COURT OF APPEALS STANDING COMMITTEE

ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee virtually held via Zoom for Government on October 16, 2020.

Members present:

Hon. Alan M. Wilner, Chair

H. Kenneth Armstrong, Esq.
Hon. Vicki Ballou-Watts
Julia Doyle Bernhardt, Esq.
Hon. Pamila J. Brown
Stan Derwin Brown, Esq.
Hon. Yvette M. Bryant
Sen. Robert G. Cassilly
Hon. John P. Davey
Mary Anne Day, Esq.
Del. Kathleen Dumais
Alvin I. Frederick, Esq.
Pamela Q. Harris, State Court Administrator
Irwin R. Kramer, Esq.
Victor H. Laws, III, Esq.
Dawne D. Lindsey, Clerk
Bruce L. Marcus, Esq.
Donna Ellen McBride, Esq.
Stephen S. McCloskey, Esq.
Hon. Douglas R. M. Nazarian
Hon. Paula A. Price
Scott D. Shellenberger, Esq.
Gregory K. Wells, Esq.
Thurman W. Zollicoffer, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Colby L. Schmidt, Esq., Deputy Reporter
Heather Cobun, Esq., Assistant Reporter
Meredith E. Drummond, Esq., Assistant Reporter
Philip Andrews, Esq., Kramon & Graham, P.A.
Shannon Baker, Esq., Deputy Director, District Court ADR Office
Cliff M. Blondes, Esq.
Audra Cathell, Esq.
Hon. Mimi Cooper
Paul Cooper of Alex Cooper Auctioneers
Thomas M. DeGonia, II, Esq.
Maureen Denihan, Esq.
Rachel Dombrowski, Esq.
Debra Gardner, Esq.
Allan J. Gibber, Esq.
Lou Gieszl, Assistant State Court Administrator, Programs

Andrew J. Graham, Esq., Kramon & Graham, P.A.
Carla Jones, Department Manager, II, Judicial Information Systems
Cynthia M. Jurrius, Esq., Program Director, MACRO, Mediation & Conflict Resolution
Jay Knight, Esq., Program Director, Alternate Dispute Resolution Division of the Court of Special Appeals
Steven M. Lash, Esq.
Richard Montgomery, Director of Legislative & Governmental Relations, MSBA
Hon. John P. Morrissey, Chief Judge, District Court of Maryland
Amy Orsi, Esq.
Pamela C. Ortiz, Esq., Program Director, Access to Justice
Sarah Parks, Operations Analyst, Administrative Office of the Courts
Lisa Preston, Manager, Business Analysis, Judicial Information Systems
Michael Schatzow, Esq., Chief Deputy State's Attorney, Office of the State's Attorney for Baltimore City
Thomas Stahl, Esq.
Stewart A. Sutton, Esq.
Gillian R. Tonkin, Esq., Staff Attorney, District Court Chief Clerk's Office
Michael Winkelman, Esq.
Brian Zavin, Esq., Deputy Chief Attorney, Office of the Public Defender, Appellate Division

The Chair convened the meeting. The Reporter announced that any person in attendance should mute his or her microphone unless speaking. In addition, the Reporter explained that the meeting was being recorded and speaking will be treated as consent to being recorded.

Agenda Item 1. Consideration of proposed amendments to Rule 14-305 (Procedure Following Sale)

Mr. McCloskey presented proposed amendments to Rule 14-305 (Procedure Following Sale), Rule 2-644 (Sale of Property Under Levy), Rule 3-644 (Sale of Property Under Levy), and Rule 3-722 (Receivers) for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 14 – SALES OF PROPERTY

CHAPTER 300 – JUDICIAL SALES

AMEND Rule 14-305 by adding new section (c) requiring an affidavit by an auctioneer following a sale, by adding a Committee note after section (c), and by making stylistic changes, as follows:

Rule 14-305. PROCEDURE FOLLOWING SALE

(a) Report of Sale

As soon as practicable, but not more than 30 days after a sale, the person authorized to make the sale shall file with the court a complete report of the sale and an affidavit of the fairness of the sale and the truth of the report.

(b) Affidavit of Purchaser

Before a sale is ratified, unless otherwise ordered by the court for good cause, the purchaser shall file an affidavit setting forth:

(1) whether the purchaser is acting as an agent and, if so, the name of the principal;

(2) whether others are interested as principals and, if so, the names of the other principals; and

(3) that the purchaser has not directly or indirectly discouraged anyone from bidding for the property.

(c) Affidavit of Auctioneer

Within 15 days after conducting a sale, the auctioneer shall file an affidavit stating that:

(1) neither the auctioneer nor any affiliate or subsidiary of the auctioneer has paid any compensation or other consideration to any person for hiring or aiding in the hiring of the auctioneer to conduct the sale;

(2) neither the auctioneer nor any affiliate or subsidiary of the auctioneer has any direct or indirect interest in the property sold other than a lawful and agreed-upon fee for conducting the sale; and

(3) neither the auctioneer nor any affiliate or subsidiary of the auctioneer has entered into any agreement or understanding with any person to conduct or assist with the resale of the property other than a resale ordered by the court pursuant to section (f) or (h) of this Rule.

Committee note: Section (c) of this Rule does not preclude a trustee from hiring an auctioneer to provide additional services in connection with the sale. If the additional compensation is to be paid from the trust estate, a court order approving the payment is required.

~~(c)~~(d) Sale of Interest in Real Property; Notice

Upon the filing of a report of sale of real property or chattels real pursuant to section (a) of this Rule, the clerk shall issue a notice containing a brief description sufficient to identify the property and stating that the sale will be ratified unless cause to the contrary is shown within 30 days after the date of the notice. A copy of the notice shall be published at least once a week in each of three successive weeks before the expiration of the 30-day period in one or more newspapers of general

circulation in the county in which the report of sale was filed.

~~(d)~~ (e) Exceptions to Sale

(1) How Taken

A party, and, in an action to foreclose a lien, the holder of a subordinate interest in the property subject to the lien, may file exceptions to the sale. Exceptions shall be in writing, shall set forth the alleged irregularity with particularity, and shall be filed within 30 days after the date of a notice issued pursuant to section ~~(c)~~ (d) of this Rule or the filing of the report of sale if no notice is issued. Any matter not specifically set forth in the exceptions is waived unless the court finds that justice requires otherwise.

(2) Ruling on Exceptions; Hearing

The court shall determine whether to hold a hearing on the exceptions but it may not set aside a sale without a hearing. The court shall hold a hearing if a hearing is requested and the exceptions or any response clearly show a need to take evidence. The clerk shall send a notice of the hearing to all parties and, in an action to foreclose a lien, to all persons to whom notice of the sale was given pursuant to Rule 14-206 (b).

~~(e)~~ (f) Ratification

The court shall ratify the sale if (1) the time for filing exceptions pursuant to section ~~(d)~~ (e) of this Rule has expired and exceptions to the report either were not filed or were filed but overruled, and (2) the court is satisfied that the sale was fairly and properly made. If the court is not satisfied that the sale was fairly and properly made, it may enter any order that it deems appropriate.

~~(f)~~ (g) Referral to Auditor

Upon ratification of a sale, the court, pursuant to Rule 2-543, may refer the matter to an auditor to state an account.

~~(g)~~ (h) Resale

If the purchaser defaults, the court, on application and after notice to the purchaser, may order a resale at the risk and expense of the purchaser or may take any other appropriate action.

Rule 14-305 was accompanied by the following Reporter's note.

Proposed amendments to Rule 14-305 require an auctioneer to file an affidavit after conducting a sale to affirm that the auctioneer did not have any conflicts of interest in the sale. An attorney for an auction house suggested the amendment primarily to prevent an auctioneer from conducting the judicial sale of a property and later serving as auctioneer/broker in the resale of the property. The concern is that an auctioneer will not be incentivized to secure the highest price at the judicial sale because the commission is significantly larger at the later sale if the lender buys-in and resells.

New section (c) specifies the contents of the affidavit and requires the affidavit to be filed within 15 days after the sale is conducted. The 15-day deadline is used because subsection (e)(1) of the Rule requires that exceptions be filed within 30 days after notice of the sale, which could be immediately after the sale, and the auctioneer's affidavit may be relevant to any possible exceptions.

A Committee note following section (c) clarifies that the Rule is not intended to preclude a trustee from hiring an auctioneer to provide additional services related to the judicial sale.

Current sections (c)-(g) are re-lettered as (d)-(h), respectively, and internal references are conformed to the re-lettering.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 2-644 by updating the reference to Rule 14-305, as follows:

Rule 2-644. SALE OF PROPERTY UNDER LEVY

. . .

(d) Transfer of Real Property Following Sale

The procedure following the sale of an interest in real property shall be as prescribed by Rule 14-305, except that (1) the provision of Rule 14-305 ~~(f)~~ (g) for referral to an auditor does not apply and (2) the court may not ratify the sale until the judgment creditor has filed a copy of the public assessment record for the real property kept by the supervisor of assessments in accordance with Code, Tax-Property Article, § 2-211. After ratification of the sale by the court, the sheriff shall execute and deliver to the purchaser a deed conveying the debtor's interest in the property, and if the interests of the debtor included the right to possession, the sheriff shall place the purchaser in possession of the property. It shall not be necessary for the debtor to execute the deed.

. . .

Rule 2-644 was accompanied by the following Reporter's note.

Proposed conforming amendments to Rule 2-644 alter a reference to Rule 14-305 in light of proposed amendments to that Rule impacting lettering.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 3-644 by updating the reference to Rule 14-305, as follows:

Rule 3-644. SALE OF PROPERTY UNDER LEVY

. . .

(d) Transfer of Real Property Following Sale

The procedure following the sale of an interest in real property shall be as prescribed by Rule 14-305, except that (1) the provision of Rule 14-305 ~~(c)(4)~~ (g) for referral to an auditor does not apply and (2) the court may not ratify the sale until the judgment creditor has filed a copy of the public assessment record for the real property kept by the supervisor of assessments in accordance with Code, Tax-Property Article, § 2-211. After ratification of the sale by the court, the sheriff shall execute and deliver to the purchaser a deed conveying the debtor's interest in the property, and if the interests of the debtor included the right to possession, the sheriff shall place the purchaser in possession of the property. It shall not be necessary for the debtor to execute the deed.

. . .

Rule 3-644 was accompanied by the following Reporter's note.

Proposed conforming amendments to Rule 3-644 alter a reference to Rule 14-305 in light of proposed amendments to that Rule impacting lettering.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 700 – SPECIAL PROCEEDINGS

AMEND Rule 3-722 by updating the reference to Rule 14-305, as follows:

Rule 3-722. RECEIVERS

. . .

(f) Procedure Following Sale

(1) Notice by Mail

Upon filing the Report of Sale, the receiver shall send a notice by first class mail and certified mail to the last known address of: the mortgagor; the present record owner of the property; and the holder of a recorded subordinate mortgage, deed of trust, or other recorded or filed subordinate interest in the property, including a judgment. The notice shall identify the property and state that the sale of the property has been completed and will be final unless cause to the contrary is shown within 30 days after the date of the notice. The receiver shall file proof of mailing with the court. This notice shall be in lieu of notice and publication by the clerk pursuant to Rule 14-305 ~~(c)~~ (d).

(2) Posting of Property

The receiver also shall cause the notice to be posted in a conspicuous place on the property and file proof of posting with the court.

(3) Exceptions to Sale

Exceptions to the sale may be filed within 30 days after the date of the mailing or posting of the

notice, which ever is later. In all other respects, exceptions shall be governed by Rule 14-305 ~~(d)~~ (e).

. . .

Rule 3-722 was accompanied by the following Reporter's note.

Proposed conforming amendments to Rule 3-722 alter a reference to Rule 14-305 in light of proposed amendments to that Rule impacting lettering.

Mr. McCloskey explained that the proposed amendments are recommended by the Property Subcommittee. Title 14 concerns sales of property, and Chapter 300 addresses judicial sales. Rule 14-305 addresses the procedure after a sale is made. New section (c) of Rule 14-305 requires the auctioneer to file an Affidavit affirming that the auctioneer does not have any conflicts of interest in the sale. The new section also sets forth the required contents of the Affidavit. Mr. McCloskey noted that a Committee note was added to clarify that the trustees may retain the auctioneer for additional services. Proposed amendments to three other Rules are conforming amendments due to the re-lettering in Rule 14-305.

There being no motion to amend or reject the proposed Rules changes, they were approved as presented.

Agenda Item 2. Consideration of proposed amendments to Rule 14-204 (Institution of Action)

Mr. McCloskey presented amendments to Rule 14-204 (Institution of Action) for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 14 – SALES OF PROPERTY

CHAPTER 200 – FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-204, by reorganizing it, by clarifying that the provision pertaining to priority of actions applies only in cases in which there are fractional interest holders of the lien instrument being foreclosed, and making stylistic changes, as follows:

Rule 14-204. INSTITUTION OF ACTION

~~(a) Who May File~~

~~(1)~~ (a) Under Power of Sale

Subject to compliance with ~~subsection (a)(3)~~ section (c) of this Rule, any individual authorized to exercise a power of sale may institute an action to foreclose the lien.

~~(2)~~ (b) Under Assent to Decree

A secured party may file an action to foreclose the lien under an assent to a decree, except that an action to foreclose a deed of trust shall be instituted by the beneficiary of the deed of trust, any trustee appointed in the deed, or any successor trustee.

~~(3)~~(c) Fractional Owners of Debt

(1) Minimum Fractional Interest Required

Except when the lien instrument is a deed of trust, a power of sale may not be exercised, and the court may not enter an order for a sale under an assent to a decree, unless the power is exercised or application for an order is made or consented to by the holders of 25% or more of the entire debt due under the lien instrument.

~~(b)~~(2) Priority of Actions Involving Fractional Interests

If more than one party is authorized under these Rules to file an action to foreclose a lien, the first such party to file an action acquires the exclusive right to ~~foreclose~~ proceed on behalf of all fractional interest holders of the lien instrument being foreclosed.

Source: This Rule is derived as follows:

~~Subsection~~ Section (a)~~(1)~~ is derived from the 2008 version of former Rule 14-202 (a)(1).
~~Subsection~~ Section ~~(a)(2)~~(b) is derived from the 2008 version of former Rule 14-202 (a)(2).
Subsection ~~(a)(3)~~(c)(1) is derived from the 2008 version of former Rule 14-202 (b)(1) and (c).
~~Section~~ Subsection ~~(b)~~(c)(2) is derived from the 2008 version of former Rule 14-202 (b)(2).

Rule 14-204 was accompanied by the following Reporter's note.

In 2008, former Rules 14-202 and 14-207 were redrafted and combined to form current Rule 14-204. During the course of the 2008 revisions of these Rules, which were meant to be organizational and not substantive, Rule 14-204 was structured such that certain provisions in former Rules 14-202 and 14-207 concerning the parties that may seek to enforce a lien and the priority of enforcement actions undertaken by fractional owners of debt were no longer as clear as they had been in former Rules 14-202 and 14-207. The

concepts "under power of sale," "under assent to decree," and "fractional owners of debt" were all included in one section.

This structure has left Rule 14-204 open to an interpretation in which a junior lien holder may acquire the exclusive right to foreclose by engaging in a race to the courthouse that effectively shuts out a senior lien holder. This situation was brought to the attention of Rules Committee staff by a practitioner who experienced this exact scenario.

The Property Subcommittee proposes that the three separate concepts be restored to their original status by being re-organized in Rule 14-204, so that each concept is contained in its own section.

Former section (b) of Rule 14-204 is re-lettered subsection (c)(2) to clarify that the priority of actions language applies only to cases in which there are fractional interest holders of the lien instrument being foreclosed.

Mr. McCloskey explained that the proposed amendments recommended by the Property Subcommittee clarify that the priority of actions provision in Rule 14-204 applies only in cases in which there are fractional interest holders of the lien instrument being foreclosed. He noted that two former Rules had been combined to form current Rule 14-204. Although the priority of actions provision related only to fractional interest holders of a debt, the provision was set out in a separate section when the Rules were combined. The formatting of the current Rule creates the possible interpretation that the first to file an action to foreclose a lien acquires the exclusive right to foreclose, even over a senior lienholder.

The amendment makes clear that the priority of actions provision applies only in cases with fractional interest holders.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Agenda Item 3. Consideration of proposed changes to the Rules in Title 4 (Criminal Causes)

Mr. Marcus presented proposed new Rule 4-333.1 (Motion to Vacate Judgment of Conviction of Human Trafficking Victim) for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 300 – TRIAL AND SENTENCING

ADD NEW Rule 4-333.1, as follows:

RULE 4-333.1. MOTION TO VACATE JUDGMENT OF CONVICTION OF HUMAN TRAFFICKING VICTIM

(a) Scope

This Rule applies to a motion to vacate a judgment of conviction filed by an individual convicted of a qualifying offense pursuant to Code, Criminal Procedure Article, § 8-302 if the individual's participation in the offense was a direct result of being a victim of human trafficking.

(b) Timing

The motion shall be filed within a reasonable period of time after the conviction.

(c) Content

The motion shall:

(1) be in writing; and

(2) describe the evidence and include copies of any documents showing that the movant is entitled to relief under Code, Criminal Procedure Article, § 8-302.

(d) Notice

The motion shall be:

(1) served on the State's Attorney for the jurisdiction where the conviction for the qualifying offense occurred; and

(2) if the qualifying offense occurred within five years before the filing of the motion, mailed to any victim's or victim's representative's last known address.

(e) Disposition without a hearing

(1) The Court may dismiss a motion filed under this section without a hearing if:

(i) The motion fails to assert grounds on which relief may be granted;

(ii) The motion offers no additional evidence beyond that which has previously been considered by the Court; or

(iii) The movant acted fraudulently or in bad faith in filing the motion.

(2) The Court may grant a motion filed under this section without a hearing if:

(i) The State's Attorney consents to the motion;

(ii) No objection has been filed by a victim or victim's representative; and

(iii) At least 60 days have elapsed since notice and service of the motion.

(f) Disposition

The Court may grant a motion filed under this section on finding by a preponderance of the evidence that the movant's participation in the qualifying offense was a direct result of being a victim of human trafficking. The court shall state the reasons for its ruling on the record.

Rule 4-333.1 was accompanied by the following Reporter's note.

Chapters 126/127, 2020 Laws of Maryland, (HB 242/SB 206), effective June 1, 2020, modified Code, Criminal Procedure Article, § 8-302. The statute previously permitted the court to vacate a conviction, modify the sentence, or grant a new trial if a person convicted of prostitution was acting under duress caused by the act of another committed in violation of Title 3, Subtitle 11 of the Criminal Law Article or in violation of the prohibition against human trafficking. The amendments to § 8-302 provide a list of additional qualifying offenses that may now be vacated by motion if participation in the offense was the direct result of being a victim of human trafficking. The revised statute also removes language permitting the court to modify the sentence or grant a new trial based on the motion, providing only that the court shall vacate the conviction if the motion is granted.

The provisions of former Code, Criminal Procedure Article, § 8-302 are currently incorporated into Rule 4-331. Rule 4-331, however, deals primarily with the court's ability to order a new trial and exercise revisory power, containing only brief references to vacating a conviction. Rule 4-333, in contrast, addresses vacating convictions, but applies only to motions filed by the State's Attorney. Criminal

> Procedure Article, § 8-302 directs the court to vacate a conviction, but no longer permits ordering a new trial or modifying a sentence. A motion pursuant to § 8-302 is filed by the defendant. Accordingly, new Rule 4-333.1 is proposed to address motions to vacate convictions of qualifying offenses filed by the defendant because he or she was a victim of human trafficking.
>
> Section (a) sets forth the scope of Rule 4-333.1. Section (b) states that the motion shall be filed within a reasonable period of time after the conviction. Content requirements for the motion are set forth in section (c). Notice requirements for the motion are explained in section (d). Section (e) provides the circumstances under which the court may dismiss or grant the motion without a hearing. Section (f) provides that the court may grant a motion filed under this section on finding by a preponderance of the evidence that the movant's participation in the qualifying offense was a direct result of being a victim of human trafficking, and that the reasons for the ruling shall be stated on the record.

Mr. Marcus said that proposed new Rule 4-333.1 is the result of an initiative of the General Assembly to reconsider a judgment of conviction if the criminally culpable individual was, at the time, acting as a victim of human trafficking. The new Rule accounts for recent revisions to Code, Criminal Procedure Article, § 8-302 by incorporating provisions of the amended statute. Mr. Marcus added that the Criminal Rules Subcommittee considered that the revised statute addresses both substantive law and procedural issues. Accordingly, the Criminal Rules Subcommittee proposes grafting the statutory provisions concerning procedure into new Rule 4-333.1.

Mr. Marcus observed one issue to highlight for the Committee's consideration. In the proposed new Rule, section (d) requires service of the motion "on the State's Attorney in the jurisdiction where the conviction for the qualifying offense occurred." Mr. Marcus suggested that the language should provide that service shall be on the State's Attorney "for" the jurisdiction where the conviction occurred, and the Committee agreed with this suggestion by consensus. Mr. Marcus asked that the legislative members of the Committee consider this language issue during the next session.

Mr. Marcus observed that Rule 4-333 refers to a motion by a State's Attorney to vacate a conviction. New Rule 4-333.1 serves as the flipside, addressing a motion to vacate a conviction filed by the defendant.

There being no motion to further amend or reject the proposed new Rule, it was approved as amended.

Mr. Marcus presented proposed amendments to Rule 4-331 (Motions for New Trial; Revisory Power) for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 300 – TRIAL AND SENTENCING

AMEND Rule 4-331 to delete subsection (b)(2) regarding motions filed pursuant to Code, Criminal Procedure Article, § 8-302 and to re-letter

subsections (b)(1)(A) and (b)(1)(2) as (b)(1) and (b)(2), as follows:

RULE 4-331. MOTIONS FOR NEW TRIAL; REVISORY POWER

(a) Within Ten Days of Verdict

On motion of the defendant filed within ten days after a verdict, the court, in the interest of justice, may order a new trial.

Cross reference: For the effect of a motion under this section on the time for appeal see Rules 7-104 (b) and 8-202 (b).

(b) Revisory Power

~~(1) Generally~~

The court has revisory power and control over the judgment to set aside an unjust or improper verdict and grant a new trial:

~~(A)~~ (1) in the District Court, on motion filed within 90 days after its imposition of sentence if an appeal has not been perfected;

~~(B)~~ (2) in the circuit courts, on motion filed within 90 days after its imposition of sentence. Thereafter, the court has revisory power and control over the judgment in case of fraud, mistake, or irregularity.

~~(2) Act of Prostitution While Under Duress~~

~~On motion filed pursuant to Code, Criminal Procedure Article, § 8-302, the court has revisory power and control over a judgment of conviction of prostitution to vacate the judgment, modify the sentence, or grant a new trial.~~

. . .

Rule 4-331 was accompanied by the following Reporter's note.

> As noted in the Reporter's note to Rule 4-333.1, amendments to Code, Criminal Procedure Article, § 8-302 became effective on June 1, 2020. The amended provisions of § 8-302 are incorporated into new Rule 4-333.1. Amendments to Rule 4-331 are therefore proposed to reflect that the provisions of § 8-302 are no longer addressed by the Rule.
>
> Proposed amendments to Rule 4-331 delete subsection (b)(2) and re-letter subsections (b)(1)(A) and (b)(1)(2) as (b)(1) and (b)(2) respectively.

Mr. Marcus explained that Rule 4-331 concerns motions for new trials and the revisory power of the court. He added that, in the existing Rule, a subsection under revisory power references the prior version of Code, Criminal Procedure Article, § 8-302. The Subcommittee recommends removing the reference to § 8-302 due to the changes to the statute, making it clear that § 8-302 is no longer part of the court's general revisory power to make adjustments post-trial. The amendments remove references to the statute that are no longer valid in relation to the court's revisory power.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Mr. Marcus presented proposed amendments to Rule 4-345 (Sentencing – Revisory Power of Court).

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 300 – TRIAL AND SENTENCING

AMEND Rule 4-345 to delete a portion of a cross reference, as follows:

RULE 4-345. SENTENCING – REVISORY POWER OF COURT

...

(f) Open Court Hearing

The court may modify, reduce, correct, or vacate a sentence only on the record in open court, after hearing from the defendant, the State, and from each victim or victim's representative who requests an opportunity to be heard. The defendant may waive the right to be present at the hearing. No hearing shall be held on a motion to modify or reduce the sentence until the court determines that the notice requirements in subsection (e)(2) of this Rule have been satisfied. If the court grants the motion, the court ordinarily shall prepare and file or dictate into the record a statement setting forth the reasons on which the ruling is based.

Cross reference: ~~See Code, Criminal Procedure Article, § 8-302, which allows the court to vacate a judgment, modify a sentence, or grant a new trial for an individual convicted of prostitution if, when the crime was committed, the individual was acting under duress caused by the act of another committed in violation of Code, Criminal Law Article, § 11-303, the prohibition against human trafficking.~~ See Code, Criminal Law Article, § 5-609.1 regarding an application to modify a mandatory minimum sentence imposed for certain drug offenses prior to October 1, 2017, and for procedures relating thereto.

Rule 4-345 was accompanied by the following Reporter's note.

> Chapters 126/127, 2020 Laws of Maryland, (HB 242/SB 206), amending Code, Criminal Procedure Article, § 8-302, became effective on June 1, 2020. Although the prior version of § 8-302 permitted the court discretion to order a new trial or modify a sentence, the amended provisions of § 8-302 provide that the court shall vacate the judgment if the motion is granted. Accordingly, a reference to § 8-302 in Rule 4-345 concerning revisions of sentences is no longer relevant.
>
> A proposed amendment to Rule 4-345 deletes the description of § 8-302 in a cross reference after section (f).

Mr. Marcus explained that existing Rule 4-345 addresses the revisory power of the court regarding sentencing. Section (f), concerning open court hearings, includes a cross reference to the prior version of Code, Criminal Procedure Article, § 8-302. He stated that the deletion of language from the cross reference following Section (f) ensures that the Rule does not cite to a statute that is no longer viable.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Mr. Marcus presented proposed amendments to Rule 4-216.1 (Pretrial Release – Standards Governing).

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-216.1 to include the definition of a pretrial risk scoring instrument, to add two cross references, to update section numbering, and to make language consistent throughout the Rule, as follows:

RULE 4-216.1. PRETRIAL RELEASE--STANDARDS GOVERNING

(a) Definitions

The following definitions apply in this Rule:

. . .

(5) Pretrial Risk Scoring Instrument

"Pretrial risk scoring instrument" means a tool, a metric, an algorithm, or software that is used to assist in determining the eligibility of a defendant for pretrial release in a pretrial proceeding based on the defendant's flight risk and threat to community safety.

Cross reference: See Code, Criminal Procedure, § 5-103.

~~(5)~~ (6) Release on Personal Recognizance

"Release on personal recognizance" means a release, without the requirement of a bond, based on a written promise by the defendant (A) to appear in court when required to do so, (B) to commit no criminal offense while on release, and (C) to comply with all other conditions imposed by the judicial officer pursuant to this Rule, Rule 4-216.2, or by other law while on release.

Committee note: The principal differences between a personal recognizance and a bond are that the former

does not provide for payment of a penalty sum if the defendant fails to appear when required and is not subject to any financial conditions.

~~(6)~~(7) Special Condition

"Special condition" means a condition of release required by a judicial officer, other than the conditions that the defendant appear in court when required to do so and commit no criminal offense while on release.

~~(7)~~(8) Special Condition of Release with Financial Terms

"Special condition of release with financial terms" means the requirement of collateral security or the guarantee of the defendant's appearance by a compensated surety as a condition of the defendant's release. The term does not include (A) an unsecured bond by the defendant or (B) the cost associated with a service that is a condition of release and is affordable by the defendant or waived by the court. Committee note: Examples of a condition of release that is not a special condition of release with financial terms are participation in an ignition interlock program, use of an alcohol consumption monitoring system, and GPS monitoring.

~~(8)~~(9) Surety

"Surety" means a person other than the defendant who, by executing a bond, guarantees the appearance of the defendant and includes an uncompensated or accommodation surety.

~~(9)~~(10) Surety Insurer

"Surety insurer" means a person in the business of becoming, either directly or through an agent, a surety on a bond for compensation.

~~(10)~~(11) Uncompensated Surety

"Uncompensated surety" means an accommodation surety who does not charge or receive compensation for acting as a surety for the defendant.

. . .

(f) Consideration of Factors

(1) Recommendation of Pretrial Release Services Program

In determining whether a defendant should be released and the conditions of release, the judicial officer shall give consideration to the recommendation of any pretrial release services program that has made a risk assessment of the defendant in accordance with a validated ~~risk assessment tool~~ pretrial risk scoring instrument and is willing to provide an acceptable level of supervision over the defendant during the period of release if so directed by the judicial officer.

Cross reference: For validation requirements for pretrial risk scoring instruments, see Code, Criminal Procedure, § 5-103 (b).

(2) Other Factors

In addition to any recommendation made in accordance with subsection (f)(1) of this Rule, the judicial officer shall consider the following factors:

(A) the nature and circumstances of the offense charged, the nature of the evidence against the defendant, and the potential sentence upon conviction;

(B) the defendant's prior record of appearance at court proceedings or flight to avoid prosecution or failure to appear at court proceedings;

(C) the defendant's family ties, employment status and history, financial resources, reputation, character and mental condition, length of residence in the community, and length of residence in this State;

(D) any request made under Code, Criminal Procedure Article, § 5-201 (a) for reasonable protections for the safety of an alleged victim;

(E) any recommendation of an agency that conducts pretrial release investigations;

(F) any information presented by the State's Attorney and any recommendation of the State's Attorney;

(G) any information presented by the defendant or defendant's attorney;

(H) the danger of the defendant to an alleged victim, another person, or the community;

(I) the danger of the defendant to himself or herself; and

(J) any other factor bearing on the risk of a willful failure to appear and the safety of each alleged victim, another person, or the community, including all prior convictions and any prior adjudications of delinquency that occurred within three years of the date the defendant is charged as an adult.

. . .

Rule 4-216.1 was accompanied by the following Reporter's note.

Chapter 41, 2020 Laws of Maryland (HB 49), effective July 1, 2021, defines a "pretrial risk scoring instrument" that may be used to assist the court in determining the eligibility of a defendant for pretrial release. The statute also requires that any such tool used by a jurisdiction must have an independent validation study conducted at least once every five years. Amendments are proposed to Rule 4-216.1 to address the language added by Chapter 41.

New subsection (a)(5) adds the definition of "pretrial risk scoring instrument." A proposed cross reference cites to Code, Criminal Procedure, § 5-103,

the source of the definition. Former subsections (a)(5), (a)(6), (a)(7), (a)(8), (a)(9), and (a)(10) are re-numbered as (a)(6), (a)(7), (a)(8), (a)(9), (a)(10), and (a)(11), respectively.

Proposed amendments to section (f) replace the term "pretrial risk assessment" with "pretrial risk scoring instrument." A proposed cross reference after section (f) addresses the validation requirements for pretrial risk scoring instruments pursuant to Code, Criminal Procedure § 5-103.

Mr. Marcus noted that the Committee had previously discussed bail reform and that localities have tried to develop their own pre-trial release service programs. The 2020 legislation was part of a five-year plan funded by the General Assembly to address pre-trial release parameters, involving sections of both the Public Safety Article and the Criminal Procedure Article of the Code.

Mr. Marcus explained that the Subcommittee reviewed the nomenclature and definitions in Rule 4-216.1 in light of a new statute that becomes effective on July 1, 2021. The changes to the Rule involve adding a definition of "pretrial risk scoring instrument" and updating certain language. Mr. Marcus indicated that amending the Rule before the statute goes into effect will not do violence to the statute or to the Rule.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Mr. Marcus presented proposed amendments to Rule 4-231 (Presence of Defendant).

MARYLAND RULES OF PROCEDURE

TITLE 4- CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-231 to update references in section (d) and to add a new section (e) pertaining to electronic proceedings in the circuit courts, as follows:

RULE 4-231. PRESENCE OF DEFENDANT

. . .

(d) Video Conferencing in District Court

In the District Court, if the Chief Judge of the District Court has approved the use of video conferencing in the county, a judicial officer may conduct an initial appearance under Rule 4-213(a) or a review of the commissioner's pretrial release determination under Rule ~~4-216.1~~ 4-216.2 with the defendant and the judicial officer at different locations, provided that:

(1) the defendant's right to counsel under Rules 4-213.1 and ~~4-216.1~~ 4-216.2 is not infringed;

(2) the video conferencing procedure and technology are approved by the Chief Judge of the District Court for use in the county; and

(3) immediately after the proceeding, all documents that are not a part of the District Court file and that would be a part of the file if the proceeding had been conducted face-to-face shall be

electronically transmitted or hand-delivered to the District Court.

(e) Electronic Proceedings in Circuit Court

A circuit court may conduct an initial appearance under Rule 4-213 (c) or a review of the District Court's release determination in accordance with the procedures set forth in Rule 2-804 **and the standards and requirements set forth in Rule 2-805,** provided that (1) the defendant's right to an attorney is not infringed, (2) **the defendant's right to a qualified interpreter under Code, Criminal Procedure Article, § 1-202 is not infringed,** and (**3**) to the extent required by law and practicable, any victim or victim's representative has been notified of the proceeding and has an opportunity to observe it.

Committee note: Except when specifically covered by this Rule, the matter of presence of the defendant during any stage of the proceedings is left to case law and the Rule is not intended to exhaust all situations.

Source: Sections (a), (b), and (c) of this Rule are derived from former Rule 724 and M.D.R. 724. ~~Section~~ Sections (d) and (e) ~~is~~ are new.

Rule 4-231 was accompanied by the following Reporter's note.

Proposed amendments to Rule 4-231 add a new section (e) pertaining to certain electronic proceedings in the circuit courts. In addition, in section (d), internal references to Rule 4-216.1 are corrected to refer to Rule 4-216.2.

Mr. Marcus advised that proposed amendments to Rule 4-231 are driven by technological advances and recently by the spread of Covid-19. The Rule concerns the presence of a defendant and the ability of judges to entertain hearings if the defendant is not physically present. Mr. Marcus explained that the

Subcommittee considered section (d), the express incorporation of permission to have defendants appear virtually by video conferencing in District Court for an initial appearance or a review of the commissioner's pretrial release determination. Proposed new section (e) permits video conferencing in circuit court in much the same way that it is currently permitted in the District Court.

Mr. Marcus said that the Subcommittee approved adding a section incorporating video conferencing in the circuit courts, but had a liberal interpretation of the exact wording for the new section. He explained that the bolded language in section (e) had not been expressly approved by the Subcommittee.

Mr. Marcus further noted that there are references to Rules 2-804 and 2-805 in Rule 4-231 (e). Title 4 concerns Rules in criminal causes. Rules 2-804 and 2-805, however, apply to civil proceedings. Mr. Marcus suggested that Rules 2-804 and 2-805, although addressing civil proceedings, contain the necessary provisions regarding procedures and requirements that would appear in any similar Rule in Title 4.

Mr. Marcus proposed amending section (e) to add the phrase "governing remote electronic participation" after the mention of the two civil Rules. The amendment would make clear that the Committee recognizes the distinction and is not borrowing too liberally from Rules that do not apply to criminal proceedings.

Mr. Marcus added that the addition of the phrase may help clarify that the references are not scrivener's errors.

The Chair clarified that Mr. Marcus suggested adding the phrase "relating to electronic participation" to section (e). Mr. Marcus confirmed the proposed language. Mr. Shellenberger moved to adopt the proposed amendment. The motion was seconded and passed by a majority vote.

The Chair noted that the bolded language in the proposed Rule also required a motion for approval. Mr. Shellenberger moved to adopt the proposed amendments. The motion was seconded and passed by a majority vote.

There being no motion to further amend or reject the proposed Rule, it was approved as amended.

Mr. Marcus presented proposed amendments to Rule 4-253 (Joint or Separate Trials).

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-253 to add a cross reference after section (c), as follows:

Rule 4-253. JOINT OR SEPARATE TRIALS

. . .

(c) Prejudicial Joinder

If it appears that any party will be prejudiced by the joinder for trial of counts, charging documents, or defendants, the court may, on its own initiative or on motion of any party, order separate trials of counts, charging documents, or defendants, or grant any other relief as justice requires.

Cross reference: See *Hemming v. State*, Md. (2020), holding that Maryland Rule 4-253 (c) does not grant a trial court the discretion to hold a bifurcated hybrid trial procedure split between two factfinders.

. . .

Rule 4-253 was accompanied by the following Reporter's note.

On June 26, 2020, the Court of Appeals issued a decision in *Hemming v. State*, __ Md. __ (2020), addressing a trial court's denial of a defendant's request to hold a hybrid judge/jury trial. The Court determined that Rule 4-253 (c) does not grant a trial court the discretion to bifurcate charges in a single trial split between two factfinders.

Consistent with the holding in *Hemming*, a proposed amendment to Rule 4-253 adds a cross reference to the recent decision after section (c), including a short description of the relevant holding.

Mr. Marcus indicated that the proposed amendment to Rule 4-253 relates to *Hemming v. State*, a recent decision of the Court of Appeals. In circumstances where individuals are disqualified from possessing handguns because of prior convictions, the prospect of a fair trial is impacted if the State gets to highlight the prior conviction of the defendant. Mr. Marcus

explained that the information may damage the jury's impression of the defendant because onerous impeachment evidence is introduced as an element of the crime.

Mr. Marcus added that the State has grappled with this issue for years. He pointed out that the Chair previously saw this issue in *Galloway v. State*, a Court of Appeals case from 2002. In a footnote of *Galloway*, the study of a bifurcated trial procedure was commended to the Rules Committee. As noted in *Hemming*, the Committee studied the matter, but declined to recommend a Rule change at that time.

Mr. Marcus explained that a fiction existed where the jury would not be told of the felony and the judge would essentially decide whether the person was a felon and whether he or she was in possession of a firearm. In *Hemming*, there was an attempt to bifurcate the issues and to have separate triers of fact. Mr. Marcus noted that the potential for inconsistent verdicts was discussed. The Court determined that a jury may decide the issue of whether the individual was a felon in possession after asking the jury to determine whether the person was in possession, without being told that the individual was previously convicted of a crime. Mr. Marcus concluded that the Chair anticipated this issue back in 2002, and the recommendation of the Subcommittee is to add a cross reference citing to the new case.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Mr. Marcus presented proposed amendments to Rule 4-351 (Commitment Record).

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 300 – TRIAL AND SENTENCING

AMEND Rule 4-351, as follows:

RULE 4-351. COMMITMENT RECORD

. . .

(b) Effect of Error

An omission or error in the commitment record or other failure to comply with this Rule does not invalidate imprisonment after conviction. The commitment record may be corrected at any time upon motion.

Cross-reference: See *Bratt v. State*, Md. (2020) for a discussion of the Court's power to correct the commitment record after sentencing.

. . .

Rule 4-351 was accompanied by the following Reporter's note.

Proposed amendments to Rule 4-351 clarify that the trial court may correct a commitment record on motion after sentencing. In *Bratt v. State*, __ Md. __

> (2020), the Court of Appeals held that Rule 4-345 was not the appropriate vehicle to correct a record to reflect time served which was not noted at the time the defendant was sentenced. Rule 4-351 does not expressly authorize such a correction, but the Court noted that motions are currently being filed to address similar errors which do not impact the substance of the sentence.

Mr. Marcus said that the proposed amendment to Rule 4-351 is based upon *Bratt v. State*, another recent decision of the Court of Appeals. *Bratt* involved a defendant serving multiple life sentences. The defendant argued that his commitment record did not reflect approximately one hundred days as credit toward his multiple life sentences. Mr. Marcus added that the case concerned the method by which an inmate or defendant may challenge a commitment record. The decision clarified that attempts to correct a commitment record do not involve the court's revisory power or the power to correct an illegal sentence. The change is considered more ministerial.

Ms. Bernhardt asked why the correction to the commitment record must be done by motion. She added that case law and the civil rules permit correction of ministerial errors by motion or on the court's own initiative.

The Chair questioned whether changes to commitment records would always result from an undisputed clerical error. He further noted that the case concerns a commitment record, not necessarily a court record. It may be difficult to determine

what errors are purely clerical, who made the error, and whether any person should weigh in on the change.

Ms. Bernhardt suggested a carveout for correcting errors on the court's own initiative. She explained that she is not suggesting that substantive changes to a sentence be made on the Court's own initiative. The issue of correcting a purported clerical error may also arise in civil cases, and Ms. Bernhardt has been involved in disputes about whether a change by the court was clerical. However, she does not want to see a clerical error unchanged because no motion was filed.

Mr. Shellenberger commented that the Subcommittee required a motion to ensure that the State or other party has an opportunity to respond to the proposed change. He added that parties may dispute whether there is a right to time served. A motion ensures that all parties can be involved.

Ms. Bernhardt inquired whether the court needs to invite a party to file a motion if the court finds an error. Judge Bryant responded that having the option to correct the error without a motion may be best because requests to correct a commitment record may also come from the jail or the Department of Public Safety. If the issue is brought to the court's attention, the court will notify the parties of the proposed change and provide an opportunity to respond. Mr. Shellenberger expressed agreement with Judge Bryant.

Ms. Bernhardt suggested that a judge can correct a commitment record on its own initiative after notice to the parties and an opportunity for the parties to respond. Judge Bryant noted that such notice and opportunity to respond currently occur as a matter of practice.

The Chair asked whether the court can increase a sentence if it determines on its own initiative that an error occurred. Judge Bryant responded that notice to the parties is needed before the correction is done. The Chair asked the Committee if a correction of a commitment record could therefore be completed on motion or on the court's own initiative, with prior notice to the parties. Judge Bryant and Mr. Shellenberger expressed agreement.

Mr. Marcus expressed agreement, but noted that the proposed amendment's current language was derived directly from *Bratt*. He further advised that the new proposed language expands on the holding of *Bratt*, but does not appear inconsistent with it because the Court has the inherent authority to correct errors that are ministerial in nature.

The Chair clarified that the suggestion is to add language to the Rule noting that a correction may be made on the court's own initiative with prior notice to the parties and an opportunity to object. By consensus, the Committee approved the Rule as amended to include the additional language.

Mr. Marcus presented proposed amendments to Rule 4-601.1 (Application for Law Enforcement Court Order).

MARYLAND RULES OF PROCEDURE

TITLE 4- CRIMINAL CAUSES

CHAPTER 600 – CRIMINAL INVESTIGATIONS AND MISCELLANEOUS PROVISIONS

AMEND Rule 4-601.1 to retitle the Rule, to amend language in section (a), to delete references to Code, Courts Article § 10—4B-03 in sections (a) and (c), to edit the heading of section (c), and to add new section (d) clarifying that the Rule does not apply to applications for orders under Code, Courts and Judicial Proceedings, § 10-408, as follows:

RULE 4-601.1. ~~PEN REGISTERS AND TRAP AND TRACE DEVICES~~ APPLICATION FOR LAW ENFORCEMENT COURT ORDER

(a) Application for Order

~~Application~~ Subject to section (d) of this Rule, an application for a court order ~~under Code, Courts Article § 10-4B-03~~ authorized by law to be presented *ex parte* by a law enforcement officer to a judge may be ~~made either~~ presented in person or by transmission of the application to the judge by secure and reliable electronic mail that permits the judge to print the complete text of the documents. If the documents are transmitted electronically, the application and proposed order shall be sent in an electronic text format approved by the State Court Administrator, and the judge shall retain a copy of the application.

(b) Signature on Application

The signature required on the application may be hand-signed or signed electronically.

(c) Order ~~Authorizing Installation and Use~~

A court order issued pursuant to ~~Code, Courts Article, § 10-4B-04,~~ this Rule may be hand-signed or signed electronically by the issuing judge and may be transmitted to the applicant by secure and reliable electronic mail that permits the applicant to print the complete text of the order and the signature of the judge.

(d) Wiretap Applications

This Rule does not apply to an application for an order authorizing the interception of a wire, oral, or electronic communication under Code, Courts Article, § 10-408.

Source: This Rule is new.

Rule 4-601.1 was accompanied by the following Reporter's note.

The Rules Committee received communication from the Honorable Norman Stone concerning Rule 4-601.1, which concerns applications for pen registers and trap and trace devices presented in person or by electronic transmission to a judge. Judge Stone inquired whether the Committee would consider broadening the Rule to address the electronic review of all orders that law enforcement officers traditionally present in chambers, excluding requests for wiretaps.

Proposed amendments to Rule 4-601.1 clarify that applications for court orders authorized by law, not only applications for pen registers and trap and trace devices, may be presented in person or transmitted electronically to a judge, excluding applications for orders pursuant to Code, Courts and Judicial Proceedings, § 10-408.

The current title of the Rule is amended from "Pen Registers and Trap and Trace Devices" to "Application for Law Enforcement Court Order" to reflect the Rule's expanded applicability. Section (a) is modified to delete a reference to Code, Courts

Article § 10-4B-03 and to indicate that, subject to section (d), the Rule encompasses applications for court orders authorized by law to be presented *ex parte* by a law enforcement officer to a judge. Section (c) is renamed and amended to remove a reference to Code, Courts Article § 10-4B-03. New section (d) is proposed, clarifying that the Rule does not apply to an application for an order authorizing the interception of a wire, oral, or electronic communication under Code, Courts and Judicial Proceedings, § 10-408.

Mr. Marcus commented that the proposed amendments to Rule 4-601.1 are the result of Judge Norman Stone's suggestions to expand the scope of the Rule. The Chair pointed out that there are additional types of law enforcement orders not referenced by current Rule 4-601.1 that can be presented to a judge *ex parte*. The Reporter added that a proposed amendment to the title of the Rule demonstrates its expanded scope and that Judge Stone suggested an exclusion for wiretaps. The Chair noted that Judge Stone provided examples of orders that may be issued *ex parte*, including orders for electronic device location information, tax information, financial records, and cell phone records. The Reporter commented that the Subcommittee chose broad language that covers the provided examples and any other types of orders that may arise, with the exception of wiretap orders.

The Chair highlighted that the amendments allow for electronic application and issuance of more types of orders in the same manner as search warrants. Mr. Shellenberger noted

that the addition of a section concerning wiretaps makes clear that, although other applications may be electronic, a wiretap application is excluded from the Rule.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Agenda Item 4. Consideration of proposed Rules changes pertaining to shielding certain information.

The Chair presented proposed amendments to Rule 16-915 (Case Records – Required Denial of Inspection – Specific Information) for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISON 2. LIMITATIONS ON ACCESS

AMEND Rule 16-915 to indicate that the State may request shielding of certain information, to add a section addressing shielding of information for witnesses, and to re-letter subsequent sections, as follows:

RULE 16-915. CASE RECORDS – REQUIRED DENIAL OF INSPECTION – SPECIFIC INFORMATION

Except as otherwise provided by law, the Rules in this Chapter, or court order, a custodian shall deny

inspection of a case record or part of a case record that would reveal:

. . .

(c) The address, telephone number, and e-mail address of a victim or victim's representative in a criminal action, juvenile delinquency action, or an action under Code, Family Law Article, Title 4, Subtitle 5, who has requested, or the State has requested, that such information be shielded. Such a request may be made at any time, including in a victim notification request form filed with the clerk or a request or petition filed under Rule 16-934.

(d) The address, telephone number, and e-mail address of a witness in a criminal or juvenile delinquency action, who has requested, or the State has requested, that such information be shielded. Such a request may be made at any time, including a request or petition filed under Rule 16-934.

~~(d)~~ (e) Any part of the Social Security or federal tax identification number of an individual.

~~(e)~~ (f) A trade secret, confidential commercial information, confidential financial information, or confidential geological or geophysical information.

~~(f)~~ (g) Information about a person who has received a copy of a case record containing information prohibited by Rule 1-322.1.

~~(g)~~ (h) The address, telephone number, and e-mail address of a payee contained in a Consent by the payee filed pursuant to Rule 15-1302 (c)(1)(F).

Cross reference: See Rule 16-934 (h) concerning information shielded upon a request authorized by Code, Courts Article, Title 3, Subtitle 15 (peace orders) or Code, Family Law Article, Title 4, Subtitle 5 (domestic violence) and in criminal actions. For obligations of a filer of a submission containing restricted information, see Rules 16-916 and 20-201.1.

Source: This Rule is derived from former Rule 16-908 (2019).

Rule 16-915 was accompanied by the following Reporter's note.

> On October 1, 2020, Chapter 539, 2020 Laws of Maryland (SB 213) became effective. The new legislation adds to Code, Criminal Procedure Article, § 11-205 by noting that, upon request, the address or telephone number of a victim, victim's representative, or witness to a domestically related crime may be withheld before the trial or an adjudicatory hearing, unless a judge finds good cause to release the information. The previous version of § 11-205 referred only to cases involving felonies or delinquent acts that would be felonies if committed by an adult.
>
> The revisions to § 11-205 prompted consideration of Code, Criminal Procedure Article, § 11-301 and review of the access Rules regarding withholding the telephone number and address of certain persons. Code, Criminal Procedure Article, § 11-301 also addresses withholding the address or phone number of a victim or witness during a criminal trial or a juvenile delinquency adjudicatory hearing if such shielding is requested by the State, the victim, or the witness. Rules 16-915 and 16-934 reference shielding the contact information for a victim, a victim's representative, or a witness.
>
> Rule 16-915 concerns the denial of inspection of specific information in a case record. Proposed amendments to Rule 16-915 aim to make the Rule's language consistent with the withholding of information permitted by Code, Criminal Procedure Article, § 11-205 and § 11-301.
>
> In section (c), the proposed amendment clarifies that the State, not just the victim or the victim's representative, may request that the address, telephone number, and e-mail address of a victim or victim's representative in a criminal action, juvenile delinquency action, or an action under Code, Family Law Article, Title 4, Subtitle 5, be shielded.

Proposed new section (d) provides for the potential shielding of witnesses' information as permitted by the Criminal Procedure Article.

Current sections (d), (e), (f), and (g) are re-lettered as (e), (f), (g), and (h), respectively.

The Chair stated that two changes to Rule 16-915 are proposed to implement Chapter 539, 2020 Laws of Maryland (SB 213), enacted by the General Assembly. The Reporter's note sets forth the background. Proposed amendments to section (c), shielding contact information regarding victims, would also require shielding when requested by a State's Attorney. The Chair explained that section (d) addresses similar shielding of contact information for witnesses in criminal and delinquency cases. The language in section (d) also provides that shielding may occur at the request of the State.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

The Chair presented proposed amendments for Rule 10-108 (Orders), Rule 15-1302 (Petition for Approval), and Rule 16-934 (Case Records – Court Order Denying or Permitting Inspection Not Otherwise Authorized by Rule) for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 10-108 to conform a Committee note after subsection (a)(2) to amendments to Rule 16-915, as follows:

Rule 10-108. ORDERS

(a) Order Appointing Guardian

. . .

(2) Confidential Information

Information in the order or in papers filed by the guardian that is subject to being shielded pursuant to the Rules in Title 16, Chapter 900 shall remain confidential, but, in its order, the court may permit the guardian to disclose that information when necessary to the administration of the guardianship, subject to a requirement that the information not be further disclosed without the consent of the guardian or the court.

Committee note: Disclosure of identifying information to financial institutions and health care providers, for example, may be necessary to further the purposes of the guardianship.

Cross reference: See Rule 16-914 (e) and (i) and Rule 16-915 ~~(d)~~ (e).

. . .

Rule 10-108 was accompanied by the following Reporter's note.

An amendment to the cross reference after subsection (a)(2) is proposed to conform with the re-lettering of sections in Rule 16-915.

AMEND Rule 15-1302 to conform a cross reference after subsection (c)(1)(F) to amendments to Rule 16-915, as follows:

Rule 15-1302. PETITION FOR APPROVAL

. . .

(c) Contents of Petition

In addition to any other necessary averments, the petition shall:

(1) subject to section (d) of this Rule, include as exhibits:

(A) a copy of the structured settlement agreement;

(B) a copy of any order of a court or other governmental authority approving the structured settlement;

(C) a copy of each annuity contract that provides for payments under the structured settlement agreement or, if any such annuity contract is not available, a copy of a document from the annuity issuer or obligor evidencing the payments payable under the annuity policy;

(D) a copy of the transfer agreement;

(E) a copy of any disclosure statement provided to the payee by the transferee;

(F) a written Consent by the payee substantially in the form specified in Rule 15-1303;

Cross reference: For shielding requirements applicable to identifying information contained in the payee's Consent, see Rule 16-915 ~~(f)~~ (h).

(G) an affidavit by the independent professional advisor selected by the payee, in conformance with Rule 15-1304;

(H) a copy of any complaint that was pending when the structured settlement was established; and

(I) proof of the petitioner's current registration with the Office of the Attorney General as a structured settlement transferee or a copy of a pending application for registration as specified in Code, Courts Article, § 5-1107, if the Office of the Attorney General has not acted within the time specified in Code, Courts Article, Title 5, Subtitle 11.

. . .

Rule 15-1302 was accompanied by the following Reporter's note.

An amendment to the cross reference after subsection (c)(1)(F) is proposed to correct a reference to Rule 16-915 and to account for the re-lettering of sections in Rule 16-915.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISON 4. RESOLUTION OF DISPUTES

AMEND Rule 16-934 to include juvenile delinquency proceedings in section (h), as follows:

RULE 16-934. CASE RECORDS – COURT ORDER DENYING OR PERMITTING INSPECTION NOT OTHERWISE AUTHORIZED BY RULE

. . .

(h) Request to Shield Certain Information

(1) This subsection applies to a request, filed by an individual entitled to make it, (A) to shield information in a case record that is subject to shielding under Code, Courts Article, Title 3, Subtitle 15 (peace orders) or Code, Family Law Article, Title 4, Subtitle 5 (domestic violence) or (B) in a criminal or juvenile delinquency action, to shield the address or telephone number of a victim, victim's representative or witness.

(2) The request shall be in writing and filed with the person having custody of the record.

(3) If the request is granted, the custodian shall deny inspection of the shielded information. The shield shall remain in effect until terminated or modified by order of court. Any person aggrieved by the custodian's decision may file a petition under section (b) of this Rule.

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

Source: This Rule is derived from former Rule 16-912 (2019).

Rule 16-934 was accompanied by the following Reporter's note.

As noted in the Reporter's note to Rule 16-915, Chapter 539, 2020 Laws of Maryland (SB 213) became effective on October 1, 2020. The new legislation prompted review of the Criminal Procedure Article and

the access Rules regarding the withholding of the telephone number and address of a victim, victim's representative or witness.

Rule 16-934 addresses the shielding of information upon request. A proposed amendment to section (h) adds that requests to shield the address or telephone number of a victim, victim's representative or witness may be filed in a juvenile delinquency adjudicatory hearing, as provided for in the Criminal Procedure Article.

The Chair explained that amendments to Rules 10-108, 15-1302, and 16-934 are conforming amendments in light of the proposed changes to Rule 16-915.

There being no motion to amend or reject the proposed Rules, they were approved as presented.

Agenda Item 5. Consideration of proposed Rules changes pertaining to attorney numbers.

The Chair presented proposed amendments to Rule 19-217 (Special Admission of Out-of-State-Attorneys Pro Hac Vice), Form 19-A.1 (Motion for Special Admission of Out-of-State Attorney under Rule 19-217), Form 19-A.2 (Order), Rule 1-311 (Signing of Pleadings and Other Papers), and Rule 20-107 (MDEC Signatures) for consideration.

TITLE 19 – ATTORNEYS

CHAPTER 200 – ADMISSION TO THE BAR

AMEND Rule 19-217 by requiring certain information be included in a motion for special admission, by requiring the attorney to be admitted to disclose certain previous special admissions and unique identifying numbers provided by Judiciary units, and by requiring a record of attorneys granted or denied special admission be maintained in the Attorney Information System, as follows:

RULE 19-217. SPECIAL ADMISSION OF OUT-OF-STATE ATTORNEYS PRO HAC VICE

(a) Motion for Special Admission

(1) Generally

A member of the Bar of this State who (A) is an attorney of record in an action pending (i) in any court of this State, or (ii) before an administrative agency of this State or any of its political subdivisions, or (B) is representing a client in an arbitration taking place in this State that involves the application of Maryland law, may move that an attorney who is a member in good standing of the Bar of another state be admitted to practice in this State for the limited purpose of appearing and participating in the action as co-counsel with the movant.

Committee note: "Special admission" is a term equivalent to "admission pro hac vice." It should not be confused with "special authorization" permitted by Rules 19-218 and 19-219.

(2) Where Filed

(A) If the action is pending in a court, the motion shall be filed in that court.

(B) If the action is pending before an administrative agency, the motion shall be filed in the circuit court for the county in which the principal office of the agency is located or in any other circuit court in which an action for judicial review of the decision of the agency may be filed.

(C) If the matter is pending before an arbitrator or arbitration panel, the motion shall be filed in the circuit court for the county in which the arbitration hearing is to be held or in any other circuit court in which an action to review an arbitral award entered by the arbitrator or panel may be filed.

(3) Other Requirements

The motion shall be in writing and shall include the following:

(A) the full name, address, telephone number, and email address of the attorney to be specially admitted; and

(B) the movant's certification that copies of the motion have been served on the agency or the arbitrator or arbitration panel, and all parties of record.

[(C) The motion shall be substantially in the form provided in Appendix 19-A, Form A.1.]

Cross reference: See Appendix 19-A following Title 19, Chapter 200 of these Rules for Forms 19-A.1 and 19-A.2, providing the form of a motion and order for the Special Admission of an out-of-state attorney.

(b) Certification by Out-of-State Attorney

The attorney whose special admission is moved shall certify in writing:

(1) the number of times the attorney has been specially admitted during the ~~twelve months~~ five years immediately preceding the filing of the motion and the courts that granted admission, and

(2) each unique identifying number previously issued to the attorney by the Attorney Information System, Client Protection Fund, or Maryland Judicial Information Systems (JIS) for use with Maryland Electronic Courts (MDEC).

The certification [shall be substantially in the form provided in Appendix 19-A, Form A.1] and may be filed as a separate paper or may be included in the motion under an appropriate heading.

(c) Order

The court by order may admit specially or deny the special admission of an attorney. In either case, the clerk shall forward a copy of the order to the State Court Administrator, who shall maintain a ~~docket~~ record of all attorneys granted or denied special admission in the Attorney Information System. When the order grants or denies the special admission of an attorney in an action pending before an administrative agency, the clerk also shall forward a copy of the order to the agency.

(d) Limitations on Out-of-State Attorney's Practice

An attorney specially admitted pursuant to this Rule may act only as co-counsel for a party represented by an attorney of record in the action who is admitted to practice in this State. The specially admitted attorney may participate in the court or administrative proceedings only when accompanied by the Maryland attorney, unless the latter's presence is waived by the judge or administrative hearing officer presiding over the action. An attorney specially admitted is subject to the Maryland Attorneys' Rules of Professional Conduct during the pendency of the action or arbitration.

Cross reference: See Code, Business Occupations and Professions Article, § 10-215.

Committee note: This Rule is not intended to permit extensive or systematic practice by attorneys not admitted in Maryland. Because specialized expertise or other special circumstances may be important in a particular case, however, the Committee has not

recommended a numerical limitation on the number of special admissions to be allowed any out-of-state attorney.

Source: This Rule is derived from former Rule 19-214 (2018).

Rule 19-217 was accompanied by the following Reporter's note.

Proposed amendments to Rule 19-217 expand on the required information that must be provided about an attorney seeking special admission. New processes within the Judiciary require attorneys to have an attorney number assigned through the Attorney Information System prior to obtaining an MDEC account.

The attorney number for admitted attorneys is now assigned on admission as a unique identifier by the Court of Appeals through the AIS rather than the Client Protection Fund. Judicial Information Systems will now require specially admitted attorneys who do not have an AIS number yet to obtain one, and it remains their unique identifier for future admissions in Maryland. Attorneys previously admitted for limited purposes may have been assigned an alphanumeric identifier for using MDEC prior to the creation of AIS.

Proposed amendments to subsection (a)(3) outline the contact information the moving attorney must provide for the out-of-state attorney. New subsection (a)(3)(C) provides the option to require the motion for special admission be in the form provided in the appendix.

Proposed amendments to section (b) require the out-of-state attorney seeking admission to report previous admissions in the last five years, previously twelve months, and the Maryland court where they were admitted. New subsection (b)(2) call for the out-of-state attorney to provide unique identifying numbers previously assigned by the Maryland Judiciary through AIS, CPF, or JIS.

Section (c) now requires the State Court Administrator to maintain a record of all attorneys granted or denied special admission in AIS.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 200 – ADMISSION TO THE BAR

AMEND Form 19-A.1. by removing the address line from the existing form, by requiring that the moving attorney provide contact information for an out-of-state attorney seeking special admission, and by requiring the disclosure of certain previous special admissions and previously issued unique identifying numbers assigned to an out-of-state attorney, as follows:

FORM 19-A.1. MOTION FOR SPECIAL ADMISSION OF OUT-OF-STATE ATTORNEY UNDER RULE 19-217

(Caption)

MOTION FOR SPECIAL ADMISSION OF OUT-OF-STATE ATTORNEY

UNDER RULE 19-217

I, ..., attorney of record in this case, move that the court admit, ... (name) ~~of~~

~~..... (address)~~, an out-of-state attorney who is a member in good standing of the Bar of ....., for the limited purpose of appearing and participating in this case as co-counsel with me.

Out-of-State Attorney Information:

.....
(Full Name)

.....
(Address)

.....
(Telephone)

.....
(Email Address)

Unless the court has granted a motion for reduction or waiver, the $100.00 fee required by Code, Courts and Judicial Proceedings Article, § 7-202 (e) is included with this motion.

I [ ] do [ ] do not request that my presence be waived under Rule 19-217 (d).

.....
Signature of Moving Attorney

.....
Name

.....
Address

.....
Telephone

.....
Email Address

Attorney for .....

CERTIFICATE AS TO SPECIAL ADMISSIONS

I, ..., certify on this ..... day of ....., ..., that during the preceding ~~twelve months~~ five years, I have been specially admitted in the State of Maryland ..... times by the following courts:~~.~~

Date	Court
.....	.....
.....	.....
.....	.....

I have previously been issued the following unique identifying numbers by the Maryland Judiciary:

Attorney Information System .....

Client Protection Fund .....

Maryland Electronic Courts (MDEC) .....

.....
Signature of Out-of-State Attorney

.....
Name

.....
Address

.....
Telephone

.....
Email Address

(Certificate of Service)

Source: This Form is derived from former Form RGAB-14/M (2016).

Form 19-A.1 was accompanied by the following Reporter's note.

The proposed amendments to Form 19-A.1. conform it to Rule 19-217, which requires additional information about an attorney seeking special admission.

The amended motion form requires contact information for the out-of-state attorney seeking special admission. The amended certification by the out-of-state attorney requires disclosure of admissions in Maryland in the last five years and previously issued unique identifying numbers.

MARYLAND RULES OF PROCEDURE
TITLE 19 – ATTORNEYS
CHAPTER 200 – ADMISSION TO THE BAR

AMEND Form 19-A.2. by adding a reference to certain unique identifying numbers assigned to out-of-state attorneys and by requiring a judge's name to be typed, as follows:

FORM 19-A.2. ORDER

ORDER

It is this ..... day of ....., ..., by the ..... Court for ....., Maryland, ORDERED that

[ ] .....
Name

.....
Address

.....
Telephone

.....
Email Address

.....
Attorney Number/
Client Protection Fund ID

.....
Maryland Electronic Courts (MDEC) ID

is admitted specially for the limited purpose of appearing and participating in this case as co-counsel for ..... The presence of the Maryland attorney [ ] is [ ] is not waived.

[ ] The Special Admission of

.....
Name

.....
Address

.....
Telephone

.....
Email Address

.....
Attorney Number/
Client Protection Fund ID

.....
Maryland Electronic Courts (MDEC) ID

is denied for the following reasons: ..... and the Clerk shall return any fee paid for the Special Admission.

It is further ORDERED, that the Clerk forward a true copy of the Motion and of this Order to the State Court Administrator.

.....
Name of Judge (Typed)

.....
(Signature) Judge

Source: This Form is derived from former Form RGAB-14/O (2016).

Form 19-A.2 was accompanied by the following Reporter's note.

Proposed amendments to Form 19-A.2. conform it to Rule 19-217 by including reference to previously issued unique identifying numbers provided by the Judiciary or its units to an out-of-state attorney. The judge's name is also required to be typed on the

order so that the State Court Administrator's Office can record the information.

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 300 – GENERAL PROVISIONS

AMEND Rule 1-311 (a) by altering a reference to the identifying number attorney-filers must include in a signature, 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~~ identifying Attorney Number registered with the Attorney Information System.

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).

. . .

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

The proposed amendment to Rule 1-311 (a) updates the reference to the identifying number an attorney must include in his or her electronic signature. The unique identifying number is now assigned by the Court of Appeals through the Attorney Information System, not the Client Protection Fund. The CPF number assigned to previously admitted attorneys is now referred to as their Attorney Number.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-107 by altering reference to the identifying number attorney-filers must include in a signature, as follows:

RULE 20-107. MDEC SIGNATURES

(a) Signature by Filer; Additional Information Below Signature

Subject to sections (b), (c), and (d) of this Rule, when a filer is required to sign a submission, the submission shall:

(1) include the filer's signature on the submission, and

(2) provide the following information below the filer's signature: the filer's address, e-mail address, and telephone number and, if the filer is an attorney, the ~~attorney's Client Protection Fund ID number~~ attorney's identifying Attorney Number registered with the Attorney Information System. That information shall not be regarded as part of the signature. A signature on an electronically filed submission constitutes and has the same force and effect as a signature required under Rule 1-311.

. . .

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

> The proposed amendment to Rule 20-107 updates the reference to the identifying number an attorney must include in his or her electronic signature. The unique identifying number is now assigned by the Court of Appeals through the Attorney Information System, not the Client Protection Fund. The CPF number assigned to previously admitted attorneys is now referred to as their Attorney Number.

The Chair explained that these amendments were requested by the Administrative Office of the Courts ("AOC"), in particular the Access to Justice Department. He explained that an attorney identification number assigned by the Attorney Information System ("AIS") previously was known as a Client Protection Fund ("CPF") number. The number is the same as the individual's CPF number, but new persons receive numbers through AIS.

Ms. Ortiz clarified that different nomenclature has been used for an attorney number in the past. She added that an out-of-state attorney admitted to practice in Maryland may have been assigned a CPF number or be familiar with the term, or the attorney may have been given an MDEC number. The proposed amendments aim to ensure that each admitted attorney has a unique identification number and that all attorneys are being admitted through the established process. Ms. Ortiz explained that a new business process ensures that any out-of-state

attorney will be confirmed as properly admitted by the court and entered into AIS by the office of the State Court Administrator before being granted access to MDEC. She pointed out that, in the past, some out-of-state attorneys received duplicate numbers or were admitted under different procedures. The proposed amendments will ensure that the State Court Administrator's office has complete information to avoid providing duplicate numbers.

There being no motion to amend or reject the proposed Rules and Forms, they were approved as presented.

Agenda Item 6. Consideration of proposed amendments to Rule 20-109 (Access to Electronic Records in MDEC Action)

The Chair presented proposed amendments to Rule 20-109 (Access to Electronic Records in MDEC Action).

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-109 by adding new section (e) permitting certain access to electronic records by court-designated alternative dispute resolution practitioners and by re-lettering subsequent sections, as follows:

Rule 20-109. ACCESS TO ELECTRONIC RECORDS IN MDEC ACTIONS

(a) Generally

Except as otherwise provided in this Rule, access to judicial records in an MDEC action is governed by the Rules in Title 16, Chapter 900.

(b) Parties and Attorneys of Record

Subject to any protective order issued by the court or other law, parties to and attorneys of record in an MDEC action shall have full access, including remote access, to all case records in that action.

(c) Judges and Judicial Appointees

Judges and judicial appointees shall have full access, including remote access, to judicial records to the extent that such access is necessary to the performance of their official duties. The Chief Judge of the Court of Appeals, by Administrative Order, may further define the scope of remote access by judges and judicial appointees.

(d) Clerks and Judicial Personnel

Clerks and judicial personnel shall have full access from their respective work stations to judicial records to the extent such access is necessary to the performance of their official duties. The State Court Administrator, by written directive, may further define the scope of such access by clerks and judicial personnel.

(e) Court-Designated ADR Practitioners

Subject to any protective order issued by the court or other law, a court-designated ADR practitioner in an MDEC action shall have full access, including remote access, to all case records in that action during the period of the ADR practitioner's designation in the action. In an action in the circuit court, the ADR practitioner shall file a notice of the designation with the clerk and, promptly upon completion of all services rendered pursuant to the designation, a notice that the designation is

terminated. If not terminated earlier, the designation shall end when the case is closed.

Committee note: The special access provided by section (e) may be needed to assist the ADR practitioner in rendering the services anticipated by the designation but should end when no further services are anticipated.

Cross reference: For the definition of "ADR practitioner," see Rule 17-102 (c).

~~(e)~~ (f) Public Access

(1) Access Through CaseSearch

Members of the public shall have free access to information posted on CaseSearch.

(2) Unshielded Documents

Subject to any protective order issued by the court, members of the public shall have free access to unshielded case records and unshielded parts of case records from computer terminals or kiosks that the courts make available for that purpose. Each court shall provide a reasonable number of terminals or kiosks for use by the public. The terminals or kiosks shall not permit the user to download, alter, or forward the information, but the user is entitled to a copy of or printout of a case record in accordance with Rule 16-904 (c).

Committee note: The intent of subsection ~~(e)~~ (f) (2) of this Rule is that members of the public be able to access unshielded electronic case records in any MDEC action from a computer terminal or kiosk in any courthouse of the State, regardless of where the action was filed or is pending.

~~(f)~~ (g) Department of Juvenile Services

Subject to any protective order issued by the court, a registered user authorized by the Department of Juvenile Services to act on its behalf shall have full access, including remote access, to all case records in an MDEC action to the extent the access is

(1) authorized by Code, Courts Article, § 3-8A-27 and (2) necessary to the performance of the individual's official duties on behalf of the Department.

~~(g)~~(h) Government Agencies and Officials

Nothing in this Rule precludes the Administrative Office of the Courts from providing remote electronic access to additional information contained in case records to government agencies and officials (1) who are approved for such access by the Chief Judge of the Court of Appeals, upon a recommendation by the State Court Administrator, and (2) when those agencies or officials seek such access solely in their official capacity, subject to such conditions regarding the dissemination of such information imposed by the Chief Judge.

Source: This Rule is new.

Rule 20-109 was accompanied by the following Reporter's note.

The Major Projects Committee requested amendments to Rule 20-109 to provide MDEC access, including remote access, to a court-designated mediator or other ADR practitioner in an action.

Subject to any protective order or other law, the first sentence of proposed new section (e) grants a court-designated ADR practitioner full access, including remote access, to case records in the action in which the ADR practitioner has been designated during the period of the ADR practitioner's designation in the action. The second sentence of section (e) requires ADR practitioners in circuit court cases to file a notice of designation with the clerk and to file a notice after services are completed to alert the clerk that the designation is terminated. In the District Court, an ADR practitioner may be assigned to and complete services for multiple cases in one day, making the filing of designations in each case impracticable. Accordingly, the requirement to file a designation is limited to circuit court. The last sentence of section (e) clarifies that, unless terminated earlier, a

designation is terminated when the subject case is closed.

Following section (e) is a proposed Committee note and cross reference. The Committee note explains that the special access provided to ADR practitioners should end when no further services by the practitioner are anticipated in the case. The cross reference is to the definition of "ADR practitioner" set forth in Rule 17-102 (c).

Current sections (e), (f), and (g) are re-lettered as (f), (g), and (h), respectively.

The Chair explained that amendments to this Rule were initially requested by AOC. The request involved granting remote access to the case file to court-appointed mediators in MDEC cases. The Chair added that the Subcommittee extended this proposal to include remote access for other kinds of Alternative Dispute Resolution ("ADR") practitioners. He noted that Title 17 also provides for neutral case evaluators, neutral experts, neutral factfinders, and nonbinding arbitrators. If mediators are granted remote access to MDEC case files, other ADR practitioners should be permitted the same access.

The Chair said that the Subcommittee discussed how ADR practitioners, in Circuit Court cases, may be involved in a case for weeks or months after appointment. The clerk needs to know when the practitioner may begin accessing the files remotely and when the practitioner's involvement in the case ends. To address this issue, the Subcommittee proposed language requiring

an ADR practitioner to file notices with the clerk when appointed and when his or her work with the case is completed. The Chair compared the access to that of the access granted to limited representation attorneys, whose appearance in the case is limited to participation in a discrete matter or judicial proceeding.

The Chair stated that the Subcommittee also considered the appointment of ADR practitioners in the District Court, which utilizes a mediation program. The Subcommittee considered requiring the filing of a notice with the clerk, but determined that District Court ADR practitioners may have multiple cases in one day. Requiring practitioners in the District Court to file two notices for each case would be impracticable. The Chair explained that the notice requirement therefore applies only to the circuit courts.

Chief Judge Morrissey noted that members of his ADR Department may have comments regarding the "full access" language included in the Rule. Ms. Denihan questioned whether the phrase "shall have full access" is meant to require that the practitioner be given full access every time he or she is designated in a case, or if full access need only be granted in cases where the practitioner believes reviewing the file would support the ADR process. The Chair responded that practitioners presumably would not seek access unless it would be useful. He

added that some discussions after the circulation of the meeting materials prompted the idea of adding language providing access to the extent necessary to the performance of the ADR practitioner's role in the action. If the access is limited, the Chair noted that either the clerk or the practitioner would have to determine when access was needed. Ms. Denihan asked if the level of access would be determined by the rights and roles provided to the practitioner by Judicial Information Systems ("JIS").

Chief Judge Morrissey observed that there are two separate issues to address. First, he questioned whether the word "shall" should be changed to "may" because not every practitioner may want or need full remote access to the case records. He reasoned that the need for access may arise on a case-by-case basis in the District Court. Second, Chief Judge Morrissey inquired as to the definition of "full access." He indicated that there may be differences between the District Court and the circuit courts, but added that some District Court cases, such as peace order mediations, may involve shielded or restricted information. Chief Judge Morrissey questioned whether granting full access provides access to otherwise shielded information that mediators do not need or should not possess. He added that perhaps mediators could receive the same access as a member of the public reviewing the file at the

courthouse. Although mediators could view the public documents at the courthouse, Chief Judge Morrissey noted that this approach may prove impracticable, as many locations lack sufficient space for the mediators to privately review the case records. Remote access would permit mediators to access documents in a conference room while conducting a mediation.

The Chair stated that the objective is to provide the benefit of remote access based on the request from the Major Projects Committee. The intent is not to go beyond a justified level of access. Chief Judge Morrissey responded that it is important for mediators to use the electronic system, but he was concerned by the phrase "full access." He requested clarification as to whether the ADR practitioners will have or need access to confidential information. Judge Price questioned whether a judge's notes or other typically inaccessible documents are considered in the phrase "full access."

Ms. Jones explained that JIS looks to implement this Rule using the MDEC portal that attorneys use to access case information and document images. She questioned whether the Rule requires granting ADR practitioners access just to public documents or access to documents with confidential or other security designations. Attorneys and litigants currently can view public and confidential documents. At a public access terminal, only public documents can be viewed. Ms. Jones

indicated that JIS is trying to determine how to configure ADR practitioners for the appropriate level of access.

The Chair commented that mediators may need access to confidential documents. The amendments to the Rule are intended to provide ADR practitioners with the same access granted to an attorney in the case, including access to confidential documents. He added that mediators may need to review financial information, health information, school records, or other non-public information. The Chair pointed out that substituting "may" for "shall" in the grammatical context of the sentence may not make a difference.

Ms. Jones explained that when using the MDEC portal to facilitate access, the clerk will need to put the ADR practitioner on the case. This explicit action authorizes the ADR practitioner to have access to images in the portal. Ms. Jones added that the ADR practitioner may be marked as inactive when his or her work is completed. She explained that there is no widespread access to all cases for these practitioners.

The Chair commented that it is unclear what the word "full" adds to the Rule in light of the word "all" in the next line. Ms. McBride agreed that it appears unnecessary.

Judge Cooper stated that she had discussed implementation of the Rule with her staff. She noted that the language currently used in the Rule to describe the access of parties and

attorneys provides for "full access." Judge Cooper stated that an ADR practitioner needs that level of access, so it is appropriate to mirror that language of section (b) in the proposed new section (e).

The Chair inquired whether Judge Cooper had a view regarding the addition of language limiting access to the extent necessary for performance of the ADR practitioner's duties. Judge Cooper objected to the language because the section for ADR practitioners should mirror the language for access of an attorney or party.

Ms. Harris expressed concerns about the term "full access." There are many different levels of access in MDEC. She noted that the term "full" may lead to the interpretation that someone should have access to other documents, such as judge's notes and draft orders, when he or she is not entitled to have such access. Ms. Harris questioned whether JIS would prefer language clarifying that ADR practitioners should be provided the same access as attorneys and parties.

Ms. Jones responded that, considering Judge Cooper's comments indicating that the proposed language mirrors the language already in the Rule for parties and attorneys, she believes ADR practitioners will be given the same access that is available to attorneys, including only public and confidential documents. ADR practitioners would not be given access to

documents with other security groups, such as the groups used for judges' notes or ADA accommodations.

Ms. Preston noted that parties must request remote access. Attorneys, in contrast, are automatically granted access. She noted that parties must affirmatively request access despite the language in the Rule providing the same access to parties and attorneys.

The Chair noted that section (b) of Rule 20-109, addressing parties and attorneys of record, does not include any limiting language permitting access only to the extent needed. Ms. Jones responded that the only significance in language concerning the necessary extent of access is in relation to limited scope attorneys who require access for a certain period of time. She commented that mediators should be given access only during the time that the ADR work occurrs, which may require additional language not found in the parties and attorneys section of the Rule. Chief Judge Morrissey noted that, by necessity, the time of access for mediators would be determined by the clerk. The ADR practitioner would be put on, and removed from, the case by the clerk.

Ms. Bernhardt pointed out that the Rule provides access to case records. Documents such as judicial notes and other work product do not fall within that definition. She explained that granting full access to case records is appropriate because

those are the records maintained by the clerk related to the case.

Judge Cooper commented that Ms. Jurrius had raised a definitional issue to the Reporter. Ms. Jurrius explained that she asked to include Rule 9-205 in the cross reference to ensure that the same access privileges apply to custody and visitation mediators. The Reporter responded that the proposed cross reference probably should be deleted, in favor of incorporating the reference to Rule 9-205 into the text of the Rule.

The Reporter indicated that after the materials for today's meeting had been circulated, she had multiple conversations regarding this Rule prior to the meeting. Several revised drafts of Rule 20-109 have been written to address the issues that various stakeholders had raised, but the drafts have not been circulated. The version of Rule 20-109 provided in the meeting materials is the Subcommittee recommendation.

The Reporter suggested, as a matter of style, deleting the cross reference and dividing section (e) into two parts. The first part would provide a definition of "ADR practitioner." She commented that moving the definition into the text of the Rule makes it very clear that a mediator designated pursuant to Rule 9-205 receives the same access as a mediator designated pursuant to the Rules in Title 17. The Reporter stated that another suggestion had been to add language limiting access to

the extent necessary to perform the ADR practitioner's duties. The Reporter questioned how JIS will program access for ADR practitioners. She noted that JIS already has programmed access to case records for attorneys and parties, so it should be possible to program the same level of access.

Ms. Lindsey questioned whether the clerks will have a responsibility to verify that an ADR practitioner is on an approved list. Ms. Jones responded that AOC and the Mediation and Conflict Resolution Office ("MACRO") are working on developing a centralized, state-wide roster of approved mediators. She added that the offices will be working on how to address the approval of applications of new mediators. The Chair noted that the remote access would apply only to mediators designated by a judge, which should alleviate concerns about whether the practitioner is on the approved list.

Ms. Jurrius added that there will be a new ADR tab created for MDEC that will dovetail with the amended Rule. Although it will be an effort to create the centralized roster, clerks will be able to locate the practitioner on the roster when the new tab is created. She explained that the centralized roster represents an attempt to consolidate the lists and to avoid practitioners receiving different numbers in different counties.

The Chair summarized the four issues concerning the proposed amendments to Rule 20-109. One issue involves making

it clear that mediators appointed pursuant to Rule 9-205 should receive access. He commented that this issue appears to be resolved by another draft of the Rule, including a definition of ADR practitioner in the text of the Rule. The second issue concerns whether "shall" should be changed to "may." The third issue involves whether "full" should be used to describe the access. Finally, the Chair noted the question of whether language limiting the ADR practitioner's remote access to the extent necessary for the performance of his or her duties should be added to the Rule.

Chief Judge Morrissey withdrew his question about changing "shall" to "may," noting that the discussion today was informative. He also withdrew his question concerning "full" access. He indicated no objections to the term if it is clear what access is being granted to the ADR practitioners.

The Chair asked about the Committee's preference regarding the addition of language limiting remote access to the extent necessary to perform the ADR practitioner's duties. Judge Nazarian noted that he had questions regarding the language, specifically who would decide the proper extent necessary. He added that the language appears to create potential conflict in a process designed to avoid conflict. Judge Cooper explained that the language was proposed because there was a lack of understanding that the mediator would have the same rights as

the parties and the attorneys. Now that the level of access is clear, it does not appear that additional language is necessary. Judge Nazarian pointed out that adding language granting access only to the extent necessary to perform duties implies that there will sometimes be less than full access. The Chair confirmed that there were no objections to keeping the "to the extent necessary" language out of the Rule.

Mr. Kramer questioned whether this exercise is worthwhile absent a case where there are real restrictions to documents, such as custody documents under seal. The Reporter responded that the main thrust of the amendment is to provide ADR practitioners with remote access to documents in the case record. Members of the public do not receive remote access and may only view docket entries remotely through CaseSearch. Mr. Kramer stated that there is a practical difference between a court-designated ADR practitioner, who would have to take the time to go to the courthouse for access, and a member of the general public. He acknowledged that remote public access is likely a broader topic than the issue currently before the Committee. The Chair added that, when implementing MDEC, the Court of Appeals declined to adopt a system like the federal PACER system that would have provided remote public access.

Ms. Lindsey asked about changes to business processes and generating notices after a mediator is added. Ms. Jones

responded that a few processes will change. She explained that the development of a new tab in the clerk's case management system will help implement this Rule change. Clerks will select the ADR practitioner from the centralized roster and the practitioner will be automatically added to the parties tab. The parties tab drives the portal access, so the ADR practitioner will maintain portal access as long as he or she remains active in the case. Ms. Jones noted that ADR practitioners will need to be explicitly added to the case and later removed. As a failsafe, JIS may remove ADR practitioners during the attorney removal job run 40 days after the case ends if the clerk fails to remove the ADR practitioner. From a technological standpoint, the attorney removal job is the last opportunity to catch ADR practitioners still marked as active.

Ms. Lindsey clarified that she is asking about sending notices and other documents when the ADR practitioners are entered in the case. Ms. Jones explained that the clerk will receive a party picker when creating notices. The ADR practitioner will appear on the party picker list and the clerk decides whether to include the practitioner for noticing.

Ms. Lindsey pointed out that the ADR practitioners are not technically parties to the case. Ms. Jones indicated that some mediators have expressed concerns about a lack of notice of case postponements and other relevant case activities. The concerns

about notice may be local issues that can be worked out with the court's mediators. Whether notice is sent to the ADR practitioner may depend on the activity and the importance of the mediator being informed of the event. Ms. Jones explained that, as a matter of course, clerks will not need to change current practices.

The Chair commented that the proposed amendment concerns access, not notice. Ms. Lindsey explained that a clerk requested clarification regarding whether clerks will be required to send copies of orders and notices to ADR practitioners while the practitioners are in the case. Ms. Jones responded that this Rule change is not intended to create that requirement. The addition of the ADR practitioner to the case simply alerts the clerk that the practitioner now is involved. The Reporter commented that, after being added to the case, the ADR practitioner can use his or her remote case access to check for postponements or review the case status, regardless of whether notices are sent.

The Chair proposed that the cross reference be deleted, and that a reference to Rule 9-205 be moved into the text of section (e) as part of a definition subsection. The Chair said that with the assent of the Committee, that change can be made by the Style Subcommittee. By consensus, the Committee approved the Rule as amended.

Agenda Item 7. Consideration of proposed amendments to Rule 20-109 (Access to Electronic Records in MDEC Action)

The Chair presented proposed amendments to Rule 16-913 (Access to Administrative Records) for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 2. LIMITATIONS ON ACCESS

AMEND Rule 16-913 by adding a new section (i) pertaining to notes, memoranda, and minutes of meetings of certain entities and by adding a Committee note after section (i), as follows:

Rule 16-913. ACCESS TO ADMINISTRATIVE RECORDS

(a) Records Pertaining to Jurors

(1) A custodian shall deny inspection of an administrative record used by a jury commissioner in the jury selection process, except (i) as otherwise ordered by a trial judge in connection with a challenge under Code, Courts Article, §§ 8-408 and 8-409; or (ii) as provided in subsections (a)(2) and (a)(3) of this Rule.

(2) Upon request, the trial judge may authorize a custodian to disclose the names and zip codes of the sworn jurors contained on a jury list after the jury has been impaneled and sworn.

Cross reference: See Rule 4-312 (d).

(3) After a source pool of qualified jurors has been emptied and re-created in accordance with Code, Courts Article, § 8-207, and after every individual selected to serve as a juror from that pool has completed the individual's service, a trial judge, upon request, shall disclose the name, zip code, age, gender, education, occupation, marital status, and spouse's occupation of each person whose name was selected from that pool and placed on a jury list, unless, in the interest of justice, the trial judge determines that this information should remain confidential in whole or in part.

(4) A jury commissioner may provide jury lists to the Health Care Alternative Dispute Resolution Office as required by that Office in carrying out its duties, subject to any regulations of that office to ensure against improper dissemination of juror data.

Cross reference: See Rule 4-312 (d).

(5) At intervals acceptable to the jury commissioner, a jury commissioner shall provide to the State Board of Elections and State Motor Vehicle Administration data about prospective, qualified, or sworn jurors needed to correct erroneous or obsolete information, such as that related to a death or change of address, subject to the Board's and Administration's adoption of regulations to ensure against improper dissemination of juror data.

(b) Personnel Records — Generally

(1) Not Open to Inspection

Except as otherwise permitted by the PIA or by this Rule, a custodian shall deny to a person, other than the person who is the subject of the record, inspection of the personnel records of an employee of the court, other judicial agency, or special judicial unit, or of an individual who has applied for employment with the court, other judicial agency, or special judicial unit.

(2) Open to Inspection

The following records or information are not subject to this exclusion and, unless sealed or otherwise shielded pursuant to the Maryland Rules or other law, shall be open to inspection:

(A) the full name of the individual;

(B) the date of the application for employment and the position for which application was made;

(C) the date employment commenced;

(D) the name, location, and telephone number of the court, other judicial agency, or special judicial unit to which the individual has been assigned;

(E) the current and previous job titles and salaries of the individual during employment by the court, other judicial agency, or special judicial unit;

(F) the name of the individual's current supervisor;

(G) the amount of monetary compensation paid to the individual by the court, other judicial agency, or special judicial unit and a description of any health, insurance, or other fringe benefit that the individual is entitled to receive from the court or judicial agency;

(H) unless disclosure is prohibited by law, other information authorized by the individual to be released; and

(I) a record that has become a case record.
Committee note: Although a judicial record that has become a case record is not subject to the exclusion under section (d) of this Rule, it may be subject to sealing or shielding under other Maryland Rules or law.

(c) Personnel Records — Retirement

Unless inspection is permitted under the PIA or the record has become a case record, a custodian shall deny inspection of a retirement record of an employee

of the court, other judicial agency, or special judicial unit.

(d) Administrative Record Prepared by or for a Judge or Other Judicial Personnel

A custodian shall deny inspection of an administrative record that is:

(1) prepared by or for a judge or other judicial personnel;

(2) either (A) purely administrative in nature but not a local rule, policy, or directive that governs the operation of the court or (B) a draft of a document intended for consideration by the author or others and not intended to be final in its existing form; and

(3) not filed with the clerk and not required to be filed with the clerk.

Cross reference: For judicial or other professional work product, see Rule 16-911 (d).

(e) Educational and Training Materials

A custodian shall deny inspection of judicial records prepared by, for, or on behalf of a unit of the Maryland Judiciary for use in the education and training of Maryland judges, magistrates, clerks, and other judicial personnel.

(f) Procurement Records

Inspection of judicial records in the form of procurement documents shall be governed exclusively by the Procurement Policy of the Judiciary approved by the Chief Judge of the Court of Appeals and posted on the Judiciary website. This Rule applies whether the procurement is funded by the federal, State, or local government.

(g) Interagency and Intra-agency Memoranda

A custodian may deny inspection of all or any part of an interagency or intra-agency letter or

memorandum that would not be available by law to a private party in litigation with the custodian or the unit in which the custodian works.

(h) Problem-Solving Court Program Records

A custodian shall deny inspection of all or any part of a judicial record maintained in connection with a participant in a problem-solving court program operating pursuant to Rule 16-207 that is not contained in a case record.

Committee note: Problem-solving court programs often provide for professionals in various fields working with a judge or other judicial official as a team to deal with participants in the program. That may result in the judge or other judicial official coming into possession of documents that identify the participant and contain sensitive information about the participant — health information, school records, drug testing, psychological evaluations. Some of that information may ultimately end up as a case record, and, if it does, public inspection will be determined by the Rules governing access to case records. To the extent the information does not become a case record but is used in private discussions among the therapy team, it will be shielded under this Rule, even though it also may be shielded under other Rules as well. Subsection (h)does not apply to judicial records regarding the creation, governance, or evaluation of problem-solving court programs that do not identify participants.

(i) Notes, Memoranda, and Minutes of Meetings of Committees, Subcommittees, or Work Groups Not Subject to Open Meetings Law

A custodian shall deny inspection of notes, memoranda, and minutes of a meeting of a judicial committee, subcommittee, or work group that is not a public body subject to the Open Meetings Law.

Committee note: There exist committees, subcommittees, or work groups that are sub-units within a larger judicial entity that constitutes a public body under the Open Meetings Law. The predominant function of those committees,

subcommittees, and work groups is to investigate issues within their jurisdiction and develop recommendations for the parent entity to consider. The committees, subcommittees, and work groups are not "public bodies" subject to the Open Meetings Law, as they do not meet the definition of that term in Code, General Provisions Article, § 3-101(h). See, in particular, § 3-101 (h)(3)(ix). They therefore are permitted to hold meetings not open to the public and are not required to keep minutes of their meetings. It is not uncommon, however, for a committee, subcommittee, or work group member or staff person to keep notes of what occurred at meetings of those committees, subcommittees, or work groups and to circulate them to their members. Those notes, whether or not designated as minutes, represent the author's perception of what was discussed or what occurred and are in the nature both of the author's work product and an intra-agency memorandum. Section (i) of this Rule clarifies that those notes or memoranda, whether or not in the form of minutes, are not required to be open to public inspection. Any recommendations or decisions of the committee, subcommittee, or work group submitted to and considered by the parent body will be reflected in the minutes of the parent body, subject to any exceptions allowed in these Rules.

Source: This Rule is derived in part from former Rule 16-905 (2019) and in part from Code, General Provisions Article, § 4-344, and in part is new. See also *Stromberg Metal Works, Inc. v. University of Maryland*, 382 Md. 151, 163 (2004).

Rule 16-913 was accompanied by the following Reporter's note.

Rule 16-913 is proposed to be amended by the addition of new section (i), together with a Committee note following section (i), to clarify that notes, memoranda, and minutes of a meeting of a judicial committee, subcommittee, or work group that is not a public body subject to the Open Meetings Law are not subject to public inspection.

The Chair explained that the Administrative Office of the Courts ("AOC") had raised the question of whether minutes prepared by committees, subcommittees, or workgroups of the Judicial Council are open to public inspection. These groups often keep minutes, although there is no requirement to do so in the law. He pointed out that the Access Rules do not specifically address access to these minutes.

The Chair added that these committees, subcommittees, and workgroups of the Judicial Council are not required to hold open meetings, post notices of meetings, or keep minutes. The Court of Appeals has never determined whether judicial agencies are directly subject to the Open Meetings Law (OML), but it does require, as a matter of judicial policy, that judicial agencies conform to the same transparency requirements that apply to Executive Branch agencies under that law.

The Chair noted that, although the Judicial Council committees, subcommittees, and workgroups consist of two or more persons, they do not constitute "public bodies" for purposes of the OML because they are not created by statute, Rule, or Executive Order. They do not hold open meetings or post public notice of their meetings, but they do keep minutes, which, though not posted on the Judicial website, do constitute administrative records for purposes of the Access Rules in Title 16, Chapter 900 of the Maryland Rules. For the reasons set

forth in the proposed Committee note, AOC recommends that those minutes not be subject to public inspection as a matter of law. Approved recommendations from those groups are transmitted to the Judicial Council, which constitutes a public body as defined by the OML, for consideration, and those recommendations and any action on them by the Council are then available to the public.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Agenda Item 8. Consideration of proposed amendments to Rule 15-504 (Temporary Restraining Order)

Mr. Frederick, Esq., Chair of the Specific Remedies Subcommittee, introduced proposed amendments to Rule 15-504 (Temporary Restraining Order) for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 500 - INJUNCTIONS

AMEND Rule 15-504 by adding new subsection (a)(2) to require a court to make appropriate findings regarding the four factors for granting a preliminary injunction and by adding a cross reference following section (a), as follows:

Rule 15-504. TEMPORARY RESTRAINING ORDER

(a) Standard for Granting

A temporary restraining order may be granted only if (1) it clearly appears from specific facts shown by affidavit or other statement under oath that immediate, substantial, and irreparable harm will result to the party seeking the order before a full adversary hearing can be held on the propriety of a preliminary or final injunction, and (2) the court examines and makes appropriate findings regarding:

(A) the likelihood that the moving party will succeed on the merits;

(B) the "balance of convenience" determined by whether greater injury would be done to the non-moving party by granting the injunction than would result from its refusal;

(C) whether the moving party will suffer irreparable injury unless the injunction is granted; and

(D) a determination that granting the order is not contrary to the public interest.

Cross reference: See Fuller v. Republican Cent. Comm., 444 Md. 613, 635-636 (2015). For an exception pertaining to governmental parties, see State Dep't v. Baltimore County, 281 Md. 548, 557 (1977).

. . .

Source: This Rule is derived from former Rules BB72, 73, and 79, and the 1987 version of Fed. R. Civ. P. 65 (b).

Rule 15-504 was accompanied by the following Reporter's note.

Proposed amendments to Rule 15-504 (a) clarify the standard for granting a temporary restraining order. In *Fuller v. Republican Cent. Comm.*, 444 Md. 613 (2015), the Court of Appeals addressed the appropriate standard and held that a party seeking a temporary restraining order must show the existence of immediate, substantial, and irreparable harm, as

required by Rule 15-504 (a), and satisfy the four-factor test for interlocutory injunctions enunciated in *Dep't of Transp. v. Armacost*, 299 Md. 392, 404-405 (1984).

New subsection (a)(2) lays out the four factors and requires the court to make appropriate findings as to those factors prior to granting the order.

The addition of the cross reference following section (a) highlights the *Fuller* opinion and an exception for governmental parties identified in *State Dep't v. Baltimore County*, 281 Md. 548, 557 (1977).

Mr. Frederick explained that Rule 15-504 previously had been before the Committee at its June 2020 meeting. The Rule was remanded to the Subcommittee for further consideration. Mr. Frederick noted that, after robust discussion by the Subcommittee, an improved version of the Rule is now before the Committee. He indicated that the Subcommittee focused on the factors that the court must consider when deciding whether to grant a temporary restraining order ("TRO"). The Subcommittee developed the appropriate findings from case law.

Mr. Laws commented that subsection (a)(2)(B) misstates the law. The proposed formulation of the balance of convenience in the Rule only addresses injury to the non-moving party. He noted that injury to the non-moving party will always be greater when granting the injunction. To determine the proper standard, Mr. Laws reviewed the *Fuller* case. Pursuant to *Fuller*, the Court is supposed to look at the balance of harm to each party

if the relief is or is not granted. Mr. Laws stated that the focus should not be solely on the non-moving party because the balance of convenience test assesses the harm to both parties based on whether an injunction is granted.

Mr. Laws commented that the language of subsection (a)(2)(B) should be amended to refer to the injury to the parties, or to use the exact formulation from the *Fuller* case. An Assistant Reporter requested clarification as to the phrasing of the amendment to subsection (a)(2)(B) proposed by Mr. Laws. Mr. Laws responded that the subsection should refer to "the parties" instead of focusing on the nonmoving party. Judge Bryant suggested tracking the standard language from the *Fuller* case. Mr. Laws agreed and noted that page 355 of the case requires a court to consider "the balance of harm to each party if relief is or is not granted." The Assistant Reporter confirmed that the Committee did not object to using the phrase "balance of harm" instead of the currently proposed "balance of convenience."

Mr. Laws moved to amend subsection (a)(2)(B) of the Rule. The motion was seconded and passed by a majority vote.

There being no further motion to amend or reject the proposed Rule, it was approved as amended.

Agenda Item 9. Consideration of proposed amendments to Rule 15-1001 (Wrongful Death)

Mr. Frederick introduced proposed amendments to Rule 15-1001 (Wrongful Death) for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 500 – WRONGFUL DEATH

AMEND Rule 15-1001 by dividing section (b) into subsections, by requiring certain preliminary notice to potential use plaintiffs, by specifying consequences for failure to provide preliminary notice, by adding a Committee note following section (b), by specifying that a complaint shall state what efforts were made to locate and notify use plaintiffs, and by making stylistic changes, as follows:

Rule 15-1001. WRONGFUL DEATH

(a) Applicability

This Rule applies to an action involving a claim for damages for wrongful death.

Committee note: Under Code, Courts Article, § 3-903 (a), if the wrongful act causing the decedent's death occurred in the District of Columbia or in another State or territory of the United States, a Maryland court must apply the substantive law of that jurisdiction. Under Code, Courts Article, § 3-903 (b), however, a Maryland court must apply the Maryland Rules of pleading and procedure. This Rule sets forth the pleading and procedural requirements particularly applicable to a wrongful death action filed in a Maryland court.

Cross reference: See Code, Courts Article, §§ 3-901 through 3-904, relating to wrongful death claims generally. See Code, Courts Article, § 3-905 (g) for the statute of limitations generally and § 5-201 (a) for statutes of limitations as to wrongful death claims involving minors, individuals under a disability, and actions arising from criminal homicide. See Code, Courts Article, § 5-806, relating to wrongful death claims between parents and children arising out of the operation of a motor vehicle. See also Code, Labor and Employment Article, § 9-901 et seq. relating to wrongful death claims when workers' compensation may also be available, and Code, Insurance Article, § 20-601, relating to certain wrongful death claims against the Maryland Automobile Insurance Fund. See also Code, Estates and Trusts Article, § 8-103, relating to the limitation on presentation of claims against a decedent's estate.

(b) Required Plaintiffs

(1) Generally

All persons who are or may be entitled by law to claim damages by reason of the wrongful death shall be named as plaintiffs whether or not they join in the action. The words "to the use of" shall precede the name of any person named as a plaintiff who does not join in the action.

(2) Preliminary Notice

Not later than 45 days before filing a complaint, a plaintiff other than a use plaintiff shall make a good faith and reasonably diligent effort to identify and locate all potential use plaintiffs and notify them of the intent to file a complaint seeking damages for the wrongful death of the decedent. The notice shall identify the decedent, provide contact information for the plaintiff, and state that a copy of the complaint along with a further notice regarding the rights of the use plaintiff will be served on the use plaintiff.

(3) Failure to Comply

A failure to comply with this requirement that has the effect of precluding a use plaintiff from participating in the action shall constitute cause to dismiss the complaint and, if a judgment is entered in the action, the failure shall constitute cause for the court to exercise its revisory power over the judgment pursuant to Rule 2-535 (b).

Committee note: The purpose of subsections (b)(2) and (b)(3) of this Rule is to act as a disincentive for plaintiffs in wrongful death actions to preclude potential use plaintiffs from participating in the action and thereby lose their one opportunity to seek damages to which they may be entitled by law. *See U.M. Medical v. Muti*, 426 Md. 358 (2012); *Pinner v. Pinner*, 467 Md. 463 (2020).

(c) Complaint

The complaint shall state (1) the relationship of each plaintiff to the decedent whose death is alleged to have been caused by the wrongful act, (2) the last known address of each use plaintiff, and (3) that the party bringing the action conducted a good faith and reasonably diligent effort to identify, locate, and name as use plaintiffs all individuals who might qualify as use plaintiffs and shall state with particularity the efforts that were made. The court may not dismiss a complaint for failure to join all use plaintiffs if the court finds that the party bringing the action made such a good faith and reasonably diligent effort.

(d) Notice to Use Plaintiff after Filing

The party bringing the action shall serve a copy of the complaint on each use plaintiff pursuant to Rule 2-121. The complaint shall be accompanied by a notice in substantially the following form:

[Caption of case]

NOTICE TO _____[Name of Use Plaintiff]

_____

You may have a right under Maryland law to claim an award of damages in this action. You should

consult Maryland Code, § 3-904 of the Courts Article for eligibility requirements. Only one action on behalf of all individuals entitled to make a claim is permitted. If you decide to make a claim, you must file with the clerk of the court in which this action is pending a motion to intervene in the action in accordance with the Maryland Rules no later that the earlier of (1) the applicable deadline stated in § 3-904 (g) and § 5-201 (a) of the Courts Article ["the statutory deadline"] or (2) 30 days after being served with the complaint and this Notice if you reside in Maryland, 60 days after being served if you reside elsewhere in the United States, or 90 days after being served if you reside outside of the United States ["the served notice deadline"]. You may represent yourself, or you may obtain an attorney to represent you. If the court does not receive your written motion to intervene by the earlier of the applicable deadlines, the court may find that you have lost your right to participate in the action and claim any recovery.

(e) Waiver by Inaction

(1) Definitions

In this section and in section (f) of this Rule, "statutory deadline" means the applicable deadline stated in Code, Courts Article, § 3-904 (g) and § 5-201 (a), and "served notice deadline" means the additional applicable deadline stated in the notice given pursuant to section (d) of this Rule.

(2) Failure to Satisfy Statutory Time Requirements

An individual who fails to file a complaint or motion to intervene by the statutory deadline may not participate in the action or claim a recovery.

(3) Other Late Filing

If a use plaintiff who is served with a complaint and notice in accordance with section (d) of this Rule does not file a motion to intervene by the served notice deadline, the use plaintiff may not participate in the action or claim any recovery unless, for good cause shown, the court excuses the

late filing. The court may not excuse the late filing if the statutory deadline is not met.

(f) Subsequently Identified Use Plaintiff

Notwithstanding any time limitations contained in Rule 2-341 or in a scheduling order entered pursuant to Rule 2-504, if, despite conducting a good faith and reasonably diligent effort to identify, locate, and name all use plaintiffs, an individual entitled to be named as a use plaintiff is not identified until after the complaint is filed, but is identified by the statutory deadline, the newly identified use plaintiff shall be added by amendment to the complaint as soon as practicable and served in accordance with section (d) of this Rule and Rule 2-341 (d).

Source: This Rule is derived as follows:
Section (a) is derived from former Rule Q40.
Section (b) is derived from former Rule Q41 a.
Section (d) (c) is derived in part from former Rule Q42 and is in part new.
Section (c) (d) is new.
Section (e) is new.
Section (f) is new.

Rule 15-1001 was accompanied by the following Reporter's note.

Proposed amendments to Rule 15-1001 seek to increase incentives for plaintiffs filing a wrongful death lawsuit to make a good faith and reasonably diligent effort to locate, name, and notify potential use plaintiffs about the action.

A 2020 Court of Appeals case presented another scenario where a known use plaintiff was not notified of a wrongful death lawsuit and learned of the action after the statutory deadline passed. In *Pinner v. Pinner,* 467 Md. 463 (2020), the decedent's wife did not name or notify her stepson of a wrongful death action in Maryland, which she settled. The Court of Appeals ultimately dismissed the stepson's lawsuit against his stepmother and her attorney for lack of

jurisdiction over the stepmother, a North Carolina resident.

A practitioner wrote to the Rules Committee following the *Pinner* case urging the Committee to revisit Rule 15-1001, most recently amended following the 2012 Court of Appeals case *University of Maryland Medical System Corp. v. Muti*, 426 Md. 358 (2012), which also involved a use plaintiff who was not properly named and later barred from joining the lawsuit.

Proposed amendments to section (b) divide it into three subsections. Subsection (b)(1) contains the current language of section (b). Subsection (b)(2) requires the plaintiff to identify and locate potential use plaintiffs and notify them of the impending lawsuit no later than 45 days prior to filing the complaint. The notice must identify the decedent, provide contact information for the plaintiff, and explain that a copy of the complaint will be served once filed. Subsection (b)(3) states that failure to comply with the notice provision constitutes cause to dismiss the complaint or, if there is a judgment, for the court to exercise its revisory power. A Committee note explains the purpose of the preliminary notice requirement.

Section (c) is amended to require the plaintiff to specify the efforts that were made to identify, locate, and notify use plaintiffs.

The tagline for section (d) is amended to differentiate notice of the filing of the lawsuit from the new preliminary notice.

The Chair announced that the Committee received two Comments related to this Rule. One Comment was from the Maryland Association for Justice (see Appendix 1), and the second Comment was from Mr. Michael Wein, Esq. (see Appendix 2). The Chair stated that the Comments primarily raised issues that

were not fully considered by the Subcommittee. For example, the Subcommittee did not consider whether the proposed amendments have a disparate racial impact and whether other remedies may better address the issue.

The Chair explained that the Subcommittee was particularly concerned with the results of *Pinner v. Pinner*. In *Pinner*, a plaintiff deliberately did not notify the decedent's son of the wrongful death action. The Chair recalled that a use plaintiff was also omitted in *University of Maryland Medical System Corp. v. Muti*, but the omission was not deliberate. Issues arose in these cases because the statute requires that all wrongful death actions pertaining to the same decedent be tried as one case.

The Chair stated that the recently decided *Plank v. Cherneski*, ___ Md. ___ (2020), recognized a breach of fiduciary duty as a separate action. He advised the Committee that Mr. Wein's Comment suggested that *Plank* may provide an alternative method to address the problems discussed by the Subcommittee. The Chair noted that *Plank* requires the existence of a fiduciary relationship, and it is not clear that the plaintiff in a wrongful death action, much less the plaintiff's attorneys, would have a fiduciary relationship with a prospective use plaintiff when the parties' interests are at odds.

The Chair proposed that the Committee remand this item to the Subcommittee to take another look at the proposal in light

of the Comments received, the possible solution under *Plank*, and the opportunity to ask the Access to Justice Department and other stakeholders to consider any possible question of disparate racial impact for any proposed amendments. He noted that the Subcommittee may want to hear from the Attorney General's Office and defense attorneys on any proposal.

Mr. Wells commented that there may be a significant barrier to addressing the problem identified by the recommended Rule change because legislative changes may be required. He moved to remand the matter to the Subcommittee to consider the noted concerns and to reach out to other groups to see if this complex problem can be effectively addressed by Rule change. The motion was seconded and passed by a majority vote.

The Chair added that the Subcommittee will use its resources to explore all options. If there are any legislative proposals regarding this issue, the Chair indicated that the information and research compiled by the Subcommittee could be made available to applicable legislative committees.

The Reporter invited anyone with alternate language for Rule 15-1001 to submit a proposal to the Subcommittee for consideration.

There being no further business before the Committee, the Chair adjourned the meeting.