or attempted to use a subpoena or a copy or reproduction of a subpoena form for a purpose other than one allowed under this Rule, the court may impose an appropriate sanction, including an award of a reasonable attorney's fee and costs, the exclusion of evidence obtained as a result of the violation, and reimbursement of any person inconvenienced for time and expenses incurred.

(k) Attachment

A witness served with a subpoena under this Rule is liable to body attachment and fine for failure to obey the subpoena without sufficient excuse. The writ of attachment may be executed by the sheriff or peace officer of any county and shall be returned to the court issuing it. The witness attached shall be taken immediately before the court if then in session. If the court

is not in session, the witness shall be taken before a judicial officer of the District Court for a determination of appropriate conditions of release to ensure the witness' appearance at the next session of the court that issued the attachment.

(l) Information Produced that is Subject to a Claim of Privilege or Work Product Protection

Within a reasonable time after information is produced in response to a subpoena that is subject to a claim of privilege or of protection as work product material, the person who produced the information shall notify each party who received the information of the claim and the basis for it. Promptly after being notified, each receiving party shall return, sequester, or destroy the specified information and any copies and may not use or disclose the information until the claim is resolved. A receiving party who wishes to determine the validity of a claim of privilege shall promptly file a motion under seal requesting that the court determine the validity of the claim. A receiving party who disclosed the information before being notified shall take reasonable steps to retrieve it. The person who produced the information shall preserve it until the claim is resolved.

Source: This Rule is new.

Rule 2-510.1 was accompanied by the following Reporter's note.

New Rule 2-510.1, Foreign Subpoenas in Conjunction with a Deposition, is proposed to effectuate and flesh out the Maryland Uniform Interstate Depositions and Discovery Act (the "Uniform Act"), codified in Code, Courts Article, §§9-401 - 407.

Section (a) sets forth the applicability of the Rule.

Subsection (b)(1) adopts the definitions

of the Uniform Act, to the extent applicable, and subsection (b)(2) defines the term "inspection" as used in the Rule.

Section (c) establishes requirements for a party in an action pending in a foreign jurisdiction when requesting issuance of a subpoena and states that a "party or attorney who files a request or undertaking pursuant to [that] does not, by so doing, submit to the jurisdiction of a court of this State for any other purpose.

Section (d) provides that the clerk shall issue a subpoena if the request, the contents of the subpoena, and any attachments are in compliance with the Rule.

Section (e) provides that every subpoena shall be on a uniform form approved by the State Court Administrator, and what the form shall contain.

Section (f) provides the manner in which a subpoena shall be served.

Section (g) discusses how a person served with a subpoena may move for a protective order or file an objection and how the party serving a subpoena may move for an order to compel production.

Section (h) states the duties of a person responding to a subpoena with respect to the production of documents, electronically stored evidence, and tangible thins.

Section (i) provides that the party responsible for issuance of the subpoena "shall take reasonable steps to avoid imposing undue burden or cost on a person subject to the subpoena."

Section (j) states to purposes for which a subpoena under this Rule may be used and may not be used.

Section (k) states that a person served with a subpoena is liable to body attachment

and fine for failure to obey the subpoena without sufficient cause.

Section (l) discusses what should be done when information subject to a claim of privilege or work product has been produced.

The Discovery Subcommittee believes that proposed Rule 2-510.1 is consistent with a core purpose of the Uniform Act -- to establish a "simple and efficient ... clerical procedure under which a trial state subpoena can be used to issue a discovery state subpoena." See Prefatory Note, The Drafting Committee on Uniform Interstate Depositions and Discovery Act. The Subcommittee believes that Rule 2-510.1 also is consistent with another cardinal goal of the Uniform Act -- to be "fair to deponents ... [by] provid[ing] that motions brought to enforce, quash, or modify a subpoena, or for protective orders, shall be brought in the discovery state and will be governed by the discovery state's laws."

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 400 - DISCOVERY

ADD new Rule 2-422.1, as follows:

Rule 2-422.1. INSPECTION OF PROPERTY - OF NONPARTY OR BY FOREIGN PARTY – WITHOUT DEPOSITION

(a) Applicability; Use of Subpoena

This Rule applies to the issuance of a subpoena to obtain entry upon and inspection of designated land or property owned by or in the possession or control of (1) a party to

an action pending in a foreign jurisdiction as defined in Code, Courts Article, §9-401 (b) or (2) a nonparty to an action pending in this State or in a foreign jurisdiction. A subpoena issued under this Rule may be used only for that purpose. This Rule does not apply to the issuance of a subpoena in conjunction with a deposition.

Committee note: A party to an action pending in this State who seeks entry upon land of another party must proceed in accordance with Rule 2-422.

Cross reference: For a subpoena issued in conjunction with a deposition, see Rule 2-510 and Rule 2-510.1.

(b) Definitions

(1) Statutory Definitions

The definitions stated in Code, Courts Article, §9-401 apply in this Rule to the extent relevant.

(2) Additional Definitions

In this Rule, the following additional definitions apply:

(A) Domestic Subpoena

"Domestic Subpoena" means a subpoena issued by a circuit court of this State in an action pending in this State.

(B) Inspection

"Inspection" includes inspecting, measuring, surveying, photographing, testing, and sampling within the scope of Rule 2-402 (a).

(C) Nonparty

"Nonparty" means any person, other than a party, who is in possession or control of land or property and, if different, the record owner of the land or property.

(c) Issuance

(1) Domestic Subpoena

Upon the request of a person entitled to the issuance of a subpoena under this Rule for discovery in an action pending in this State, the clerk shall issue a completed subpoena, or provide a blank form of subpoena which shall be filled in and returned to the clerk to be signed and sealed before service. On the request of an attorney or other officer of the court entitled to the issuance of a subpoena under this Rule, the clerk shall issue a subpoena signed and sealed but otherwise in blank, which shall be filled in before service.

(2) Foreign Subpoena

(A) Request for Issuance

A party to an action pending in a foreign jurisdiction may request issuance of a subpoena by a court of this State based on a foreign subpoena issued in that action by submitting a request to the clerk of the circuit court for the county in which discovery is sought to be conducted. The request shall be accompanied by the foreign subpoena and a written understanding, in a form approved by the State Court Administrator, signed by the party and the party's attorney, if any, by which the party and attorney submit to the jurisdiction of the circuit court for the purpose of adjudicating discovery disputes, motions to quash, enforcement of the subpoena, and sanctions for the improper use of the subpoena. A party or attorney who files a request or undertaking pursuant to this section does not, by so doing, submit to the jurisdiction of a court of this State for any other purpose.

Committee note: This section does not affect the jurisdiction of a court over a party or attorney who is otherwise subject to the court's jurisdiction.

(B) Issuance

If the request, the contents of the subpoena, and any attachments to the subpoena are in compliance with this Rule, the clerk promptly shall issue a subpoena for service upon the person to whom the foreign subpoena is directed. The subpoena shall:

(i) incorporate the terms used in the foreign subpoena;

(ii) comply with the requirements of section (d) of this Rule; and

(iii) contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

(d) Form

(1) Except as otherwise provided by the court for good cause, every subpoena shall be on a uniform form approved by the State Court Administrator and shall:

(A) contain the caption of the action, including the civil action number for the Maryland court issuing the subpoena;

(B) contain the name and address of the person to whom it is directed;

(C) contain the name of the person at whose request it is issued;

(D) describe with reasonable particularity the land or property to be entered and any actions to be performed;

(E) state the nature of the controversy and the relevancy of the entrance and proposed acts;

(F) specify a reasonable time and manner of entering and performing the proposed acts;

(G) describe the good faith attempts made by the party to reach agreement and with the person to whom the subpoena is directed concerning the entry and proposed acts;

(H) contain the date of issuance;

(I) be served at least 45 days before the date of the requested entry; and

(J) contain a statement that the subpoena may be served within 60 days after its issuance and may not be served thereafter.

(2) A subpoena issued pursuant to this Rule shall be accompanied by:

(A) a written undertaking that the requesting party will pay for all damages arising out of the entry and performance of the proposed acts; and

(B) a notice informing the person to whom the subpoena is directed that:

(i) the person has the right to object to the entry and proposed acts by filing an objection with the court and serving a copy of it on the requesting party;

(ii) any objection must be filed and served within **30** days after the person is served with the subpoena; and

(iii) the objection must include or be accompanied by a certificate of service, stating the date on which the person mailed a copy of the objection to the requesting party.

Cross reference: See Rules 1-321 and 1-323.

(e) Service

A subpoena shall be served by delivering a copy to the person named or to an agent authorized by appointment or by law to receive service for the person named or as permitted by Rule 2-121 (a)(3). Service of a

subpoena upon a party represented by an attorney may be made by service upon the attorney under Rule 1-321 (a). A subpoena may be served by a sheriff of any county or by any person who is not a party and who is not less than 18 years of age. If a subpoena is to permit entry upon leased land or property, the subpoena shall be served on any record owner of the land or property and any occupant or person in possession or control of the land or property. Before the subpoena is served, the party on whose behalf the subpoena is issued shall serve a copy of it on each other party in the manner provided by Rule 1-321 and file with the court a certificate of service attesting to the fact of service on the other parties. A person may not serve or attempt to serve a subpoena more than 60 days after its issuance.

Cross reference: See Code, Courts Article, §6-410, concerning service upon certain persons other than the custodian of public records named in the subpoena if the custodian is not known and cannot be ascertained after a reasonable effort. As to additional requirements for certain subpoenas, see Code, Health-General Article, §4-306 (b)(6) and Code, Financial Institutions Article, §1-304.

(f) Objection to Subpoena to Permit Entry Upon Designated Land or Property; Procedure to Compel Entry

(1) Objection

A person served with a subpoena to permit entry upon designated land or property, or any other person who claims an interest in the land or property, may object to the entry by filing an objection within 30 days after service of the subpoena and serving the objection on the requesting party. After an objection is filed, entry upon the designated land or property is not permitted unless the court grants a motion to compel entry filed in accordance with subsection (f)(2) of this Rule.

(2) Procedure to Compel Entry

(A) Motion to Compel

If the requested discovery is refused or within 15 days after an objection is served, the requesting party may file a motion to compel entry. The requesting party shall (i) attach to the motion a copy of the subpoena and any objection, (ii) serve a copy of the motion in the manner provided by Rule 1-321 on all other parties and the person who filed the objection, and (iii) if the requesting party is seeking entry upon leased land or property, serve a copy of the motion on any record owner of the land or property and any occupant or person in possession or control of the land or property. A hearing may be requested by including the headline "Request for Hearing" in the motion.

(B) Response

A response may be filed within 15 days after service. A hearing may be requested by including the headline "Request for Hearing" in the response.

(C) Hearing

If a hearing is not timely requested, the court may rule on the motion without a hearing. If a nonparty requests a hearing, the court shall hold a hearing. If a party requests a hearing, the court may determine whether a hearing will be held.

(D) Order

An order granting the motion shall specify the time, place, and manner of entry upon the land or property and the acts that may be performed. The order also may include any other provision that the court deems appropriate, including provisions relating to the privacy of the person who filed the objection, protection of the interests of the parties and any nonparty, and the filing of a bond to secure the obligation of the moving party to pay for damages arising out of the

entry and acts performed.

Cross reference: See Maryland Uniform Interstate Depositions and Discovery Act, Code, Courts Article, §§9-401 et seq.

Source: This Rule is new.

Rule 2-422.1 was accompanied by the following Reporter's note.

In Chapter 41 of the 2008 session, the General Assembly enacted the Maryland Uniform Interstate Depositions and Discovery Act (the "Uniform Act"), which is codified in Code, Courts Article, §§9-401 - 407. The purpose of the Uniform Act, which has been codified in twenty-eight jurisdictions, is to create a fair and easy-to-follow procedure, requiring minimal judicial oversight and intervention. The Uniform Act is patterned after Rule 45 of the Federal Rules of Civil Procedure. *See* Report of the Drafting Committee on the Uniform Interstate Deposition and Discovery Act, §3. Accordingly, Section 9-401 (f)(3) of the Uniform Act provides that a subpoena issued under the Uniform Act may require a person to "[p]ermit inspection of premises under control of a person."

Section 9-401 (f)(3), however, is inconsistent with Rule 2-422. In *Webb v. Joyce*, 108 Md. App. 512 (1996), the Court of Special Appeals determined that Rule 2-422 did not permit a party to inspect the property of a nonparty. The Court distinguished Rule 2-422 from what is permitted under the federal rules of civil procedure, which had been specifically amended to permit the use of subpoenas to inspect the property of nonparty's.

After the *Webb* decision, the Rules Committee proposed a new Rule 2-422.1. *See* One Hundred Forty-Seventh Report of the Rules Committee. The Rule expressly would have authorized circuit courts to issue subpoenas to command the inspection of premises of non-parties. However, by Rules Order dated June

6, 2000, the Court of Appeals rejected proposed new Rule 2-422.1.

The Discovery Subcommittee now proposes a revised version of Rule 2-422.1, for two reasons that have occurred since 2000.

First, the passage of the Uniform Act enables a foreign party to obtain a subpoena requiring a person, including a non-party, to permit inspection of premises under the control of the person.

Second, the Subcommittee believes that Maryland litigants should receive the same consideration. Post-*Webb* case authority from the Court of Special Appeals has highlighted for Maryland practitioners that there is an indirect means to obtain discovery of the property of nonparties. In *Stokes v. 835 N. Washington Street, LLC*, 141 Md. App. 214 (2001), the Court of Special Appeals declared the "circuit courts have the power to order inspection of a non-party's property on a case-by-case basis through the equitable bill of discovery." *Id.* At 223. The Court acknowledged its earlier decision in *Webb v. Joyce*, but held that, "Because the Maryland Rules do not preclude circuit courts from exercising their inherent equitable powers, we are persuaded that the circuit court has jurisdiction to permit appellants entry into appellee's property through an equitable bill of discovery." *Id.* At 222. In *Johnson v. Franklin*, 223 Md. App. 273 (2015), the Court of Special Appeals adhered to its holding in *Stokes*. The Subcommittee proposes that Rule 2-422.1 be adopted to create a Rule whereby parties may directly obtain discovery of the property of nonparties, rather than having to obtain an equitable bill of discovery.

Section (a) of proposed new Rule 2-422.1 provides that the Rule applies to the issuance of a subpoena to obtain entry upon and inspection of designated land or property owned by or in the possession or control of (1) a party to an action pending in a foreign jurisdiction as defined in the Uniform Act, or (2) a nonparty to an action pending in

this State or in a foreign jurisdiction.

Subsection (b)(1) adopts the definitions from the Uniform Act to the extent relevant, and subsection (b)(2) contains additional definitions of "domestic subpoena," "inspection," and "nonparty."

Subsections (c)(1) and (c)(2) deal with the issuance of domestic subpoenas and foreign subpoenas, respectively.

Subsection (d)(1) contains a detailed list of the elements of a subpoena. Subsection (d)(2) states that certain information must accompany a subpoena, including a written undertaking that the requesting party will pay for all damages arising from the entry and proposed acts and a notice containing the receiving person's right to object.

Section (e) contains provisions pertaining to service of the subpoena.

Section (f) contains provisions pertaining to an objection to a subpoena under the Rule and to a procedure to compel entry.

Mr. Carbine told the Committee that the proposed changes to Rules 2-510 and 2-422 and the proposed addition of Rules 2-510.1 and 2-422.1 need to be examined carefully, because there are some separation of powers issues in them. The topic evolves from the Maryland Uniform Interstate Depositions and Discovery Act, which has been in effect for a long time, but there has never been a procedure in the Rules to implement the dictates of the statute. Mr. Carbine had found that the procedure varies from county to county, and in some counties, it varies within the county from year to year as to how they handle this. In addition, the Act

requires or permits a foreign subpoena for the entry on land. The Discovery Subcommittee decided that it was time to tackle drafting Rules that implement the filing and service of a form subpoena for a deposition, and Rules that track the filing, service, and conditions upon which a foreign subpoena can compel the inspection of property.

Mr. Carbine remarked that no Rule currently allows the entry on land of non-parties. Proposed Rule 2-422.1 takes care of the Interstate Deposition and Discovery Act. It also tacks on something new that in the past the Court of Appeals has not been in favor of, which is that it permits a subpoena to enter on and inspect the land and property of a non-party.

Mr. Carbine said that in subsection (a)(3) of Rule 2-510, the language "[e]xcept as otherwise provided by law" has been added to open the window for the change in the procedure. A Committee note has been added after subsection (b)(4) that explains what Rule 2-510 applies to. The cross reference added after the Committee note is a brief explanation of the scope of Rules 2-510.1, 2-422, and 2-422.1.

Mr. Carbine pointed out that Code, Courts Article, §9-404 of the Maryland Uniform Interstate Depositions and Discovery Act provides that Title 2, Chapter 400 and Maryland Rule 2-510 apply to subpoenas issued under §9-402 of the Act. It is hopelessly cumbersome to put the Rule pertaining to domestic subpoenas, Rule 2-510, in the same Rule pertaining to foreign subpoenas. This

why the Subcommittee created Rule 2-510.1. The legislature does not refer to Rule 2-510.1 in §9-404 as the Rule is only a proposal. One way to handle this is to make Rule 2-510.1 part of Rule 2-510, or the Rules can be flipped. The Reporter suggested asking the legislature to amend the statute to refer to Rule 2-510.1. Mr. Carbine commented that the simplest way was to have two separate Rules. The Subcommittee preferred drafting a new Rule 2-510.1.

Mr. Carbine referred to section (c) of Rule 2-510.1, noting a typographical error in the second sentence. The word "understanding" should be the word "undertaking." This is the second area where there is some "pushing the envelope" on the separation of powers. Mr. Carbine said that his view was that the Uniform Interstate Deposition and Discovery Act does not give carte blanche to a foreign party coming into Maryland and using a subpoena for improper purposes. The Chair inquired whether Mr. Carbine meant that it was a separation of powers issue or a conflict of law issue. Mr. Carbine answered that he meant the separation of powers between the Rules and the legislature, because when the legislature provides in a law that the clerk shall issue the subpoena, and the draft of the Rule provides that along with the subpoena, the attorney or the party has to agree to submit to the jurisdiction of the circuit court that issues the subpoena for the sole purpose of being subject to that court's jurisdiction for discovery disputes, contempt

proceedings, and sanctions, this is a separation of powers issue.

Mr. Zollicoffer asked whether someone would be subject to the Maryland Rules if the person filed in another state that has no liability on an issue, but Maryland does have liability, and the person takes a deposition in Maryland. Mr. Carbine replied that the person would only be subject to the Maryland Rules on discovery and sanctions. This is pursuant to the statute. Mr. Carbine suggested that the fact that Code, Courts Article, §9-404 refers to the Title 400 Rules and Rule 2-510 does not mean that it automatically include sanctions. Without the proposed Rule, in the situation described by Mr. Zollicoffer, all that is necessary is to get a foreign subpoena from the clerk and take the testimony of someone in a proceeding in Maryland. Code, Courts Article, §9-402 provides that a request for the issuance of a subpoena under the subtitle does not constitute an appearance in the Maryland courts. The last sentence of section (c) of Rule 2-510.1 is: "A party or attorney who files a request or undertaking pursuant to this section does not, by so doing, submit to the jurisdiction of a court of this State for any other purpose." The jurisdiction is limited to discovery disputes. Mr. Carbine said that he wanted to flag the issue, because of pushing the envelope on what the legislature has instructed the clerks to do by adding this undertaking.

Mr. Sullivan asked whether the Rule could provide that the court has some jurisdiction over the party to an action pending

in a foreign jurisdiction who files a request for a subpoena in a Maryland court. Mr. Carbine responded that the statute is very clear that filing the request for a subpoena does not subject the person to the jurisdiction of the Maryland court.

The Chair asked Mr. Carbine what the impact of Code, Courts Article, §9-405 was. Will these issues pertaining to protective orders, and orders to enforce, quash, or modify subpoenas come up? Mr. Carbine replied that this should come up. The whole idea of section (c) of the Rule is the undertaking. Does the Court of Appeals have the authority to require that? The Subcommittee had studied this issue thoroughly. Unless the proposed Rule refers to it, the concept of sanctions is not listed in the statute. It does not apply to sanctions. Attorneys' fees could not be awarded.

The Chair commented that he viewed this as a conflict of laws issue. The statute allows someone to file a foreign subpoena, and the clerk in Maryland issues a Maryland subpoena, which must incorporate the terms of the foreign subpoena. The meaning of the word "terms" is not clear. What if, in the foreign jurisdiction, a litigant is entitled to the issuance of a subpoena containing "terms" that are contrary to the public policy of Maryland or other Maryland law? Mr. Carbine reiterated that the statute provides that the subpoena is subject to the Discovery Rules in Maryland. The Chair remarked that the point of Rule 2-510.1 might be that if someone has an issue in

Maryland, a judge in this State will decide it. It would not be the judge in the other state.

Mr. Marcus inquired as to why all of proposed Rule 2-510.1 could not be placed into Rule 2-510. The legislature provided that whatever is in Rule 2-510 is part of the statute. Mr. Carbine responded that this had been the way the Subcommittee had begun the drafting process, but the numbering in Rule 2-510 was awkward and unusual. It is difficult to put in the normal subpoena procedures and put in another paragraph about foreign subpoenas. Mr. Marcus pointed out that Code, Courts Article, §9-404 has delegated authority to the Maryland Rules. It allows the Maryland Rules to prescribe the limits of what may go on in the deposition.

The Chair hypothesized that a Rule in another state has no limit on the length of the deposition. If Maryland adopted a Rule that provides otherwise, which Rule will apply? Mr. Carbine answered that it would be the Rule in Maryland that applies. The Chair pointed out that Code, Courts Article, §9-402 provides that the Maryland subpoena has to incorporate the terms used in the foreign subpoena. Mr. Carbine commented that many of the issues raised by the Chair are substantive conflicts of law issues that cannot be addressed in a rule and that a Maryland judge will have to sort out. This would be substance vs. procedure. What if something is permitted in Maryland that is not permitted in the issuing state or vice versa? The Chair

noted that there may be these issues in the subpoena Rule itself. The Court of Appeals just adopted a rule that provides that all subpoenas have to be on a uniform form approved by the State Court Administrator. This is pursuant to Rules 2-510; 3-510, Subpoenas; 4-265, Subpoenas for Hearing or Trial; and 4-266, Subpoenas – Generally.

Mr. Carbine said that Rule 2-510 could be divided into two parts. The uniform form would not apply to a foreign subpoena. Mr. Zarbin remarked that if someone issues a foreign subpoena, and no one objects to it, it has to be followed. However, if someone objects to it, does Code, Courts Article, §9-405 require that the subpoena has to comply with the Maryland Rules? Does this statute not cure the problem? Would compliance with the Maryland Lawyers' Rules of Professional Conduct not be included? Mr. Carbine responded that this is another issue. Mr. Zarbin noted that this is what the statute provides.

The Chair said that a case that addressed this issue had been in the Court of Special Appeals. It had come from Texas. There was a conflict, and this issue was brought up as to which court would decide the case, the judge in Maryland or the judge in Texas? The case was eventually settled in Texas, so the matter did not have to be decided. Mr. Marcus noted that Texas has a pre-suit deposition rule (Texas Rules of Civil Procedure, Rule 202.1 et seq.) that allows the taking of depositions to determine whether or not someone intends to file suit. This

would not be permitted in Maryland.

Mr. Carbine commented that if there is no action in Texas, there is no foreign subpoena. Mr. Marcus responded that the process is bizarre. A subpoena is issued, which is a pre-suit subpoena, but no case has been filed. Mr. Zollicoffer said that this is done frequently in Maryland. Depositions are taken, but no suit has been filed. Mr. Marcus commented that the procedure in Texas is not the same. It is to determine whether or not there is a merit to filing the case.

Mr. Carbine observed that the discussion had raised many problems, and the Committee had not even considered the other Rules in the package. Section (e) of Rule 2-510.1 requires a civil action number for the Maryland court issuing the subpoena. This had never been required before. In Mr. Carbine's experience, some courts have not yet opened a file. This would require the court that issues the subpoena to open a file and give it a number. He expressed the opinion that Rule 2-510.1 works well. The big issue is the written undertaking. He pointed out an error in the Rule in subsection (j)(2). One of the sanctions that the court may impose is "the exclusion of evidence obtained as a result of the violation." The court is not able to do this. This language appears also in section (a) of Rule 2-510. The Reporter explained that the Subcommittee tried to keep Rules 2-510 and 2-510.1 as much the same as possible. The inclusion of this language in Rule 2-510.1 was an

error. By consensus, the Committee agreed to remove the language referred to by Mr. Carbine from section (e) of Rule 2-510.1.

The Chair said that when he had first looked at the statute, he realized that some information was not in it, and he was sure that attorneys around the country have figured out a way of dealing with it. Mr. Carbine commented that the question is whether the attorneys who come to Maryland from another state should be subject to sanctions. Also, does the circuit court have the jurisdiction to impose sanctions, or do the attorneys have carte blanche to do anything they want? The Chair pointed out that an attorney may have a case in another state, but there is a request to take a deposition in Maryland. In the case he had referred to in the Court of Special Appeals, the attorney requested hospital records by a subpoena duces tecum. The records were privileged. This privilege existed in Maryland but was unclear if it existed in Texas. When the attorney from another state comes into Maryland, does the foreign attorney take the deposition, or does the attorney get local counsel?

Mr. Carbine responded that he had spoken with Mr. Frederick about this issue when the Subcommittee had discussed it, and his advice, which the Subcommittee followed, was that this is not the unauthorized practice of law. It is proper in Maryland. Mr. Frederick advised checking the Rules of Professional Conduct if an attorney is going to another state. Under the Maryland Uniform Interstate Depositions and Discovery Act, it is not

necessary for an out-of-state attorney to use local counsel. Mr. Sullivan added that this is because it is not an appearance in court. The Chair pointed out that practicing law goes beyond appearances in court.

Judge Nazarian commented that even though the attorney or the party can fill out and serve the subpoena form, it still issues from the court. Even putting aside the issues of local counsel or the unauthorized practice of law, someone invoked this, and the subpoena issued from the court. If the person misbehaves, even though he or she has not submitted to the jurisdiction of the court for all purposes, within the life of the subpoena issued by that court, the court should have the inherent authority to sanction.

Mr. Frederick agreed with Judge Nazarian. This is set forth in Rule 8.5, Disciplinary Authority; Choice of Law. Subsection (a)(2) of that Rule reads: "A lawyer not admitted to practice in this State is also subject to the disciplinary authority of this State if the lawyer (i) provides or offers to provide any legal services in this State,....(iii) has an obligation to supervise or control another lawyer practicing law in this State whose conduct constitutes a violation of these Rules." Mr. Zarbin remarked that this was why he thought that Code, Courts Article, §9-405 was applicable.

Mr. Frederick observed that sanctions may not include the payment of money, but they certainly include discipline by the

AGC. If someone does not have the privilege to practice law in Maryland and is disbarred here, the Clerk of the Court of Appeals notifies the clerk of the court where the attorney is authorized to practice, and then there is reciprocal action undertaken. Mr. Zarbin reiterated his view that if a foreign subpoena is issued, and no one objects, no harm is done. If someone objects, then Code, Courts Article, §9-405 is triggered.

The Chair asked whether the Subcommittee had checked to see if any other states have specific rules implementing the Uniform Interstate Depositions and Discovery Act. The Reporter said that the problem is that the law pertaining to entry onto land is somewhat unique to Maryland. Mr. Carbine added that this had not even been discussed yet. The Reporter commented that she did not think that this is the same in other states. The Chair noted that he was thinking about the procedures in other states to see how they handle this.

Mr. Carbine told the Committee that he would like some guidance. Should there be no other requirements in addition to those in the statute? It is important to have a uniform practice among the circuits in the State. He preferred that section (e) of Rule 2-510.1 not be changed. Section (c) provides that anyone can come in from a foreign jurisdiction, and the person is on his or her own. Should there be language added providing that the person is submitting to the jurisdiction of the court that issues the subpoena? Mr. Marcus commented that Code, Courts Article,

§9-404 has a reference to the Title 2, Chapter 400 Rules, which are the Discovery Rules, and Chapter 400 has a laundry list of different sections that apply, including sanctions. Mr. Carbine observed that there are sanctions for disobeying the subpoena. Sanctions for disobedience are in Title 1.

Mr. Marcus noted that sanctions are available, such as the awarding of costs and expenses if a motion was filed under Rule 2-403, Protective Orders. These should be looked at to see whether all of the Rules in Chapter 400 apply in the conduct of a deposition. Mr. Carbine responded that Title 1 offers refuge. Judge Price asked whether the statute clarifies that an application to the court for a protective order or to enforce, quash, or modify a subpoena is to be filed in a Maryland court. Mr. Marcus said that Code, Courts Article, §9-404 points out that Title 2 and Rule 2-510 apply to subpoenas issued under §9-402. Chapter 400 discusses the award of costs, sanctions, etc. There is a cross reference in section (d) of Rule 2-433, Sanctions, to Rule 2-403. Section (d) has the tagline "Award of Costs and Expenses, including Attorney's Fees." If someone did something wrong, and a motion for a protective order was filed under Chapter 400, which includes Rule 2-403, then the same Rules that govern the conduct of a deposition taken by a Maryland attorney, which are the Chapter 400 Rules, have been statutorily engrafted into the process.

Mr. Marcus observed that one of the problems that Mr.

Carbine had identified is that filing of the foreign subpoenas is not done in a user-friendly fashion. To file a motion for a protective order to bring this issue before a judge is more cumbersome, because it obviously is not the mainstay of what the court usually deals with. In terms of how this is done administratively, the Committee can help make this a clearer process. Attorneys get hired frequently to shepherd a subpoena in Maryland for someone who is out of state. It has become a cottage industry. Most attorneys have the ability to get a subpoena. However, the way that the clerks' offices handle this varies to some degree from one jurisdiction to another. It may be that what is necessary is to draw attention to this procedure so that there can be some uniformity as to how the various clerks' offices handle this. He expressed the opinion that Rule 2-510.1, with some minor differences, applies to the out-of-state attorney who comes into Maryland to take a deposition in the same way it applies to a Maryland attorney taking a deposition under the same Chapter.

The Chair read from section (c) of Code, Courts Article, §9-402: "*Requirements for subpoena.* – A subpoena under subsection (b) of this section shall (1) Incorporate the terms used in the foreign subpoena;...". What does this mean? There is a form of a subpoena that the State Court Administrator has approved, and it is uniform throughout the State in the District Court and the circuit courts. Proposed Rules 2-510 and 2-510.1 provide that

the subpoena in Maryland has to be in that form. An attorney could argue that the legislature has said that the subpoena shall incorporate the terms used in the foreign subpoena. Judge Nazarian suggested that the Maryland subpoena should be attached to the foreign subpoena with the instruction: "See the attached form." That is a form from a Maryland court, so it has that source of authority behind it. The Chair remarked that it is different from the required Maryland form. Judge Nazarian responded that this is where the argument arises. This has come up before. In Arizona, there is a limit of four hours for a deposition. The judge had limited the deposition of in Maryland of an Arizona case to four hours. In California, it is the unauthorized practice of law to take a deposition even with local counsel present if the attorney taking the deposition has not been admitted *pro hac vice*. Non-uniformity exists across the country.

The Chair commented that to a certain extent the separation of powers issue is when the legislature has imposed a duty on the court that it has no authority to impose. This may be an issue. However, the question is whether Rule 2-510.1 is regarded as practice and procedure, as to which, under a conflict of laws in this State, Maryland would apply its own procedures. Judge Nazarian noted that Rule 2-510.1 does not have to solve that problem. The Rule seems to be providing how to issue, serve, and perpetuate out-of-state subpoenas in Maryland, given the

legislative authority to do this. It is difficult to anticipate and solve all of the conflicts as to what that subpoena actually entitles someone to do. Since this is subject to the Chapter 400 Rules, because the subpoena has been issued in the circuit court, if someone receives this type of subpoena, he or she has the opportunity to get a protective order if the subpoena seems overly broad or inconsistent with law.

The Chair asked whether an attorney, who had a case in a foreign state and wanted to get records in Maryland, could come into Maryland and get a subpoena duces tecum prior to the enactment of the Maryland Uniform Interstate Depositions and Discovery Act. Mr. Carbine responded that in the 1970's, an attorney could go to the court in Maryland and get a miscellaneous file opened and file a petition to take a subpoena. The court would order that a subpoena be issued. Judge Nazarian added that it would be on the miscellaneous docket in the circuit court. The Chair remarked that this could be done without the statute being in effect. Mr. Carbine commented that from the procedure in the 1970's, it went to the procedure in the 1980's and 1990's where the attorney would ask the clerk for a subpoena, and the clerk would reply that no file number was necessary for the subpoena, and the foreign subpoena could just be served.

Mr. Carbine said that the only substantive issue being discussed is whether the written undertaking should be taken out of Rule 2-510.1. Judge Price asked whether anyone had a problem

with the written undertaking. The Chair noted that if the written undertaking is deleted from Rule 2-510.1, the problem does not go away. It would just have to be decided on a case-by-case basis. Mr. Sullivan inquired whether there is statutory or case law authority that makes the distinction between the jurisdictions for discovery purposes only. Judge Nazarian expressed the opinion that Code, Courts Article, §9-404 solves this problem. The statute provides that Title 2, Chapter 400 and Rule 2-510 apply to these subpoenas, so that someone has the right to seek a protective order and get sanctions.

Mr. Zarbin asked whether, if there is any concern about the Rules of Professional Conduct, it would be a good idea to amend Rule 2-510.1 to say that the Rules of Professional Conduct also apply. There are fewer and fewer attorneys in the legislature. If this change comes from the court, it ought to be sent to the Honorable Joseph Vallario, Chairman of the House Judiciary Committee, and a member of the Rules Committee and to the Honorable Robert Zirkin, Chair of the Senate Judicial Proceedings Committee, to effectuate changing the statute.

The Chair pointed out that the subpoena has to be on a form approved by the State Court Administrator. Mr. Sullivan asked whether the Subcommittee should draft an undertaking to attach to the subpoena form. The Chair inquired where the Subcommittee got the language referring to the undertaking. Mr. Carbine answered that it had been his idea. Mr. Zarbin suggested that these Rules

go back to the Subcommittee. Mr. Carbine told the Committee that he would like their opinion on whether to delete the undertaking.

Mr. Frederick commented that since this is based on the Uniform Act, if other states have the undertaking, so should Maryland. The Chair said that there may be rules or case law on this.

Mr. Carbine remarked that the Discovery Rules could be amended to make sure that sanctions are available. The Chair pointed out that sanctions are all over the place, including the point raised earlier that if a Discovery Rule is violated, the case can be dismissed, or evidence cannot be used. These would not be appropriate. Proceeding under Rule 1-341, Bad Faith – Unjustified Proceeding, is a possibility. Mr. Carbine asked the Committee for a straw vote on whether to retain the written undertaking. Mr. Sullivan said that he was looking at this from the point of view of a foreign attorney getting the party's signature under section (c) of proposed Rule 2-510.1. Is this a little extreme? Mr. Carbine noted that the Uniform Act specifies that neither a foreign attorney nor a Maryland attorney is needed. Mr. Sullivan responded that Rule 2-510.1 appears to require that there be an attorney. Section (c) provides that the party and the party's attorney must sign the form. Mr. Carbine said that he did not know how the attorney for the defending party could be forced to pay legal fees of the party who files the successful motion to quash. Mr. Sullivan remarked that the

attorney submits something in court, and the party is bound by that submission. The Reporter noted that if Title 2, Chapter 400 and Rule 2-433 are to be incorporated, section (d) of that Rule provides that the court shall require the failing party or the attorney or both to pay to the moving party the reasonable costs and expenses incurred.

The Chair asked whether this language would include the Rules of Professional Conduct, because this language pertains to the jurisdiction of the circuit court. Mr. Carbine said that this issue is even more significant in Rule 2-422.1 where there is an undertaking that if someone goes onto the farmland of someone else and burns down the barn while the person is testing the ground near it, the person has to pay the farmer for the damage. There is an undertaking to pay for the damages by the entry on the land. Mr. Carbine added that he was still in favor of the undertaking. Mr. Zarbin pointed out that if someone obtains a subpoena to go onto someone else's land, the property owner could ask the person seeking entry on the land to agree to be responsible for any damage to the property. If the person does not agree, the landowner could seek a protective order under Code, Courts Article, §9-405.

The Chair commented that if someone comes onto land under a subpoena, he or she is not a trespasser, and not an invitee, so there is liability. He noted that this is all substantive law. How much of the subject of liability and damages is practice and

procedure? The person has a subpoena allowing him or her to go onto the land. Mr. Zarbin said that the parties set limits, and if they do not agree, then they will get a court order to force an agreement. This is the same idea. The Chair reiterated that the rules and case law around the country on this issue should be looked at. Both Rules 2-510.1 and 2-422.1, as well as the amendments to Rules 2-510 and 2-422, will go back to the Subcommittee.

There being no further business before the Committee, the Chair adjourned the meeting.