STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

NOTICE OF PROPOSED RULES CHANGES

The Rules Committee has submitted its Two Hundred and Ninth Report to the Court of Appeals, recommending proposed new Rules 4-508.1, 4-613, and 8-125; amendments to current Rules 1-101, 1-205, 1-324, 2-504, 2-506, 2-535, 2-551, 2-649, 3-506, 3-535, 3-649, 3-731, 4-212, 4-248, 4-251, 4-252, 4-329, 4-342, 4-502, 4-508, 4-510, 4-601, 4-612, 5-611, 5-615, 6-151, 7-112, 7-114, 7-206.1, 8-112, 8-201, 8-207, 8-303, 8-305, 8-411, 8-501, 8-502, 8-503, 8-504, 8-511, 8-602, 9-103, 9-105, 9-205, 9-205.3, 9-402, 12-102, 15-901, 16-207, 16-208, 16-302, 16-308, 16-903, 16-913, 16-914, 16-918, 17-405, 19-301.15, 19-414, 19-604, 20-101, 20-102, 20-106, 20-107, 20-109, 20-201.1, and 20-402; and rescission of current Form 22.

The Committee's Two Hundred and Ninth Report and the proposed Rules changes are set forth below.

Interested persons are asked to consider the Committee's Report and proposed Rules changes and to forward on or before January 10, 2022 any written comments they may wish to make to:

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THE COURT OF APPEALS OF MARYLAND
STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

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December 10, 2021

The Honorable Joseph M. Getty,
Chief Judge
The Honorable Robert N. McDonald
The Honorable Shirley M. Watts
The Honorable Michele D. Hotten
The Honorable Brynja M. Booth
The Honorable Jonathan Biran
The Honorable Steven B. Gould,
Judges

The Court of Appeals of Maryland
Robert C. Murphy Courts of Appeal Building
Annapolis, Maryland 21401

Your Honors:

The Rules Committee submits this, its Two Hundred and Ninth Report and recommends that the Court adopt the new Rules and amendments to existing Rules transmitted with this Report. The Report consists of nine categories of proposed changes and one informational item.

Category One: Attorney Trust Accounts

Rules 19-414, 19-301.15, and 19-604

Category One consists of proposed new Rule 19-414 and conforming amendments to Rules 19-301.15 and 19-604. The intent of these changes is:

(1) to end the practice of attorneys transferring to the Client Protection Fund ("CPF") funds that had been placed in attorney escrow accounts pursuant to Rule 19-404 or its predecessors and, after three years, remained undistributed because the attorney was unable either to identify or to locate the beneficial owners entitled to the funds or because that

person affirmatively declined in writing to accept the funds other than because of a dispute as to the amount owed;

(2) to give general guidance to attorneys in how properly to deal with that situation and to instruct that such presumptively abandoned funds be transferred to the abandoned property division of the State Comptroller's Office pursuant to Code, Commercial Law Article ("CL"), §§ 17-310 and 17-312; and

(3) to require CPF to transfer the attorney trust funds it is holding to the abandoned property division of the State Comptroller's Office pursuant to those sections of the Code.

The development of Rules to achieve those objectives was requested by the Court. The Committee's response is principally in new Rule 19-414.

Section (b) of that Rule and the Committee note that follows it provide the guidance recommended by the Committee. The text of section (b) defines when escrowed trust funds may be declared presumptively abandoned – if, after three years from the date the funds were deposited by the attorney pursuant to Rule 19-404, the attorney is unable to determine the identity or location of the beneficial owner entitled to the funds *after having made reasonable efforts to do so* or that person has affirmatively declined in writing to accept the funds, other than because of a dispute as to the amount owed. The real guidance is in the Committee note that follows, which sets forth the kinds of actions, depending on the circumstances, that would qualify as "reasonable efforts."

The Committee note observes that CL § 17-306, which defines when intangible personal property held in a fiduciary capacity may be presumed abandoned for purposes of the Maryland Uniform Disposition of Abandoned Property Act, is textually different from the definition proposed in Rule 19-414 (b), but that the specifics of the statutory definition would not likely apply factually to attorney trust accounts. The two definitions are substantively the same, however, and the Comptroller's Office has advised the Committee that it would accept transfers that comply with Rule 19-414 (b).

Section (c) instructs attorneys, upon finding a presumed abandonment, to transfer the funds to the Comptroller in the manner provided in CL §§ 17-310 and 17-312. Those sections require that an annual report containing the information specified in § 17-310(b) and (c) be filed by October 31 with

respect to abandoned funds held during the period from July 1 of the preceding year to June 30 of the reporting year.

Section (d) requires CPF, on or before October 31, 2022, to prepare the reports required by CL § 17-310 and transmit them, together with all attorney trust account funds received on or prior to that date that have not been paid to beneficial owners and all non-IOLTA interest thereon, to the Comptroller in accordance with CL §§ 17-310 and 17-312. CPF estimates that it is presently holding approximately $5 million of such funds.

Section (e) requires that the first reports by attorneys also be filed with the Comptroller by October 31, 2022 and include all trust funds that qualify as abandoned as of June 30, 2022.

A cross reference to Rule 19-414 is added to Rule 19-301.15, the ethical Rule dealing with safekeeping property.

The amendment to Rule 19-604 is a conforming one, to make clear that the authority of CPF to receive and distribute funds under subsection (a)(2) of the Rule does not include abandoned attorney trust funds.

There is one circumstance that the Committee became aware of that the Court may wish to take into account in considering Rule 19-414, if it has not already done so. The attorney trust funds currently held by attorneys or CPF are deposited in IOLTA accounts. The interest earned on those accounts is paid to the Maryland Legal Services Corporation ("Legal Services") pursuant to Code, Business Occupations and Professions Article, § 10-303 and Human Services Article, § 11-402.

Upon the transfer of the trust account funds by the attorneys or CPF, there likely will be some accrued interest not yet paid to Legal Services. If that interest can be broken out and identified as IOLTA interest, the Comptroller's Office has advised the Committee that it will transfer that interest to Legal Services. But the Comptroller's Office has advised the Committee that it cannot otherwise segregate the money it will get from attorneys or CPF into IOLTA accounts. The consequence is that Legal Services would lose any future interest that it is now getting from the trust funds held by the attorneys or CPF.

The Comptroller distributes $8 million each year to Legal Services pursuant to CL § 17-317. That amount was increased by the Legislature from $2 million in 2021. The Comptroller's

Office has advised the Committee that it would not oppose a further amendment to CL § 17-317 to increase its contribution to Legal Services to compensate Legal Services for the loss of the IOLTA interest on the transferred amounts. The Committee is taking no position on that, but simply wishes to inform the Court of that consequence.

Category Two: Criminal Procedure

Rule 4-212

An amendment to Rule 4-212 (d) permits a District or Circuit Court judge to recall a warrant issued by a District Court Commissioner and replace it with a summons. That amendment implements 2021 Md. Laws, Chapter 594.

Rule 4-248

Rule 4-248, which deals with stets, provides that, when a charge is stetted, the clerk shall take the action necessary to recall or revoke any outstanding warrant or detainer that could lead to the defendant's arrest. That language also appeared in the Juvenile Rules applicable in delinquency cases. The Committee recommended, and the Court approved, an amendment to the comparable Juvenile Rule, now Rule 11-420, to make clear that it is the court that must order the clerk to take that action. Clerks may not recall warrants and detainers on their own initiative. The same amendment is recommended for Rule 4-248.

Expungement: Rules 4-508.1, 4-329, 4-502, 4-508, and 4-510

New Rule 4-508.1 and the amendments to Rules 4-329, 4-502, 4-508, and 4-510 are intended to implement 2021 Md. Laws, Chapter 680, which requires that records pertaining to certain criminal and civil charges that have been dismissed, resulted in an acquittal, or resulted in a nolle prosequi without a requirement of drug or alcohol treatment, be expunged by operation of law, without the need of a petition or court order, three years after the disposition. The law also requires that certain notices be given to the defendant and others. In part because of other statutes bearing on the same subject, implementing that law engendered some procedural issues that were the subject of discussion in both the Judicial Council's Major Projects Committee and the Rules Committee.

Although the statute has been loosely characterized as providing for "automatic expungement," the expungement is not automatic. The records do not destroy or relocate themselves, especially if they are in paper form, which they may be in police or other non-court files. The problem, arising from the fact that there will be no petition or court order, was how custodians will know, on the third anniversary of the disposition, that they have records that must be expunged. Neither the clerks nor the various custodians – mostly State or local law enforcement agencies – can keep that kind of tickler system for the hundreds or more cases that may fall under the statute.

The solution, provided for in Rule 4-508.1, is to put two duties on the court clerks that the clerks can comply with and have not opposed: (1) at the time of the dismissal or acquittal, make a record of all known custodians of records that will be subject to expungement under the statute, so the clerks will not need to search for that information three years later, and (2) no later than 60 days prior to the expungement date, send notice of the expungement date to those custodians and to the person entitled to expungement. The Committee was advised that the Judicial Information System can electronically keep track of the expungement dates and notify the clerks of those dates in time for them to pass that information on to the other custodians.

Section (d) requires the custodians to expunge the records within ten days after the expungement date. At the recommendation of the Major Projects Committee and due to the fact that there will be no court order requiring the expungement, the Rule does not require the custodians to file a certificate that they have actually expunged the records, as is the case with the traditional expungement process. Enforcement of the statutory directive is left to the erstwhile defendant.

The amendments to Rule 4-329 deal with a separate issue. Code, Criminal Procedure Article, § 10-105.2 requires that, upon the acquittal or dismissal of the charges, or entry of a nolle prosequi other than a nolle prosequi with a requirement of drug or alcohol treatment, the defendant be given notice of the defendant's right to expungement under § 10-105. The problem is that there are two other statutes that provide for that kind of notice, but there is an overlap and some inconsistency in their application and in how they may be implemented. The amendments to Rule 4-329 attempt to ensure that the defendant gets the notice that any statute requires but not duplicative notices.

The amendments to Rules 4-502, 4-508, and 4-510 permit notices to certain custodians to be given electronically.

Category Three: Appellate Rules

Rules 7-112, 7-114, and 7-206.1

Amendments to Rules 7-112 and 7-114 address an issue raised in *Tengeres v. State*, 474 Md. 126 (2021), which involved a *de novo* appeal from the District Court. The appellant failed to appear for a status conference in the Circuit Court, whereupon the court dismissed her appeal and denied her motion to reinstate it. Current section (f) of Rule 7-112 requires the court to dismiss an appeal in that circumstance. That section is amended to make dismissal discretionary rather than mandatory and, in a Committee note, gives some guidance to the Circuit Court in exercising that discretion. Conforming amendments are made to Rule 7-114.

The amendment to Rule 7-206.1 merely updates a cross reference.

See also proposed amendments to Rules 2-535 and 3-535 in **Category Eight**.

Title 8 and Related Rules: Rules 8-112, 8-125, 8-201, 8-207, 8-303, 8-305, 8-411, 8-501, 8-502, 8-503, 8-504, 8-511, 8-602, 17-405, 20-102, 20-402, and Form 22.

Some of the amendments in this Category were recommended by the Court of Special Appeals or the Clerk of the Court of Appeals in an effort to simplify, streamline, or clarify the appellate process or to protect confidentiality; others were recommended by attorneys or are merely conforming amendments.

New Rule 8-125, recommended by the Court of Special Appeals, is intended to protect the confidentiality of (1) minors and (2) victims of a crime that would require the defendant to register as a sex offender, by requiring the exclusion of the victim's name and other identifying information from briefs, opinions, and other documents filed in the appellate courts.

The amendments to Rule 8-201 and Form 22 implement the policy noted in *B & K Rentals v. Universal Leaf*, 319 Md. 127, 133 (1990) that notices of appeal should be construed liberally

and need not reference particular orders or judgments of the lower court being challenged in the appeal.

The amendments to Rule 8-207, recommended by the Court of Special Appeals, clarify that, in appeals in juvenile and TPR cases, the noting of the appeal is the event that triggers the five-day period for ordering a transcript and the 30-day period for transmitting the record. Those cases are on a fast track and are not subject to the ADR process provided for in Rule 8-206.

The amendments to Rule 8-303, recommended by the Clerk of the Court of Appeals, reduce the number of paper copies of petitions and cross-petitions for certiorari required to be filed, and set word limits for those petitions and answers thereto.

The amendment to Rule 8-305, requested by the Clerk of the Court of Appeals, eliminates the requirement of filing seven copies of the certification order entered by the certifying court. That order will be available electronically.

The amendments to Rule 8-411 were recommended by the Court of Special Appeals in an effort to reduce the cost of appeals. Subsection (a)(2) of the current Rule requires appellants to provide a transcription of "any proceeding relevant to the appeal." The amendment requires a transcription of "any portion of any proceeding" relevant to the appeal that contains the ruling or reasoning of the court or that is otherwise necessary for the determination of the questions presented by the appeal or cross-appeal.

Amendments to Rules 8-501, 8-502, 8-503, and 8-504, also recommended by the Court of Special Appeals, deal with record extracts and briefing. Rule 8-501 permits the filing of a record extract to be deferred, in which event the parties must file four page-proof briefs. The amendments reduce that to one page-proof brief, excuse the parties from filing any paper page-proof briefs if they are represented by counsel or are registered users of MDEC, and, in the Court of Special Appeals, permit the parties, by stipulation, to extend the time for filing page-proof briefs.

Amendments to Rule 8-502 clarify the ability of parties to extend time for filing briefs in the Court of Special Appeals by joint stipulation. A new section (e) added to Rule 8-502, derived in part from Fed. R. App. P. § 28(j), permits the appellate courts, upon notice that there are new cases,

statutes, or other authority not available when the briefs were filed, to allow or direct the parties to supplement their briefs.

Amendments to Rule 8-503, recommended by the Clerks of the Court of Appeals and Court of Special Appeals, designate the color of the cover of a cross-appellant's reply brief – purple in the Court of Special Appeals and orange in the Court of Appeals. That should not be taken as a judicial preference for the Baltimore Ravens or Orioles. Rule 8-503 also is amended to set the word limit for cross-appellant briefs at 3,900 words in the Court of Special Appeals and 6,500 words in the Court of Appeals. The current provision in Rule 8-503 dealing with the certification of word count is moved to Rule 8-504 (a)(9). Conforming amendments to Rule 8-112 reflect the changes to Rules 8-503 and 8-504.

Amendments to Rule 8-511 permit attorneys to file an amicus brief on the question of whether the Court of Appeals should grant certiorari or other extraordinary writ in a particular case, or whether the Court of Special Appeals should grant an application for leave to appeal, without seeking permission of the court.

An amendment to Rule 8-602 extends the time limit for filing a motion for reconsideration from ten days to 20 days. This was recommended by the Court of Special Appeals, which was concerned that ten days was too short, especially for incarcerated and other self-represented litigants.

An amendment to Rule 17-405 permits senior judges of the District Court and retired Circuit Court magistrates to be approved to serve as mediators in the Court of Special Appeals mediation program if they are otherwise qualified under the Rule.

Current Rule 20-102 (b) applies the MDEC Rules to appellate proceedings seeking the review of a judgment, but not other proceedings unless ordered by the Court of Appeals. At the request of the Clerk of the Court of Appeals, the Rule is amended to apply to all proceedings, without the need for such an Order.

At the request of the Clerk of the Court of Appeals, an amendment to Rule 20-402 clarifies the procedure for transmitting the record in an MDEC case to the Court of Appeals when the Court issues a writ of certiorari. If the case to be

reviewed is or was in the Court of Special Appeals, the writ is directed to that court, even if the record is no longer in the custody of the court. In the two remaining non-MDEC counties, the record is in paper form and, if it has already been returned to the Circuit Court, the clerk of that court will need to send it to the Court of Appeals, even though the writ was directed to the Court of Special Appeals. The Committee was advised that some Circuit Court clerks have declined to send the record unless the writ was directed to them. The practice in the Court of Appeals and in the Supreme Court is to direct the writ to the last court that dealt with the case, because it is that court's judgment that is under review.

In the 22 MDEC counties, the record is electronic. It consists of what the Circuit Court has certified after an appeal has been noted plus anything added by the Court of Special Appeals. If the writ is issued after the Court of Special Appeals has issued a mandate, the record is back in the custody of the Circuit Court, even though nothing physically has moved. The Clerk of the Court of Appeals has concluded that the same result occurs when the writ is issued, even if the case was still pending in the Court of Special Appeals. In both instances, the clerk of the Circuit Court must certify the record, as it then exists, to the Court of Appeals. The clarification is simply to substitute "lower court" for "trial court." The intended procedure is for the Court of Appeals to issue the writ to the Court of Special Appeals, as it does currently, and for the Clerk of the Court of Appeals to send a notice to the clerk of the Circuit Court that the writ was issued and for that clerk to certify the record to the Court of Appeals.

Category Four: Family/Domestic Rules

Rules 15-901 and 9-105

Substantial amendments are recommended to Rule 15-901, concerning name-change proceedings, in part to conform to a recent statutory change but mostly to implement recommendations by the Judicial Council Domestic Law Committee's LGBTQ+ Family Law Workgroup. Before the Legislature and before the Rules Committee, representatives of that workgroup expressed concern that the safety of members of the LGBTQ+ community may be compromised by unnecessary public disclosure of their identity.

Subsection (e)(2) of the current Rule requires that notice of a petition for name change be published in a newspaper of

general circulation in the county unless, on motion of the petitioner, the court orders otherwise. The impetus for a change arose from the reluctance of some judges to waive that requirement. A new statute, 2021 Md. Laws, Chapters 506 and 507, requires the court to waive publication on motion of the petitioner.

The Committee was advised that, apart from the prospect of actual danger to petitioners who are members of the LGBTQ+ community, publication is an antiquated and expensive method of providing notice to persons who might have an interest in the matter, that several States have eliminated the requirement, and that law enforcement agencies and creditors have and use other methods of keeping track of name changes and do not rely on publication for that purpose. Upon that evidence, the Committee proposes to eliminate the requirement by repealing subsection (e)(2).

The Committee believes, however, that there is a need for special precautions when dealing with adults who petition to change the name of a minor. Most of the proposed changes to Rule 15-901 deal with that situation, as evident in:

- Section (b) dealing with venue;
- Section (c) dealing with the required contents of a petition;
- Section (e) dealing with notices of and consent and objections to the petition; and
- Section (f) dealing with hearings and action by the court.

A petition to change the name of a minor must identify the minor's parents and any guardian or other custodian of the minor. The petition must be accompanied by their written consent and the consent of the minor, if the minor is at least ten years old, or contain a statement of why such consents are not attached. Unless consents are attached, the court must give written notice to such persons of the petition, give them an opportunity to object, and, if there is an objection, hold a hearing. The consent of a minor under ten is not required, but the petition must state that the minor does not object to the name change.

A key distinction, in section (f), is that, where the name change is of an adult, the court need not hold a hearing unless it proposes to deny the petition. Where a child's name is sought to be changed, the court must hold a hearing unless the

child's consent, if required, has been filed and each parent, guardian, or custodian has filed a consent or failed to file a timely objection.

The amendment to Rule 9-105 is a conforming one.

Rule 9-103

The amendment to Rule 9-103 (b), dealing with adoptions and private agency guardianships, was recommended by the LGBTQ+ Family Law Workgroup to clarify the relationship of the Rule to a 2019 statute (2019 Md. Laws, Chapter 438) regarding the exhibits that must be attached to a petition.

Rule 9-205

Rule 9-205, dealing with court-annexed child custody mediation, precludes a court from ordering mediation where there is a genuine issue of abuse. The proposed amendment, recommended by the Judicial Council Domestic Law Committee's Family Mediation and Abuse Screening Workgroup, defines "coercive control," and adds coercive control of a party as an independent preclusion of mediation. Even when coercive control does not constitute abuse, as that word is defined, it can be just as intimidating, or more so.

Rule 9-205.3

The proposed amendments to Rule 9-205.3 were recommended by the Custody Evaluator Training and Standards Workgroup of the Judicial Council, in part to clarify the purpose and use of specific issue evaluations in custody cases but also to add provisions relating to custody evaluations generally. As explained in the Workgroup's Report, the changes are designed to (1) make custody evaluators more available to the courts, (2) clarify the purpose and use of specific issue evaluations, (3) provide for form orders for evaluations, (4) require data from high neutrality/low affiliation collateral sources, (5) encourage best practices, (6) require screening for intimate partner violence, and (7) require and conduct training for evaluators, judges, and magistrates.

Category Five: MDEC

Rules 20-101 and 20-107

The amendments to these two Rules reflect the growing use of digital signatures in MDEC filings. A new section (e) to Rule 20-101 defines "digital signature" as the visual image of the signer's handwritten signature or the signer's cursive signature affixed using a digital program. The operative provision is in the amendments to Rule 20-107, which permit the use of a digital signature for documents under oath, affirmation, or with verification. *See* the Reporter's note to Rule 20-107.

Rules 20-106 and 2-504

A new section (f) is added to Rule 20-106 to provide for the pre-filing of documents in an MDEC Circuit Court case. The Committee was advised that some courts allow pre-filing and some do not. The amendment to Rule 2-504 is a conforming one.

Rules 20-109 and 16-903

Upon the recommendation of the Judicial Council's Major Projects Committee, amendments are proposed to Rule 20-109 to permit limited remote access by (1) court-designated ADR practitioners to case records in cases that they were appointed to mediate, (2) authorized registered users on behalf of the CASA (Court-Appointed Special Advocate) program to certain juvenile court records in cases in which they were appointed to provide service, and (3) judiciary contractors to the extent such access is necessary to the performance of their official duties. The amendment to Rule 16-903 deletes an obsolete cross reference.

Rule 20-201.1

Rule 20-201.1 places two requirements on persons who file a submission that contains restricted information: (1) to accompany the submission with a Notice stating that the submission contains restricted information and the basis for including that information, and (2) that included in the submission must be a redacted version of the document that excludes the restricted information. If the filer omits the Notice, the clerk must reject the filing without prejudice to refile it accompanied by the Notice. The Major Projects Committee has informed the Rules Committee that clerks are

receiving submissions containing restricted information that are accompanied by the required Notice but not the redacted copy, which puts them in a quandary of what to do with the unredacted document.

The Major Projects Committee recommended, and the Rules Committee agreed, that, in that situation, the submission also should be rejected without prejudice to refile it accompanied by the redacted version. Accepting the incomplete filing, even if a deficiency notice is issued, could make the restricted information immediately accessible to the public.

Category Six: Access to Judicial Records

Rule 16-913

The proposed amendment to Rule 16-913 updates the procedure for notifying the State Board of Elections and the Motor Vehicle Administration of erroneous or obsolete information relating to jurors. That is now done by a unit in the Administrative Office of the Courts rather than a jury commissioner.

Rule 16-914

The proposed amendments to Rule 16-914 conform the Rule to confidentiality requirements regarding juveniles charged as adults imposed by 2021 Md. Laws, Chapter 314. A Committee note makes clear that the Rule does not preclude a clerk from divulging a case number to an attorney for the purpose of entering an appearance in the case or petitioning the court for access to determine whether to enter an appearance.

Category Seven: Judicial Administration

Rule 16-207

In *Conner v. State*, 472 Md. 722, 751 (2021), the Court referred to the Committee the question of whether further guidance should be incorporated in Rule 18-102.11 or Rule 16-207 for the recusal of judges who have participated in drug court proceedings from presiding in subsequent proceedings to terminate the defendant from the drug court program or to revoke the defendant's probation. The issue in *Conner* involved a drug court program, but it could arise as well in other problem-solving court programs.

Rule 18-102.11, which is part of the Code of Judicial Conduct, states the general requirement that a judge must recuse in any proceeding in which the judge's impartiality might reasonably be questioned. That is followed by a list of circumstances in which recusal is required, including where the judge has a personal bias or personal knowledge of facts in dispute in the proceeding. Rule 16-207, which governs problem-solving court programs, says nothing textually regarding recusal. It does require that, as a condition to being accepted into the program, the defendant must sign an agreement that sets forth the protocols of the program, including an acknowledgment that the judge may initiate, permit, and consider *ex parte* communications and the range of sanctions that the judge may impose while the defendant is in the program if the defendant violates some requirement or condition of the program.

Rule 16-207 addresses the recusal issue only in a Committee note, which states that, in considering whether a judge should be disqualified pursuant to Rule 18-102.11 from presiding in "post-termination proceedings" involving a participant who was terminated from the program, the judge should be sensitive to any exposure to *ex parte* communications or inadmissible information that the judge may have received while the participant was in the program.

There was little debate in the Rules Committee about the meaning of any of this language. As it did in *Conner*, the Public Defender's Office urged that the Rule require recusal on motion of the defendant because the defendant might be reluctant to be candid while participating in the drug court program, which is critical to completing it successfully, unless assured that the judge would not be in a position to use that candor, including incriminating admissions, in a subsequent violation of probation ("VOP") proceeding. The Public Defender did not urge a duty to recuse absent a request from the defendant and suggested that it likely would be rare for a defendant to seek recusal. Although the issue in *Conner*, and before the Committee, concerned recusal from conducting a post-termination VOP proceeding, the same argument could be, and has been, made regarding whether a judge who has been part of the collaborative team working with the defendant could properly preside at the proceeding to terminate the defendant from the program. *See Conner*, 472 Md. at 750.

Apart from some concerns about possible logistical problems in the smaller counties, the Committee was not convinced that recusal should be mandated at the will of the defendant simply

to encourage the defendant to participate in a more constructive manner, which the defendant has a strong incentive to do in order to complete the program, get his or her life in order, and escape jail time. The Committee does recommend, however, adding to the existing Committee note (with some style and clarifying amendments) the general precept from Rule 18-102.11 that even when the judge does not have personal bias or prejudice that would require recusal, if presiding over the VOP proceeding might reasonably create the appearance of impropriety, the judge should recuse. A citation to *Conner* also is added.

The Committee believes, even in the special problem-solving court milieu, that judges could be trusted to apply that standard as fairly in this situation as they would in any other, that the overarching requirement is that judges be impartial in any proceeding, and that judges should not be precluded from performing their judicial duties at the will of a defendant simply to encourage the defendant to collaborate honestly in a program that is largely for the defendant's benefit.

Rule 16-208

Current Rule 16-208 (b)(2)(E)(ii) directs that the court liberally allow attorneys in a proceeding currently being heard to make reasonable use of an electronic device in connection with the proceeding. The Committee received evidence that some judges are not allowing some attorneys to use their laptops in a proceeding being heard and are not giving reasons on-the-record for their decisions. The complaint in particular is that, in criminal cases, the prosecutor, but not defense counsel, was allowed to use a computer at counsel.

Normally, erroneous decisions by some judges are best left to the appellate process or judicial education programs and do not require a Rule change, but, with the increasing legitimate need for computers at trial table to deal with electronic evidence and logistical matters, the Committee believes that some clarification and guidance would be helpful. The Committee proposes to delete the current language and replace it with a new provision in subsection (b)(3) to put some conditions on the use of electronic devices but, subject to those conditions, to state affirmatively that a court may not deny the reasonable and lawful use of an electronic device in a courtroom by an attorney, except upon a finding of good cause made upon the record. That would provide a proper record for appellate review.

Rule 16-308

The proposed amendments to Rule 16-308 define certain kinds of cases that are presumptively referrable to the Business and Technology Program and other kinds of cases that are presumptively not so referrable. They were recommended by the Maryland Judiciary Workgroup on Business and Technology.

Category Eight: Civil Procedure

Rules 2-506 and 3-506

Several attorneys have indicated that there is some confusion regarding certain aspects of stipulated dismissals and have requested clarification. One area concerns what must be included in a stipulation of dismissal. Some attorneys simply file a form stipulation stating that the action was dismissed upon stipulated terms but not stating the terms, preferring to keep that information confidential. The Committee was advised that some judges, however, have refused to permit the dismissal unless the terms are stated in the stipulation.

A second question deals with the enforcement of the terms. The Rule permits a party to the settlement to enforce the terms through the entry of judgment or other appropriate relief. Some courts will reopen the case on a motion by the enforcing party. Other courts, the Committee was advised, require the issuance and service of a new summons, as if it were a new case.

Amendments to section (b), including a Committee note to the section, make clear that the stipulation itself need not recite the terms of the settlement or be accompanied by a settlement agreement. The stipulation must state (1) that there is an agreement, (2) the date for satisfaction of the agreement, if a time is specified, and (3) that the agreement provides that the parties will keep each other informed of their current addresses until satisfaction of the agreement. Subsection (b)(2) makes clear that the action may be reopened on motion of a party, but that motion must include a copy of the settlement agreement and an affidavit stating the balance due or term to be enforced. A Committee note provides that the affidavit may be signed by a party, an attorney for a party, or anyone having knowledge of the non-compliance.

Rule 2-551

Rule 2-551 requires a party seeking in banc review to file four copies of a memorandum regarding the questions presented and the opposing party to file four copies of any response. In the 22 MDEC counties, the requirement of four copies is unnecessary and confusing. The proposed amendments eliminate the four-copies requirement for persons filing under MDEC.

Rules 2-535 and 3-535

At the request of the Judicial Council's Court Access and Community Relations Committee and the Attorney General's COVID-19 Access to Justice Task Force, a Committee note is proposed to take account of a judgment entered due to a failure to appear when the failure to appear arose because of emergency situations. The Committee note provides that, in considering a motion to vacate a judgment based on a party's failure to appear at a proceeding, the court may consider emergency circumstances that contributed to the failure to appear, if presented with information by the moving party. Where there is a declared emergency, factors may include lack of access to a platform to participate in a remote proceeding.

Rules 2-649 and 3-649

These Rules provide that, upon a written request of a judgment creditor of a partner in a partnership, the court may issue an order charging the partnership interest of the judgment debtor with the payment of all amounts due on the judgment. The order is served on the partnership. After service on the partnership, the request and order must be mailed to the debtor at the debtor's last known address. The delayed notice to the debtor is to prevent dissipation. The proposed amendments to these Rules extend that procedure to judgments against a member holding an economic interest in a limited liability company ("LLC").

The Code permits charging orders to be obtained against both partners and members of an LLC. It does so in different sections of the Code, neither of which mention service or notice. *See* Code, Corporations and Associations Article, §§ 4A-607 and 9A-504. The Committee was advised that some courts will not grant such an order against a member of an LLC if it is to be served on the LLC without first notifying the judgment debtor. The Committee believes that the procedure should be the same in both situations and that the delayed notice to the

judgment debtor is the better approach. The proposed amendments extend Rules 2-649 and 3-649 to orders against members of an LLC.

Rule 3-731

The amendment to Rule 3-731 removes from the Rule the required form of a petition for relief and provides, instead, that the petition be in the form approved by the State Court Administrator and posted on the Judiciary website. That is consistent with the general policy recommended by the Committee and approved by the Court of removing mandated forms from the Rules unless there is a special reason to have them there.

Rule 12-102

Rule 12-102 provides that, in an action in which the doctrine of lis pendens applies, the filing of the complaint is constructive notice of the lis pendens as to real property in the county where the complaint was filed and in any other county in which the lis pendens has been created. On motion of a party in interest, the court where the action is pending may enter an order terminating the lis pendens in that county and in any other county in which the lis pendens was created.

The Major Projects Committee brought to the Rules Committee's attention several problems with that approach. Research into how other States handle lis pendens convinced the Rules Committee that there was a better way. Lis pendens is a form of constructive notice that there may be a cloud on the title to property in the county. Rather than have that notice emanate from a docketed action in a court file, the Rules Committee agrees with the Major Projects Committee that a better approach, used in other States, is to have the lis pendens emanate from a filing in the land records of the county of either a certified copy of the complaint or a Notice of Lis Pendens in a form approved by the State Court Administrator. That is where title searchers and others normally would look for any liens or clouds. The amendments to section (b) make that change. A Committee note reminds practitioners that the change, if adopted by the Court, is prospective only and that, for any lis pendens established before the effective date of the change, they will need to look for court filings.

A second change deals with termination of lis pendens. The Rules Committee proposes to leave in place current subsection (c)(1), allowing termination by court order on motion, but to

rewrite subsection (c)(2), dealing with termination by operation of law, to require the plaintiff to record a notice of termination in the land records and, in default of that obligation, to permit any interested party to file such a notice at the expense of the plaintiff.

Category Nine: Housekeeping Amendments

Rule 1-101

The proposed amendments to section (t) add a reference to Rule 20-101 (e) and update other references.

Rule 1-205

The proposed amendment updates a cross reference.

Rule 1-324

The proposed amendment to Rule 1-324 updates a reference in section (b) to conform to amendments to Rule 20-101.

Rules 4-251, 4-252, and 4-342

Proposed amendments to Rules 4-251, 4-252, and 4-342 add cross references to recent relevant Court of Appeals cases.

Rules 4-601, 4-612, 4-613

Proposed amendments to Rule 4-601 add a cross reference and shorten the efficacy of an unserved search warrant from 15 days to ten days. They implement, in part, 2021 Md. Laws, Chapter 62.

Proposed amendments to Rule 4-612 provide for the issuance of an order for use of a cell site simulator. They implement 2021 Md. Laws, Chapter 392.

Proposed new Rule 4-613 provides for orders for forensic genetic genealogical DNA analysis and search ("FGGS"). The new Rule implements 2021 Md. Laws, Chapters 681 and 682.

Rules 5-611 and 5-615

The proposed amendments to these Rules update cross references to conform to 2021 Md. Laws, Chapters 181 and 182.

Rule 6-151

The proposed amendment to Rule 6-151 updates a cross reference to conform the Rule to 2021 Md. Laws, Chapter 513.

Rule 9-402

The proposed amendment to Rule 9-402 updates a cross reference.

Rule 16-302

The proposed amendments to Rule 16-302 change the term "vulnerable adult" to "susceptible adult" to conform to 2021 Md. Laws, Chapter 311.

Rule 16-918

The proposed amendments to Rule 16-918 update a cross reference and add new subsection (b)(2)(B)(ii) pertaining to certain documents filed in the appellate courts.

INFORMATIONAL ITEM

In reviewing recently enacted legislation, the Committee became aware of, and attempted to draft a Rule to implement, 2021 Md. Laws, Chapter 428, which requires certain filers to include with their initial pleading or appearance a statement identifying business entity affiliates. A copy of the statute is attached as an Appendix to this Report. The statute was derived from various national and local Federal Rules and Rules or statutes adopted in a few other States. Its purpose is (1) to alert judges to the existence of those affiliates for consideration of possible recusal, and (2) to provide that information to other parties and the public at large. Chapter 428 took effect October 1, 2021.

The statute is poorly drafted, does not follow the wording of the Federal Rules or Rules in other States, and, indeed, is internally inconsistent as to whether it applies only to corporate filers or extends to initial filings by other business entities as well. Whatever its breadth, it will affect tens of thousands of cases filed each year. After much consideration, the Committee concluded that any Rule designed just to implement the statute would have to be based on a construction of the statute's ambiguous and inconsistent provisions. The Committee had no objection to the general objectives of the statute, but

was reluctant, in the guise of implementing it, to determine by Rule what the General Assembly intended its scope to be. If the General Assembly declines to clarify the statute in its next session, the Committee may need to revisit its decision and propose a Rule to clarify the requirement as an independent matter of judicial policy.

For the further guidance of the Court and the public, following the proposed new Rules and the proposed amendments to each of the existing Rules is a Reporter's note describing in further detail the reasons for the proposals. We caution that the Reporter's notes are not part of the Rules, have not been debated or approved by the Committee, and are not to be regarded as any kind of official comment or interpretation. They are included solely to assist the Court in understanding some of the reasons for the proposed changes.

Respectfully Submitted,

/ s /

Alan M. Wilner
Chair

AMW:sdm
cc: Suzanne C. Johnson, Clerk

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 400 – ATTORNEY TRUST ACCOUNTS

ADD New Rule 19-414, as follows:

RULE 19-414. FUNDS PRESUMED ABANDONED

(a) Definition

In this Rule, "Client Protection Fund" means the Client Protection Fund of the Bar of Maryland.

(b) Generally

Funds deposited in an attorney's trust account pursuant to Rule 19-404 for the benefit of a client or other person are presumed abandoned if: (A) the beneficial owner affirmatively declined in writing to accept the funds, other than because of a dispute as to the amount owed; or (B) after three years from the date the funds were deposited or were required to be deposited pursuant to that Rule, the attorney is unable to determine the identity or location of the beneficial owner after having made reasonable efforts to do so.

Committee note: Reasonable efforts must commence when the attorney first has notice of a problem identifying or locating a person who may be entitled to trust account funds or other property held by the attorney. Reasonable efforts may include (1) making a diligent search for any records or information in the attorney's file, any court file to which the attorney has access, and any published directory, available public records, estate records, or obituary records in a jurisdiction in which

the attorney has reason to believe the person may reside; (2) seeking the assistance of the client and, if ethically appropriate, other attorneys, unrepresented parties, and witnesses in the case who may have information regarding the name or whereabouts of the person; (3) attempting to determine whether the person is in the custody of the Federal Bureau of Prisons, the Maryland Department of Public Safety and Correctional Services, or the local government of a jurisdiction in which the attorney has reason to believe the person may reside; (4) conducting an internet search for the person using information possessed by the attorney; and (5) attempting to contact the person by first-class mail, certified mail, and e-mail.

Code, Commercial Law Article, § 17-306 declares, for purposes of the Maryland Uniform Disposition of Abandoned Property Act, that intangible personal property held in a fiduciary capacity for the benefit of another person is presumed abandoned unless, within three years after it becomes payable or distributable, the owner has increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary. That is not a workable definition with respect to attorney trust accounts. Persons who may be entitled to the payment of attorney trust account funds would not be able to increase or decrease the funds, and, if they correspond with the attorney, their identity and likely their location will be revealed. The definition in this Rule is intended to be a reasonable and practicable one that would be acceptable to the Comptroller.

(c) Duty of Attorney upon Presumed Abandonment

(1) Upon determining that attorney trust funds are presumed abandoned pursuant to section (b) of this Rule, the attorney shall: (A) comply with Code, Commercial Law Article, § 17-308.2, and (B) prepare the requisite report and transmit it, together with the funds and any non-IOLTA accrued interest, to the State Comptroller in accordance with Code, Commercial Law Article, §§ 17-310 and 17-312.

(2) The transmission shall be accompanied by a report filed at the times specified and containing the information required by Code, Commercial Law Article, § 17-310.

Cross reference: See Rule 19-301.6 regarding confidential information.

Committee note: Code, Commercial Law Article, § 17-310(d) anticipates an annual report covering the period July 1 through June 30 to be filed no later than October 31.

(3) No such funds or report shall be transmitted to the Client Protection Fund.

Committee note: For several decades, a practice was in place for attorneys who have been unable to identify or locate persons entitled to trust funds received by the attorney to transfer those funds to the Client Protection Fund. The intent of this Rule is to end that practice. The sole statutory mission of the Client Protection Fund is to receive, investigate, and pay claims filed by persons injured by the misconduct of attorneys, not deal with abandoned money in attorney trust fund accounts. See Rule 19-602 (a) and Maryland State Bar Association Committee on Ethics, Ethics Docket 92-2 (1992), which states: "After the property is presumed abandoned, you, as holder, are required to file a report with the State Comptroller's Office regarding the property."

(d) Transfer of Funds from Client Protection Fund

On or before October 31, 2022, the Client Protection Fund shall (1) prepare the reports required by Code, Commercial Law Article, § 17-310, and (2) transmit them, together with all attorney trust account funds that, on or prior to that date, were received by the Client Protection Fund and all non-IOLTA accrued interest thereon that have not previously been paid by the Client Protection Fund to persons lawfully entitled to those

funds, to the State Comptroller, in accordance with Code, Commercial Law Article, §§ 17-310 and 17-312 and applicable regulations adopted by the Comptroller.

(e) Initial Compliance with this Rule

The first reports under this Rule shall be filed no later than October 31, 2022 and shall include all attorney trust funds that qualify as abandoned as of June 30, 2022.

Committee note: Notwithstanding the provisions of this Rule, Rule 19-407 requires attorneys to keep certain records pertaining to the attorney's trust accounts and to maintain those records for at least five years after the date the record was created.

REPORTER'S NOTE

Proposed new Rule 19-414 provides a procedure for the transfer of presumed abandoned funds from an attorney's trust account or the Client Protection Fund, as applicable, to the State Comptroller in accordance with Code, Commercial Law Article, §§ 17-310 and 17-312.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 300 – MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

CLIENT-ATTORNEY RELATIONSHIP RULES

AMEND Rule 19-301.15 by adding a cross reference after section (e), as follows:

RULE 19-301.15. SAFEKEEPING PROPERTY

(a) An attorney shall hold property of clients or third persons that is in an attorney's possession in connection with a representation separate from the attorney's own property. Funds shall be kept in a separate account maintained pursuant to Title 19, Chapter 400 of the Maryland Rules, and records shall be created and maintained in accordance with the Rules in that Chapter. Other property shall be identified specifically as such and appropriately safeguarded, and records of its receipt and distribution shall be created and maintained. Complete records of the account funds and of other property shall be kept by the attorney and shall be preserved for a period of at least five years after the date the record was created.

(b) An attorney may deposit the attorney's own funds in a client trust account only as permitted by Rule 19-408 (b).

(c) Unless the client gives informed consent, confirmed in writing, to a different arrangement, an attorney shall deposit legal fees and expenses that have been paid in advance into a client trust account and may withdraw those funds for the attorney's own benefit only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property in which a client or third person has an interest, an attorney shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, an attorney shall deliver promptly to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall render promptly a full accounting regarding such property.

(e) When an attorney in the course of representing a client is in possession of property in which two or more persons (one of whom may be the attorney) claim interests, the property shall be kept separate by the attorney until the dispute is resolved. The attorney shall distribute promptly all portions of the property as to which the interests are not in dispute.

Cross reference: For the duties of an attorney with respect to attorney trust account funds that are presumed abandoned, see Rule 19-414.

. . .

REPORTER'S NOTE

A proposed amendment to Rule 19-301.15 adds a cross reference to proposed new Rule 19-414 after section (e), before the Comment and Model Rules Comparison.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 600 – CLIENT PROTECTION FUND

AMEND Rule 19-604 by adding a Committee note following subsection (a)(2) and by making clarifying stylistic changes, as follows:

RULE 19-604. POWERS AND DUTIES OF TRUSTEES; TREASURER

(a) Trustees

The trustees have the following powers and duties:

(1) To elect, from among their membership, a chair, a treasurer, and such other officers as they deem necessary or appropriate.

(2) To receive, hold, manage, and distribute, pursuant to ~~this Rule~~ the Rules in this Chapter, the funds raised hereunder, and any other monies that may be received by the Fund through voluntary contributions or otherwise.

Committee note: The power of the trustees under subsection (a)(2) of this Rule to receive and distribute funds received through "voluntary contributions or otherwise" does not include receiving or distributing abandoned attorney trust funds, except for the distribution of funds required by Rule 19-414.

(3) To authorize payment of claims in accordance with ~~this Rule~~ the Rules in this Chapter.

(4) To adopt regulations for the administration of the Fund and the procedures for the presentation, consideration, recognition, rejection, and payment of claims~~,~~ and to adopt procedures for conducting business. A copy of the regulations shall be filed with the of the Court of Appeals, who shall mail a copy of them to the clerk of the circuit court for each county and to all Registers of Wills. The regulations shall be posted on the Judiciary website.

(5) To enforce claims for restitution arising by subrogation, assignment, or otherwise.

(6) To deposit funds in any bank or other savings institution (A) that is chartered and whose financial activities are regulated under federal or Maryland law, and (B) whose deposits are insured by an instrumentality of the federal government.

(7) To invest funds not needed for current use in such investments as they deem appropriate, consistent with an investment policy specified in regulations adopted by the trustees and approved by the Court of Appeals.

(8) To employ and compensate consultants, agents, attorneys, and employees.

(9) To delegate the power to perform routine acts which may be necessary or desirable for the operation of the Fund, including the power to authorize disbursements for routine

operating expenses of the Fund, but authorization for payments of claims shall be made only as provided in Rule 19-609.

(10) To sue or be sued in the name of the Fund without joining any or all individual trustees.

(11) To comply with the requirements of Rules 19-704 (e), 19-705 (c), 19-708 (a), and 19-723 and all other applicable laws.

(12) To designate an employee to perform the duties set forth in Rules 19-708 (a) and 19-723 and notify Bar Counsel of that designation.

(13) To file with the Court of Appeals an annual report of the management and operation of the Fund and to arrange for an annual audit of the accounts of the Fund by state or private auditors. The cost of the audit shall be paid by the Fund if no other source of funds is available.

(14) To file additional reports and arrange for additional audits as the Court of Appeals or the Chief Judge of that Court may order.

(15) To perform all other acts authorized by these Rules or necessary or proper for the fulfillment of the purposes of the Fund and its efficient administration.

(b) Treasurer

The treasurer shall:

(1) maintain the Fund in a separate account;

(2) disburse monies from the Fund only upon the action of the trustees pursuant to these Rules;

(3) file annually with the trustees a bond for the proper execution of the duties of the office of treasurer of the Fund in an amount established by the trustees and with one or more sureties approved by the trustees; and

(4) comply with the requirements of Rule 19-705 (b).

Source: This Rule is derived from former Rule 16-811.4 (2016).

REPORTER'S NOTE

Proposed amendments to Rule 19-604 make clarifying stylistic changes to the Rule and add a Committee note following subsection (a)(2). Included in the Committee note is a reference to proposed new Rule 19-414, Funds Presumed Abandoned.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-212 by creating new subsection (d)(1)(B)(i) using language from former subsection (d)(1)(B), by making stylistic changes to subsection (d)(1)(B)(i), and by adding new subsection (d)(1)(B)(ii) concerning the recall of warrants issued by commissioners, as follows:

RULE 4-212. ISSUANCE, SERVICE, AND EXECUTION OF SUMMONS OR WARRANT

...

(c) Summons – Service

The summons and charging document shall be served on the defendant by mail or by personal service by a sheriff or other peace officer, as directed (1) by a judicial officer in the District Court, or (2) by the State's Attorney in the circuit court.

(d) Warrant - Issuance; Inspection

(1) In the District Court

(A) By Judge

A judge may, and upon request of the State's Attorney shall, issue a warrant for the arrest of the defendant, other

than a corporation, upon a finding that there is probable cause to believe that the defendant committed the offense charged in the charging document and that (i) the defendant has previously failed to respond to a summons that has been personally served or a citation, or (ii) there is a substantial likelihood that the defendant will not respond to a summons, or (iii) the whereabouts of the defendant are unknown and the issuance of a warrant is necessary to subject the defendant to the jurisdiction of the court, or (iv) the defendant is in custody for another offense, or (v) there is probable cause to believe that the defendant poses a danger to another person or to the community. A copy of the charging document shall be attached to the warrant.

(B) By Commissioner

(i) Generally

On review of an application by an individual for a statement of charges, a commissioner may issue a warrant for the arrest of the defendant, other than a corporation, upon a finding that there is probable cause to believe that the defendant committed the offense charged in the charging document and that ~~(i)~~ (1) the defendant has previously failed to respond to a summons that has been personally served or a citation, or ~~(ii)~~ (2) the whereabouts of the defendant are unknown and the issuance of a warrant is necessary to subject the defendant to

the jurisdiction of the court, or ~~(iii)~~(3) the defendant is in custody for another offense, or ~~(iv)~~(4) there is probable cause to believe that the defendant poses a danger to another person or to the community. A copy of the charging document shall be attached to the warrant.

(ii) Recall of Warrant

A judge of the District Court or a circuit court, upon a finding of good cause, may recall a warrant issued by a commissioner and issue a summons pursuant to section (c) of this Rule.

Cross reference: See Code, Courts Article, § 2-607.

(2) In the Circuit Court

Upon the request of the State's Attorney, a judge may order, in writing or on the record, issuance of a warrant for the arrest of a defendant, other than a corporation, if an information has been filed against the defendant and the circuit court or the District Court has made a finding that there is probable cause to believe that the defendant committed the offense charged in the charging document or if an indictment has been filed against the defendant; and (A) the defendant has not been processed and released pursuant to Rule 4-216, 4-216.1, or 4-216.2, or (B) the court finds there is a substantial likelihood that the defendant will not respond to a summons. A copy of the charging document shall be attached to the warrant.

Unless the court finds that there is a substantial likelihood that the defendant will not respond to a criminal summons, the court shall not order issuance of a warrant for a defendant who has been processed and released pursuant to Rule 4-216, 4-216.1, or 4-216.2 if the circuit court charging document is based on the same alleged acts or transactions. When the defendant has been processed and released pursuant to Rule 4-216, 4-216.1, or 4-216.2, the issuance of a warrant for violation of conditions of release is governed by Rule 4-217.

(3) Inspection of the Warrant and Charging Document

Unless otherwise ordered by the court, files and records of the court pertaining to a warrant issued pursuant to subsection (d)(1) or (d)(2) of this Rule and the charging document upon which the warrant was issued shall not be open to inspection until either (A) the warrant has been served and a return of service has been filed in compliance with section (g) of this Rule or (B) 90 days have elapsed since the warrant was issued. Thereafter, unless sealed pursuant to Rule 4-201 (d), the files and records shall be open to inspection.

Committee note: This subsection does not preclude the release of otherwise available statistical information concerning unserved arrest warrants nor does it prohibit a State's Attorney or peace officer from releasing information pertaining to an unserved arrest warrant and charging document.

Cross reference: See Rule 4-201 concerning charging documents. See Code, General Provisions Article, § 4-316, which governs inspection of court records pertaining to an arrest warrant.

...

REPORTER'S NOTE

Chapter 594, 2021 Laws of Maryland (HB 366) permits a judge of the District Court or of a circuit court to, upon a finding of good cause, recall an arrest warrant issued by a District Court commissioner and issue a summons in its place.

Proposed amendments to Rule 4-212 account for the new law. Rule 4-212 (d)(1)(B) concerns the ability of a commissioner to issue an arrest warrant. Proposed amendments to Rule 4-212 create new subsection (d)(1)(B)(i) with the language of former subsection (d)(1)(B), making stylistic changes. New subsection (d)(1)(B)(ii) addresses the recall of arrest warrants issued by commissioners as permitted in Chapter 594, 2021 Laws of Maryland (HB 366).

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-248 by adding language to section (b) requiring a court order, as follows:

RULE 4-248. STET

(a) Disposition by Stet

On motion of the State's Attorney, the court may indefinitely postpone trial of a charge by marking the charge "stet" on the docket. The defendant need not be present when a charge is stetted but if neither the defendant nor the defendant's attorney is present, the clerk shall send notice of the stet to the defendant, if the defendant's whereabouts are known, and to the defendant's attorney of record. Notice shall not be sent if either the defendant or the defendant's attorney was present in court when the charge was stetted. If notice is required, the clerk may send one notice that lists all of the charges that were stetted. A charge may not be stetted over the objection of the defendant. A stetted charge may be rescheduled for trial at the request of either party within one year and thereafter only by order of court for good cause shown.

(b) Effect of Stet

When a charge is stetted, the court shall order the clerk ~~shall~~ to take the action necessary to recall or revoke any outstanding warrant or detainer that could lead to the arrest or detention of the defendant because of the charge, unless the court orders that any warrant or detainer shall remain outstanding.

Committee note: For provisions relating to bail or recognizance when criminal charges are stetted, see Code, Criminal Procedure Article, § 5-208.

Cross reference: For provisions relating to expungement of the records after a stet has been entered in a case, see Rule 4-329. For provisions relating to a stet with the requirement of drug or alcohol treatment in non-violent crimes, see Code, Criminal Procedure Article, § 6-229.

Source: This Rule is derived from former Rule 782 c and d and M.D.R. 782 c and d.

REPORTER'S NOTE

In its 208th Report, the Rules Committee recommended the adoption of new Title 11, Chapter 400 concerning delinquency and citation proceedings in Juvenile Court. New Rule 11-420 addressing stetted cases, adopted by Rules Order dated November 9, 2021, was derived from Rule 4-248. During the Committee's discussion of Rule 11-420 at the June 17, 2021 meeting, it was noted that the clerk does not take action to recall or revoke any outstanding warrant, writ, or detainer without a court order. Accordingly, Rule 11-420 (c) states that the court shall order the clerk to take action to recall or revoke any outstanding warrant, writ, or detainer when a stet is entered on the docket.

Rule 4-248 (b) currently requires the clerk to take necessary action when a stet is entered on the docket without referencing a court order. Proposed amendments to section (b) add that the court shall order the clerk to take the action

necessary to recall or revoke any outstanding warrants or detainers that could lead to the arrest or detention of the defendant because of the charge. The amendments mirror the language in Rule 11-420 (c), adopted by Rules Order dated November 9, 2021.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 500 – EXPUNGEMENT OF RECORDS

ADD new Rule 4-508.1, as follows:

RULE 4-508.1. EXPUNGEMENT BY OPERATION OF LAW

(a) Definition

In this Rule, "custodian of records" means each booking facility, law enforcement unit, and other unit of the State or political subdivision of the State that the court believes may have a record subject to expungement under Code, Criminal Procedure Article, § 10-105.1.

(b) Applicability

This Rule applies to records that are required to be expunged by operation of law pursuant to Code, Criminal Procedure Article, § 10-105.1 without any order of court.

Cross reference: Code, Criminal Procedure Article, § 10-105.1 requires that any police record, court record, or other record maintained by the State or political subdivision of the State relating to the charging of a crime or civil offense included within that section shall be expunged three years after disposition of the charge if no charge in the case resulted in a disposition other than acquittal, dismissal, not guilty, or nolle prosequi except a nolle prosequi with a requirement of drug or alcohol treatment.

(c) Duties of Clerk

(1) Record of Identity of Custodians

Unless an alternative method is created by the Administrative Office of the Courts, upon the disposition of a charge subject to expungement under this Rule, the clerk shall make a record of all known custodians of records relating to that charge.

(2) Notice

Not later than 60 days prior to the date expungement under this Rule takes effect, the clerk shall send notice of the date the expungement takes effect to (A) the Criminal Justice Information System Central Repository, (B) each other custodian of records subject to the expungement, and (C) the person entitled to the expungement at the last known address for that person.

Cross reference: See Code, Criminal Procedure Article, § 10-105.1(b).

(d) Compliance by Custodians

Not later than ten days after the effective date of the expungement stated in the notice, each custodian shall expunge all records subject to the expungement.

Cross reference: See Code, Criminal Procedure Article, § 10-101(e) for methods of expungement.

Source: This Rule is new.

REPORTER'S NOTE

Chapter 680, 2021 Laws of Maryland (SB 201) implements several changes to expungement procedures. Pursuant to new Code, Criminal Procedure Article, § 10-105.1, records shall be expunged by operation of law three years after a disposition if no charge in the case resulted in a disposition other than acquittal, dismissal, not guilty, or nolle prosequi, except nolle prosequi with a requirement of drug or alcohol treatment. Proposed new Rule 4-508.1 sets forth procedures to comply with the new statute.

Section (a) provides the definition of "custodian of records," consistent with Code, Criminal Procedure Article, § 10-105.1. The applicability of the Rule is addressed in section (b). A cross reference to § 10-105.1 details the requirements of the statutory section.

Section (c) concerns the duties of the clerk when a charge is subject to expungement by operation of law. Subsection (c)(1) requires the clerk to make a record of all known custodians of records relating to the charge upon the disposition of a charge subject to expungement under Rule 4-508.1. The amendments require that this information be gathered at the time of disposition because it is easier to locate at that time. The subsection indicates, however, that the Administrative Office of the Courts may develop an alternative method of recording the custodians. The clerk requires information about the custodians to comply with the notice requirements of subsection (c)(2). Pursuant to subsection (c)(2), the clerk must send notice of the date the expungement takes effect to certain custodians and persons not later than 60 days prior to the date of expungement by operation of law. The electronic system used by the clerk can generate and provide the clerk with the appropriate date of the expungement to include in the notice to custodians.

Section (d) requires custodians to expunge all records subject to expungement no later than ten days after the effective date in the notice. A cross reference following the section cites to Code, Criminal Procedure Article, § 10-101(e) for methods of expungement.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 300 – TRIAL AND SENTENCING

AMEND Rule 4-329 by adding new subsections (a)(1), (a)(2), and (a)(3) concerning notice pursuant to Code, Criminal Procedure Article, § 10-105.2; by creating new subsection (b)(1) with language from the current Rule to address notice required by Code, Criminal Procedure Article, § 6-232; by requiring the notice provided by subsection (b)(1) to be in writing; by making stylistic changes to subsection (b)(1); by adding language to subsection (b)(1) concerning the delivery or sending of notice to the defendant; by deleting language in subsection (b)(1) pertaining to notices provided by Rules 4-247 and 4-248; and by adding new subsection (b)(2) concerning an exception to notice under section (b), as follows:

RULE 4-329. ADVICE OF EXPUNGEMENT

(a) Notice Pursuant to Code, Criminal Procedure Article, § 10-105.2

(1) Generally

When all of the charges in a case involving a criminal offense or a civil offense under Code, Criminal Law Article, § 5-601(c)(2)(ii) are disposed of by (A) acquittal, including an

acquittal based on a verdict of not guilty, (B) dismissal, or (C) nolle prosequi other than nolle prosequi with a requirement of drug or alcohol treatment, the court shall provide written notice to the defendant of the defendant's right to expungement in accordance with and subject to the conditions of Code, Criminal Procedure Article, § 10-105.2.

(2) Form and Content of Notice

The notice shall be on a form approved by the State Court Administrator and shall notify the defendant of (A) the defendant's entitlement under Code, Criminal Procedure Article, § 10-105.1 to expungement by operation of law three years after the disposition and (B) the right to file a petition for expungement in accordance with Code, Criminal Procedure Article, Title 10, Subtitle 1 and Title 4, Chapter 500 of these Rules within three years after the disposition if accompanied by a completed General Waiver and Release form approved by the State Court Administrator. The notice shall include or be accompanied by a blank General Waiver and Release form for all tort claims relating to the charge or charges eligible for expungement under Code, Criminal Procedure Article, § 10-105.

(3) Method of Delivery

If the defendant is in court when the disposition occurs, the written notice may be handed to the defendant in court. If the defendant does not receive the notice at that

time, the court shall send the notice to the defendant by first class-mail to the defendant's last known address.

(b) Notice Pursuant to Code, Criminal Procedure Article, § 6-232

(1) Generally

When all of the charges in a criminal case against a defendant are disposed of by acquittal, dismissal, probation before judgment, nolle prosequi, or stet, the court shall, pursuant to Code, Criminal Procedure Article, § 6-232, advise the defendant in writing that the defendant may be entitled to have the records relating to the charge or charges against the defendant expunged ~~expunge the records relating to the charge or charges against the defendant~~ in accordance with Code, Criminal Procedure Article, Title 10, Subtitle 1 and Title 4, Chapter 500 of these Rules. If the defendant is in court when the disposition occurs, the written notice may be handed to the defendant in court. If the defendant does not receive the notice at that time, the court shall send the notice to the defendant by first-class mail to the defendant's last known address. ~~If the defendant is not present, and the case has been disposed of by dismissal, nolle prosequi, or stet, the advice of expungement shall be included in the notice to the defendant required by Rules 4-247 and 4-248.~~

(2) Exception

If the charges were disposed of by acquittal, dismissal, or nolle prosequi without a requirement of drug or alcohol treatment, and notice has been delivered or sent to the defendant pursuant to section (a) of this Rule, no notice shall be sent pursuant to this section.

Cross reference: For expungement of charges in cases that include a minor traffic violation, see Code, Criminal Procedure Article, § 10-107.

Source: This Rule is new.

REPORTER'S NOTE

Chapter 680, 2021 Laws of Maryland (SB 201) implements several changes to expungement procedures. Pursuant to new Code, Criminal Procedure Article, § 10-105.2, notice of a defendant's right to expungement and a blank General Waiver and Release form must now be provided in cases where no charge in the case resulted in a disposition other than acquittal, dismissal, not guilty, or nolle prosequi, except nolle prosequi with a requirement of drug or alcohol treatment.

Proposed new section (a) incorporates the new notice provisions of Code, Criminal Procedure Article, § 10-105.2. Subsection (a)(1) sets forth the application of the section to certain dispositions, following the language of the statute. Subsection (a)(2) addresses the form and content of the notice, providing that the notice shall be on a form approved by the State Court Administrator. The subsection further provides that the notice be accompanied by a blank General Waiver and Release form. The method of delivery of the notice is set forth in subsection (a)(3), stating that the written notice may be handed to the defendant in court. If the defendant does not receive notice in court at that time, the notice must be sent by first-class mail to the defendant's last known address.

New section (b) is created to distinguish between the different notices required by separate statutes. Section (b) concerns the notice required by Code, Criminal Procedure

Article, § 6-232. Subsection (b)(1) is created from the current language of Rule 4-329, with some stylistic changes. New language clarifies the method of delivery, conforming it with delivery of the notice required by section (a) of the Rule. References to the notice required by Rules 4-247 and 4-248 have been deleted because the proposed amendments to Rule 4-329 already require the sending of written notice to the defendant in those circumstances. Because there is a partial overlap between the notices in sections (a) and (b), subsection (b)(2) provides that notice under section (b) is not required if notice was sent pursuant to section (a). This exception avoids the sending of two notices.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 500 – EXPUNGEMENT OF RECORDS

AMEND Rule 4-502 by adding language concerning electronic service to section (k), as follows:

RULE 4-502. EXPUNGEMENT DEFINITIONS

...

(k) Service

"Service" with respect to the application or petition means electronically serving or mailing a copy by certified mail or delivering it to any person admitting service, and with respect to any answer, notice, or order of court required by this Rule or court order to be served means electronically serving or mailing by first-class mail.

...

REPORTER'S NOTE

Proposed amendments to Rule 4-502 implement a request by the Major Projects Committee to permit electronic service of an application or petition for expungement, as well as other documents pertaining to a requested expungement. Language added to section (k) permits electronic service in lieu of service by certified mail, reflecting an intention to complete more tasks electronically as MDEC usage increases.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 500 – EXPUNGEMENT OF RECORDS

AMEND Rule 4-508 by deleting certain language from section (d) and by adding to section (d) that the State Court Administrator shall transmit data electronically to the Central Repository, as follows:

RULE 4-508. COURT ORDER FOR EXPUNGEMENT OF RECORDS

. . .

(d) Service of Order and Compliance Form

Upon entry of a court order granting or denying expungement, the clerk forthwith shall serve a true copy of the order and any stay of the order on all parties to the proceeding. Upon entry of an order granting expungement, the clerk shall serve on each custodian of records designated in the order ~~and on the Central Repository~~ a true copy of the order together with a blank form of Certificate of Compliance set forth at the end of this Title as Form 4-508.3. The State Court Administrator shall transmit electronically to the Central Repository the data included in the order.

Source: This Rule is derived in part from former Rule EX7 and is in part new.

REPORTER'S NOTE

Rule 4-508 (d) details requirements for the service of a court order granting expungement, noting that the clerk shall serve a copy of the order on each custodian of records designated in the order and on the Central Repository. Proposed amendments to Rule 4-508 (d) delete the requirement that the order be served on the Central Repository and instead require electronic transmission of the data in the order by the State Court Administrator to the Central Repository. The proposed amendments are recommended by the State Court Administrator and the Major Projects Committee. Permitting expungement data to be transmitted electronically will eliminate the need for the Central Repository to process paper orders and will streamline the process.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 500 – EXPUNGEMENT OF RECORDS

AMEND Rule 4-510 by clarifying that the Central Repository receives notice of the data included in certain orders and by making stylistic changes, as follows:

RULE 4-510. COMPLIANCE WITH COURT ORDER FOR EXPUNGEMENT

Upon receipt of an order for expungement that is not stayed or notice that a stay has been lifted, or, in the case of the Central Repository, notice of the data included in the order or lifting of a stay, each custodian of records subject to the order and the Central Repository shall forthwith remove the records from public inspection. As soon as practicable but in no event later than 60 days after the entry of a court order for expungement, or if the order for expungement is stayed, 30 days after the stay is lifted, every custodian of police records and court records subject to the order, including the Central Repository, shall comply with the order, file an executed Certificate of Compliance, and serve a copy of the certificate on the applicant or petitioner.

Source: This Rule is derived from former Rule EX9.

REPORTER'S NOTE

Rule 4-510 addresses compliance with an order of expungement by custodians of records. Proposed amendments to Rule 4-510 add language indicating that, instead of receiving a paper order, the Central Repository receives notice of the data included in an order for expungement or lifting of a stay. The amendments further clarify that the Central Repository must still comply with the order, file an executed Certificate of Compliance, and serve a copy of the certificate on the applicant or petitioner. The proposed amendments are recommended by the State Court Administrator and the Major Projects Committee. Permitting expungement data to be transmitted electronically will eliminate the need for the Central Repository to process paper orders and will streamline the process.

MARYLAND RULES

TITLE 7 – APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

CHAPTER 100 – APPEALS FROM THE DISTRICT COURT TO THE CIRCUIT COURT

AMEND Rule 7-112 by amending subsection (f)(1) to make dismissal discretionary where the appellant fails to appear, by adding a Committee note pertaining to dismissals pursuant to subsection (f)(1), by adding a Committee note following subsection (f)(3) pertaining to a motion to reinstate an appeal, and by making stylistic changes, as follows:

Rule 7-112. APPEALS HEARD DE NOVO

. . .

(f) Dismissal of Appeal; Entry of Judgment

(1) An appellant may dismiss an appeal at any time before the commencement of trial. The court ~~shall~~ may dismiss an appeal if the appellant fails to appear as required for trial or any other proceeding on the appeal.

Committee note: If the court is not presented with information explaining the defendant's absence, the court may presume that the absence is voluntary and consider the appeal dismissed by the appellant. If the court is presented with information that could amount to good cause for the absence and there is a request for a postponement, the court ordinarily should grant a continuance in order to assess the merits of that information. See *Tengeres v. State*, 474 Md. 126, 184 (2021).

(2) Upon the dismissal of an appeal, the clerk shall promptly return the file to the District Court. Any statement of satisfaction shall be docketed in the District Court.

(3) On motion filed in the circuit court within 30 days after entry of a judgment dismissing an appeal, the circuit court, for good cause shown, may reinstate the appeal upon the terms it finds proper. On motion of any party filed more than 30 days after entry of a judgment dismissing an appeal, the court may reinstate the appeal only upon a finding of fraud, mistake, or irregularity. If the appeal is reinstated, the circuit court shall notify the District Court of the reinstatement and request the District Court to return the file.

Committee note: A motion to reinstate an appeal for good cause is to be liberally granted. See *Mobuary v. State*, 435 Md. 417 (2013).

(4) If the appeal of a defendant in a criminal case who was sentenced to a term of confinement and released pending appeal pursuant to Rule 4-349 is dismissed, the circuit court shall (A) issue a warrant directing that the defendant be taken into custody and brought before a judge of the District Court or (B) enter an order that requires the defendant to appear before a judge. If a judge is not available on the day the warrant or order is served, the defendant shall be brought before a judge the next day that the court is in session. The warrant or order shall identify the District Court case by name and number and

shall provide that the purpose of the appearance is the entry of a commitment that conforms to the judgment of the District Court.

Source: This Rule is derived in part from former Rule 1314 and in part new.

REPORTER'S NOTE

Proposed amendments to Rule 7-112 address the recent Court of Appeals decision in *Tengeres v. State*, 474 Md. 126 (2021). In that case, the appellant did not appear for a status hearing in circuit court on her appeal from the District Court. Counsel for the appellant informed the court that the appellant did not receive actual notice of the hearing until that day and could not arrange for transportation and childcare. Counsel requested a postponement. The court denied the request and dismissed the appeal at the request of the State. The court later denied a motion to reinstate the appeal and a motion to reconsider the denial. The Court of Appeals reversed, finding that given the totality of the circumstances, there was good cause to reinstate the appeal and reemphasizing that such motions should be liberally granted. The Court also determined that where a court is presented with information explaining the appellant's absence, the court ordinarily should grant a continuance to assess the merits of that information.

Amendments to subsection (f)(1) alter the standard for dismissal for failure to appear from "shall" to "may." Committee notes following subsections (f)(1) and (f)(3) cite the holdings in *Tengeres* and *Mobuary v. State*, 435 Md. 417 (2013), respectively. The Committee note following subsection (f)(1) addresses the required considerations when the appellant fails to appear, as stated in *Tengeres*. The Committee note following subsection (f)(3) emphasizes that motions to reinstate appeals should be liberally granted as stated in *Mobuary* and reiterated in *Tengeres*.

MARYLAND RULES

TITLE 7 – APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

CHAPTER 100 – APPEALS FROM THE DISTRICT COURT TO THE CIRCUIT COURT

AMEND Rule 7-114 by altering subsection (b)(3) to refer to dismissal of an appeal by the appellant, by adding new subsection (f)(4) pertaining to discretionary dismissal by the court where the appellant fails to appear, by adding Rule 7-112 (f)(1) and its Committee note to the cross reference following section (c), and by making stylistic changes, as follows:

Rule 7-114. DISMISSAL OF APPEAL

. . .

(b) When Mandatory

The circuit court shall dismiss an appeal if:

(1) the appeal is not allowed by law;

(2) the notice of appeal was not filed with the District Court within the time prescribed by Rule 7-104; or

(3) an appeal to be heard de novo was ~~withdrawn~~ dismissed by the appellant pursuant to Rule 7-112 (f)(1).

(c) When Discretionary

The circuit court may dismiss an appeal if:

(1) the appeal was not properly taken pursuant to Rule 7-103;

(2) the record was not transmitted within the time prescribed by Rule 7-108, unless the court finds that the failure to transmit the record was caused by the act or omission of a judge, a clerk of court, a court reporter, or the appellee; ~~or~~

(3) the case has become moot~~.~~; or

(4) the appellant fails to appear for trial or any other proceeding on appeal.

Cross reference: See Rule 7-105 allowing the District Court to strike a notice of appeal for certain reasons, including failure to file the notice of appeal within the time prescribed by Rule 7-104. See Rule 7-112 (f)(1) and its Committee note regarding dismissal where the appellant fails to appear.

Source: This Rule is derived from former Rule 1335.

REPORTER'S NOTE

Proposed amendments to Rule 7-114 address the recent Court of Appeals decision in *Tengeres v. State*, 474 Md. 126 (2021). See the Committee note following Rule 7-112 for more information.

Section (b) is updated to conform the language regarding dismissal of an appeal by the appellant to the language in Rule 7-112 (f)(1). Such an action was previously referred to as a withdrawal of an appeal but is now called a dismissal.

Section (c) is amended to conform it with proposed amendments to Rule 7-112 (f)(1), which makes dismissal by the court discretionary when the appellant fails to appear. The cross reference following section (c) is updated to refer to

Rule 7-112 (f)(1) and its Committee note, which explains the considerations for the court when contemplating dismissal under that subsection.

MARYLAND RULES OF PROCEDURE

TITLE 7 – APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

CHAPTER 200 – JUDICIAL REVIEW OF ADMINSTRATIVE AGENCY DECISIONS

AMEND Rule 7-206.1 by updating a reference in section (d), as follows:

RULE 7-206.1. RECORD – JUDICIAL REVIEW OF DECISION OF THE WORKERS' COMPENSATION COMMISSION

...

(d) Electronic Transmission

If the Commission is required by section (b) of this Rule or by order of court to transmit all or part of the record to the court, the Commission may file electronically if the court to which the record is transmitted is the circuit court for an "MDEC county" as defined in Rule 20-101 ~~(m)~~ (n).

...

REPORTER'S NOTE

The proposed conforming amendment to Rule 7-206.1 updates a reference in section (d) as a result of proposed amendments to Rule 20-101.

MARYLAND RULES OF PROCEDURE

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

CHAPTER 100 – GENERAL PROVISIONS

ADD new Rule 8-125, as follows:

Rule 8-125. APPEALS FROM COURTS EXERCISING CRIMINAL JURISDICTION – CONFIDENTIALITY

(a) Scope

This Rule applies to an appeal from a criminal prosecution or conviction in which the victim of the alleged crime:

(1) was a minor child at the time of the crime; or

(2) is the victim of a crime that would require the defendant, if convicted, to register as a sex offender.

Cross reference: See Code, Criminal Procedure Article, §§ 11-701 – 11-704.2.

(b) Confidentiality

(1) Name of Victim

The name of an individual covered by section (a) of this Rule, other than the individual's initials, shall not be used in any opinion, oral argument, brief, record extract, petition, appendix, or other document pertaining to the appeal that is generally available to the public.

(2) Other Identifying Information

Other information from which an individual covered by subsection (a) of this Rule might readily be identified, including the individual's street address, phone number, e-mail address, or the names (other than initials) of related individuals other than a defendant in the criminal prosecution, shall not be used in any opinion, oral argument, brief, record extract, petition, appendix, or other document pertaining to the appeal that is generally available to the public.

(3) Information Filed Under Seal

Information that is required to be kept confidential by this Rule may be included in a document that is filed under seal, provided that a redacted copy of the document omitting the confidential information is filed at the same time.

Source: This Rule is new.

REPORTER'S NOTE

The Court of Special Appeals and the Criminal Appeals Division of the Office of the Attorney General have indicated that the advent of electronic filing in Maryland has greatly increased the public's ability to access appellate records. One side effect of this increased access is that the details of crimes against children and sexual assault victims are easily searchable by the public.

As a result, the Rules Committee proposes that new Rule 8-125 be adopted by the Court of Appeals. Rule 8-125, which is based structurally on existing Rules 8-121, 8-122, 8-123, and 8-124, requires that any personally identifying information

pertaining to children victims of crime or victims of sexual assault be kept confidential during an appeal.

MARYLAND RULES OF PROCEDURE

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

CHAPTER 200 – OBTAINING REVIEW IN COURT OF SPECIAL APPEALS

AMEND Rule 8-201 by adding the language contained in former Form 22 to section (a) and by adding a cross reference after section (a), as follows:

RULE 8-201. METHOD OF SECURING REVIEW – COURT OF SPECIAL APPEALS

(a) By Notice of Appeal

Except as provided in Rule 8-204, the only method of securing review by the Court of Special Appeals is by the filing of a notice of appeal within the time prescribed in Rule 8-202. The notice shall be filed with the clerk of the lower court or, in an appeal from an order or judgment of an Orphans' Court, with the register of wills. The clerk or register shall enter the notice on the docket. It is sufficient that the notice be substantially in the following form:

(Caption)

NOTICE OF APPEAL

_____ notes an appeal to the Court of Special Appeals in the above-captioned action.

(Signature and Certificate of Service)

Cross reference: See *B & K Rentals & Sales Co. v. Universal Leaf Tobacco Co.*, 319 Md. 127, 133 (1990) ("Maryland cases usually have construed notices of appeal liberally and have ignored limiting language in notices of appeal, deeming it surplusage.").

. . .

Source: This Rule is derived from former Rule 1011 with the exception of the first sentence of (a) which is derived from former Rule 1010, and former Form 22.

REPORTER'S NOTE

Form 22 is proposed to be deleted from the Appendix of Forms, and the Notice of Appeal language from Form 22 is proposed to be moved to section (a) of Rule 8-201. This change is suggested to make the form easier for a practitioner to locate in the Rules while preparing an appeal. A cross reference is added after section (a) noting that notices of appeal are to be liberally construed.

MARYLAND RULES OF PROCEDURE

APPENDIX: FORMS

DELETE FORM 22, as follows:

~~FORM 22. NOTICE OF APPEAL (Rule 8-201)~~

~~(Caption)~~

~~NOTICE OF APPEAL~~

~~_____ notes an appeal to the Court of Special Appeals in the above-captioned action.~~

~~(Signature and Certificate of Service)~~

REPORTER'S NOTE

Form 22 is proposed to be deleted from the Appendix of Forms, and the Notice of Appeal language from Form 22 is proposed to be moved to section (a) of Rule 8-201. This deletion is proposed in conjunction with the deletion of the forms pertaining to juvenile causes by Rules Order dated November 9, 2021. The deletion completes the removal of forms from the Appendix of Forms that follows the Maryland Rules, with the exception of the Form Interrogatories, which will remain in the Appendix.

MARYLAND RULES OF PROCEDURE

TITLE 8 – APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 200 – OBTAINING REVIEW IN COURT OF SPECIAL APPEALS

AMEND Rule 8-207 by revising subsection (a)(3) to clarify that the five-day requirement to order a transcript applies to juvenile and TPR cases, by revising subsection (a)(4) to expand the 30-day deadline to transmit the record in juvenile and TPR matters, and by making stylistic changes, as follows:

RULE 8-207. EXPEDITED APPEAL

(a) Adoption, Guardianship, Child Access, Child in Need of Assistance, Special Immigrant Juvenile Status Cases

(1) This section applies to every appeal to the Court of Special Appeals (A) from a judgment granting or denying a petition (i) for adoption, guardianship terminating parental rights, or guardianship of the person of a minor or disabled person, or (ii) to declare that a child is a child in need of assistance, (B) from a judgment granting, denying, or establishing custody of or visitation with a minor child or from an interlocutory order taken pursuant to Code, Courts Article, § 12-303(3)(x), and (C) from a judgment or other appealable order granting or denying a petition or motion for an order containing

findings or determinations of fact necessary to a grant of Special Immigrant Juvenile Status by the Secretary of Homeland Security or other authorized federal agency or official. Unless otherwise provided for good cause by order of the Court of Special Appeals or by order of the Court of Appeals if that Court has assumed jurisdiction over the appeal, the provisions of this section shall prevail over any other rule to the extent of any inconsistency.

(2) In the information report filed pursuant to Rule 8-205, the appellant shall state whether the appeal is subject to this section.

(3) Within five days after (A) the entry of an order pursuant to Rule 8-206 (c) directing preparation of the record, or (B) the filing of a notice of appeal in a juvenile cause subject to this Rule or from a guardianship terminating parental rights subject to this Rule, the appellant shall order the transcript and make an agreement for payment to assure its preparation. The court reporter or other person responsible for preparation of the transcript shall give priority to transcripts required for appeals subject to this section and shall complete and file the transcripts with the clerk of the lower court within 20 days after receipt of an order of the party directing their preparation and an agreement for payment of the cost. An extension of time may be granted only for good cause.

(4) The clerk of the lower court shall transmit the record to the Court of Special Appeals within thirty days after (A) the date of the order entered pursuant to Rule 8-206 (c), or (B) the filing of a notice of appeal in a juvenile cause subject to this Rule or from a guardianship terminating parental rights subject to this Rule.

(5) The briefing schedule set forth in Rule 8-502 shall apply, except that (A) an appellant's reply brief shall be filed within 15 days after the filing of the appellee's brief, (B) a cross-appellee's brief shall be filed within 20 days after the filing of a cross-appellant's brief, and (C) a cross-appellant's reply brief shall be filed within 15 days after the filing of a cross-appellee's brief. Unless directed otherwise by the Court, any oral argument shall be held within 120 days after transmission of the record. The decision shall be rendered within 60 days after oral argument or submission of the appeal on the briefs filed.

(6) Any motion for reconsideration pursuant to Rule 8-605 shall be filed within 15 days after the filing of the opinion of the Court or other order disposing of the appeal. Unless the mandate is delayed pursuant to Rule 8-605 (d) or unless otherwise directed by the Court, the Clerk of the Court of Special Appeals shall issue the mandate upon the expiration of 15 days after the filing of the court's opinion or order.

. . .

Source: This Rule is derived in part from former Rule 1029 and is in part new.

REPORTER'S NOTE

The Court of Special Appeals has requested that Rule 8-207 be amended to resolve a perceived ambiguity in CINA/TPR cases as to when the transcript must be ordered and when the record must be transmitted.

To resolve the issue with transcripts, the Rules Committee proposes that subsection (a)(3) be amended to add the filing of a notice of appeal in a juvenile matter as an event that triggers the five-day requirement to order the transcript.

To resolve the issue of when the record must be transmitted, the Committee also proposes that subsection (a)(4) be amended so that the record must be transmitted within 30 days of the filing of a notice of appeal in a juvenile or TPR matter.

Stylistic changes to subsections (a)(3) and (a)(4) are also proposed.

MARYLAND RULES OF PROCEDURE

TITLE 8 – APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 300 – OBTAINING APPELLATE REVIEW IN COURT OF APPEALS

AMEND Rule 8-303 by revising section (a) so that seven copies are no longer required to be filed with a petition; by adding references to a "cross-petition" in sections (a), (b), (c), (d), (f), and (g); by deleting the requirement in subsection (d)(1) requiring seven copies to be filed with a petition or cross-petition; by revising subsection (d)(1) so the time to file a response if an amicus curiae brief is filed is extended by 15 days; by adding new subsection (d)(2) pertaining to word limits; and by making stylistic changes, as follows:

RULE 8-303. PETITION FOR WRIT OF CERTIORARI — PROCEDURE

(a) Filing

A petition for a writ of certiorari~~, together with seven legible copies,~~ shall be filed with the Clerk of the Court of Appeals. The petition or cross-petition shall be accompanied by the filing fee prescribed pursuant to Code, Courts Article, § 7-102 unless:

(1) if the petition or cross-petition is in a civil action, the prepayment of prepaid costs has been waived in accordance with Rule 1-325.1; or

(2) if the petition or cross-petition is in a criminal action, the fee has been waived by an order of court or the petitioner is represented by the Public Defender's Office.

Cross reference: Rule 1-325.

(b) Petition; Cross-Petition

(1) Contents

The petition or cross-petition shall present accurately, briefly, and clearly whatever is essential to a ready and adequate understanding of the points requiring consideration. Except with the permission of the Court of Appeals, a petition or cross-petition, including a cross-petition that answers a petition, shall not exceed 3,900 words. ~~It~~ A petition and cross-petition shall contain the following information:

(A) A reference to the action in the lower court by name and docket number;

(B) A statement whether the case has been decided by the Court of Special Appeals;

(C) If the case is then pending in the Court of Special Appeals, a statement whether briefs have been filed in that Court or the date briefs are due, if known;

(D) A statement whether the judgment of the circuit court has adjudicated all claims in the action in their entirety, and the rights and liabilities of all parties to the action;

(E) The date of the judgment sought to be reviewed and the date of any mandate of the Court of Special Appeals;

(F) The questions presented for review;

(G) A particularized statement of why review of those issues by the Court of Appeals is desirable and in the public interest~~.~~;

(H) A reference to pertinent constitutional provisions, statutes, ordinances, or regulations;

(I) A concise statement of the facts material to the consideration of the questions presented; and

(J) A concise argument in support of the petition or cross-petition.

(2) Documents

A copy of each of the following documents shall be submitted with the petition or cross-petition at the time it is filed:

(A) The docket entry evidencing the judgment of the circuit court;

(B) Any opinion of the circuit court;

(C) Any written order issued under Rule 2-602 (b);

(D) If the case has not been decided by the Court of Special Appeals, all briefs that have been filed in the Court of Special Appeals; and

(E) Any opinion of the Court of Special Appeals.

(3) Where Documents Unavailable

If a document required by subsection (b)(2) of this Rule is unavailable, the petitioner shall state the reason for the unavailability. If a document required to be submitted with the petition or cross-petition becomes available after the petition or cross-petition is filed but before it has been acted upon, the petitioner shall file it as a supplement to the petition or cross-petition as soon as it becomes available.

(4) Previously Served Documents

Copies of any brief or opinion previously served upon or furnished to another party need not be served upon that party.

(c) Sanction

Failure to comply with section (b) of this Rule is a sufficient reason for denying the petition or cross-petition.

(d) Answer

(1) Time to File

Within 15 days after service of the petition or cross-petition, any other party may file an original ~~and seven copies of an~~ answer to the petition or cross-petition stating why the writ should be denied. If an amicus curiae brief is filed in

support of the petition or cross-petition pursuant to Rule 8-511 (e), the deadline to answer is automatically extended to 15 days after service of the amicus curiae brief.

(2) Word Limits

Except with the permission of the Court of Appeals: (A) an answer to a petition shall not exceed 3,900 words, and (B) a reply to a cross-petition shall not exceed 1,500 words.

(e) Stay of Judgment of Court of Special Appeals or of a Circuit Court

Upon the filing of a petition for a writ of certiorari, or upon issuing a writ on its own motion, the Court of Appeals may stay the issuance, enforcement, or execution of a mandate of the Court of Special Appeals or the enforcement or execution of a judgment of a circuit court.

(f) Disposition

On review of the petition or cross-petition and any answer, the Court, unless otherwise ordered, shall grant or deny the petition or cross-petition without the submission of briefs or the hearing of argument. If the petition or cross-petition is granted, the Court shall:

(1) direct further proceedings in the Court of Appeals;

(2) dismiss the appeal pursuant to Rule 8-602;

(3) affirm the judgment of the lower court;

(4) vacate or reverse the judgment of the lower court;

(5) modify the judgment of the lower court;

(6) remand the action to the lower court for further proceedings pursuant to Rule 8-604 (d); or

(7) an appropriate combination of the above.

(g) Duty of Clerk

The Clerk of the Court of Appeals shall send a copy of the order disposing of the petition or cross-petition to the clerk of the lower court. If the order directs issuance of a writ of certiorari, the Clerk shall issue the writ to the lower court.

Source: This Rule is derived from former Rule 811.

REPORTER'S NOTE

The Clerk of the Court of Appeals has requested that Rule 8-303 be amended to remove the requirement for multiple copies of a petition, cross-petition, and answers to the same to be filed from sections (a) and (d). The Clerk no longer requires multiple copies of these papers.

In addition, a practitioner has expressed concerns with current Rule 8-303 and the practice involving petitions for certiorari in the Court of Appeals. In the current version of this Rule, there is a limit of 3,900 words for a petition. There is no word limit for answers, and the Rule is silent concerning cross-petitions. This results in some confusion among practitioners, and in some instances, answers to petitions under this Rule far exceed the word limit imposed by this Rule on the petitions.

To address these concerns, Rule 8-303 is proposed to be amended throughout to add cross-petitions as papers that are covered by the Rule, and subsection (b)(1) is proposed to be

amended to provide a limit of 3,900 words for a cross-petition, including a cross-petition that answers a petition.

Section (d) is proposed to be restructured with subsection (d)(1) added so that a party will have 15 days to answer after service of a petition, cross-petition, or amicus curiae brief. New subsection (d)(2) establishes word limits for an answer to a petition (3,900 words) and a reply to a cross-petition (1,500 words).

MARYLAND RULES OF PROCEDURE

TITLE 8 – APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 300 – OBTAINING APPELLATE REVIEW IN COURT OF APPEALS

AMEND Rule 8-305 by deleting the requirement from section (b) requiring seven copies to accompany an original certification order, as follows:

RULE 8-305. CERTIFICATION OF QUESTIONS OF LAW TO THE COURT OF APPEALS

. . .

(b) Certification Order

In disposing of an action pending before it, a certifying court, on motion of any party or on its own initiative, may submit to the Court of Appeals a question of law of this State, in accordance with the Maryland Uniform Certification of Questions of Law Act, by filing a certification order. The certification order shall be signed by a judge of the certifying court and state the question of law submitted, the relevant facts from which the question arises, and the party who shall be treated as the appellant in the certification procedure. The original order ~~and seven copies~~ shall be forwarded to the Court of Appeals by the clerk of the certifying court under its

official seal, together with the filing fee for docketing regular appeals, payable to the Clerk of the Court of Appeals.

. . .

Cross reference: Code, Courts Article, §§ 12-601 through 12-609.

Source: This Rule is derived from former Rule 896.

REPORTER'S NOTE

The Rules Committee, at the request of the Clerk of the Court of Appeals, proposes that Rule 8-305 be amended to remove the requirement that seven copies of the Certification Order be filed with the Court. The Clerk has informed the Rules Committee that seven copies of the order are no longer required.

MARYLAND RULES OF PROCEDURE

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

CHAPTER 400 – PRELIMINARY PROCEDURES

AMEND Rule 8-411 by adding a provision to subsection (a)(2) requiring transcripts to be made of only the portions of recorded proceedings that are relevant to an appeal, and by adding a cross reference following subsection (a)(3), as follows:

RULE 8-411. TRANSCRIPT

(a) Ordering of Transcript

Unless a copy of the transcript is already on file, the appellant shall order in writing from the court reporter a transcript containing:

(1) a transcription of (A) all the testimony or (B) that part of the testimony that the parties agree, by written stipulation filed with the clerk of the lower court, is necessary for the appeal or (C) that part of the testimony ordered by the Court pursuant to Rule 8-206 (c) or directed by the lower court in an order;

(2) a transcription of any <u>portion of any</u> proceeding relevant to the appeal that was recorded pursuant to Rule 16-503

(b) and that: (A) contains the ruling or reasoning of the court or tribunal, or (B) is otherwise reasonably necessary for the determination of the questions presented by the appeal and any cross-appeal; and

(3) if relevant to the appeal and in the absence of a written stipulation by all parties to the contents of the recording, a transcription of any audio or audiovisual recording or portion thereof offered or used at a hearing or trial.

Cross reference: See Rule 8-501 (c).

. . .

Source: This Rule is derived in part from former Rule 1026 a 2 and Rule 826 a 2(b), and is in part new.

REPORTER'S NOTE

The Court of Special Appeals has identified an area of concern with Rule 8-411. The current Rule, in subsection (a)(2), requires that any proceeding relevant to the appeal must be transcribed. The effect of this provision is that the whole proceeding must be transcribed, even the portions of the proceeding that are not relevant for the appeal. This makes the process of obtaining the transcript necessary for the appeal to proceed much more costly than it needs to be, which has a disproportionate impact on self-represented and lower income parties to an appeal.

To remedy this situation, the Rules Committee proposes that subsection (a)(2) of Rule 8-411 be revised so that only the portions of recorded proceedings relevant to an appeal must be transcribed.

A cross reference is also added following subsection (a)(3).

MARYLAND RULES OF PROCEDURE

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

CHAPTER 500 – RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-501 by reducing or, under certain circumstances, eliminating the required number of paper copies of certain documents filed in the Court of Special Appeals; by adding a Committee note following subsection (l)(2); by adding a reference to Rule 20-404 (b) in subsection (l)(6); by creating new subsection (l)(7)(A), applicable to a certain extension of time in the Court of Appeals, with language from current section (l); by adding new subsections (l)(7)(B) and (C) establishing procedures permitting a joint stipulation to extend the time to file a page-proof or final brief in the Court of Special Appeals and addressing extensions of time by order of the Court of Special Appeals; and by making stylistic changes, as follows:

RULE 8-501. RECORD EXTRACT

. . .

(l) Deferred Record Extract; Special Provisions Regarding Filing of Briefs

(1) If the parties so agree in a written stipulation filed with the Clerk or if the appellate court so orders on motion or

on its own initiative, the preparation and filing of the record extract may be deferred in accordance with this section. The provisions of section (d) of this Rule apply to a deferred record extract, except that the designations referred to therein shall be made by each party at the time that party serves the page-proof copies of its brief.

(2) If a deferred record extract authorized by this section is employed, the appellant, within 30 days after the filing of the notice required by Rule 8-412 (a) ~~record~~, shall file ~~four~~ one page-proof ~~copies~~ copy of the brief ~~if the case is in the Court of Special Appeals, or one copy if the case is in the Court of Appeals,~~ and shall serve ~~two copies~~ one copy on ~~the appellee~~ each party. Within 30 days after the filing of the page-proof ~~copies~~ copy of the appellant's brief, the appellee shall file one page-proof copy of the brief and shall serve ~~two copies~~ one copy on the appellant. The page-proof copies shall contain appropriate references to the pages of the parts of the record involved. The parties are not required to file paper copies of page-proof briefs if they are represented by counsel or are registered users of MDEC.

Committee note: Attorneys and other registered users are required to file briefs and other papers with the court electronically.

(3) Within 25 days after the filing of the page-proof copy of the appellee's brief, the appellant shall file the deferred

record extract, and the appellant's final briefs. Within five days after the filing of the deferred record extract, the appellee shall file its final briefs.

(4) The appellant may file a reply brief in final form within 20 days after the filing of the appellee's final brief, but not later than ten days before the date of scheduled argument.

(5) In a cross-appeal:

(A) within 30 days after the filing of the page-proof copies of the appellee/cross-appellant's brief, the appellant/cross-appellee shall file one page-proof copy of a brief in response to the issues and argument raised on the cross-appeal and shall include any reply to the appellee's response that the appellant wishes to file;

(B) within 25 days after the filing of the cross-appellee/appellant's reply brief, the appellant shall file the deferred record extract, the appellant's final briefs, and the final cross-appellee's/appellant's reply briefs;

(C) within five days after the filing of the deferred record extract, the appellee shall file its final appellee/cross-appellant's briefs; and

(D) the appellee/cross-appellant may file in final form a reply to the cross-appellee's response within 20 days after the

filing of the cross-appellee's final brief, but not later than ten days before the date of scheduled argument.

(6) The deferred record extract and final briefs shall be filed in the number of copies required by Rules 8-502 (c), ~~and~~ 8-501 (a), and 20-404 (b). The briefs shall contain appropriate references to the pages of the record extract. The deferred record extract shall contain only the items required by Rule 8-501 (c), those parts of the record actually referred to in the briefs, and any material needed to put those references in context. No changes may be made in the briefs as initially served and filed except (A) to insert the references to the pages of the record extract, (B) to correct typographical errors, and (C) to take account of a change in the law occurring since the filing of the page-proof briefs.

(7) The time for filing page-proof copies of a brief or a final brief may be extended as provided in subsections (l)(7)(A), (B), and (C) of this Rule.

(A) In the Court of Appeals, ~~The~~ the time for filing page-proof copies of a brief or final briefs may be extended by stipulation of counsel filed with the clerk so long as the final briefs set out in subsections (l)(3) and (5) of this ~~section~~ Rule are filed at least 30 days, and any reply brief set out in subsections (l)(4) and (5) of this ~~section~~ Rule is filed at least ten days, before the scheduled argument.

(B) In the Court of Special Appeals, by joint stipulation filed with the Clerk, the parties may extend the time for filing a page-proof brief or final brief by no more than 30 days from the original due date of the page-proof brief or final brief. The time to file a reply brief may be extended by stipulation so long as the reply brief will be filed at least ten days before argument or the date of submission of the case on the briefs.

(C) The Court of Special Appeals, on its own initiative or on motion filed pursuant to Rule 1-204, may extend the time for filing a brief. Absent urgent and previously unforeseeable circumstances, a motion shall be filed at least five days before the applicable due date. The motion shall: (1) state that the moving party has sought consent of the other parties and whether each party consents to the extension; and (2) if the requested due date is more than 30 days after the original due date, identify good cause for the extension required.

. . .

Source note: This Rule is derived from former Rules 1028 and 828 with the exception of section (l) which is derived from former Rule 833.

REPORTER'S NOTE

The Court of Special Appeals ("COSA") has requested that the Rules Committee consider proposed amendments to section (l) of Rule 8-501 so that parties using a deferred record extract

will follow the same procedures adopted recently which modified the time extension limits for briefs in the COSA.

The Committee proposes subsection (l)(2) be amended to reduce the requirement of an appellant to file four page-proof paper copies of the brief with the court to one paper copy for non-MDEC parties. The requirement to serve two page-proof paper copies of the brief on the other parties in an appeal is also reduced to one paper copy for non-MDEC parties. Attorneys and registered users of MDEC are now required to file one electronic copy with the court and serve one copy electronically on the other parties instead of filing four paper copies and serving two paper copies on the other parties in an appeal. A Committee note is proposed following subsection (l)(2) indicating that attorneys and other registered users are required to file briefs and papers with the court electronically.

Subsection (l)(6) is proposed to be amended by adding a reference to Rule 20-404 (b).

Subsection (l)(7) is proposed to be amended by using the current language of the subsection, with stylistic changes, to create new subsection (l)(7)(A) addressing extensions of time to file page-proof briefs or final briefs in the Court of Appeals. New subsections (l)(B) and (C) address extensions of time to file page-proof briefs or final briefs in the Court of Special Appeals by joint stipulation or by order of court, respectively.

Stylistic changes are also proposed.

MARYLAND RULES OF PROCEDURE

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

CHAPTER 500 – RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-502 by revising subsection (b)(2)(A) to link the automatic 30-day extension by stipulation to the original due date of the principal brief, by making stylistic changes to subsection (b)(2)(B), by changing the number of copies required in section (c) to eight, and by adding new section (e) establishing procedures for the citation of supplemental authority and supplemental memoranda, briefs, and oral argument, as follows:

RULE 8-502. FILING OF BRIEFS

. . .

(b) Extension of Time

(1) In the Court of Appeals

In the Court of Appeals, the time for filing a brief may be extended by (A) joint stipulation of the parties filed with the clerk so long as the appellant's brief and the appellee's brief are filed at least 30 days, and any reply brief is filed at least ten days, before the scheduled argument, or (B) order

of the Court entered on its own initiative or on motion filed pursuant to Rule 1-204.

(2) In the Court of Special Appeals

Subsection (b)(2) of this Rule governs extensions of time for filing briefs in the Court of Special Appeals.

(A) By Joint Stipulation

By joint stipulation filed with the clerk, the parties may extend the time for filing (i) a principal brief by no more than 30 days from the original due date of the brief, or (ii) a reply brief, provided that the reply brief will be filed at least ten days before argument or the date of submission on the brief.

(B) By Order of the Court

The court, on its own initiative or on motion filed pursuant to Rule 1-204, may extend the time for filing a brief. Absent urgent and previously unforeseeable circumstances, a motion shall be filed at least five days before the applicable due date. The motion shall: ~~(1)~~ (i) state that the moving party has sought the consent of the other parties and whether each party consents to the extension, and ~~(2)~~ (ii) if the requested due date is more than 30 days after the original due date, identify good cause for the extension request.

(c) Filing and Service

In an appeal to the Court of Special Appeals, ~~15~~ eight copies of each brief and ~~10~~ eight copies of each record extract shall be filed, unless otherwise ordered by the court. Unless filing an informal brief pursuant to subsection (a)(9) of this Rule, ~~Incarcerated~~ incarcerated or institutionalized parties who are self-represented shall file ~~nine~~ eight copies of each brief and ~~nine~~ eight copies of each record extract. In the Court of Appeals, ~~20~~ eight copies of each brief and record extract shall be filed, unless otherwise ordered by the court. Two copies of each brief and record extract shall be served on each party pursuant to Rule 1-321.

. . .

(e) Citation of Supplemental Authority; Supplemental Memoranda, Briefs, and Oral Argument

(1) Citation of Supplemental Authority

If a pertinent and significant authority comes to a party's attention after the party's brief has been filed, including after oral argument but before the mandate issues, the party promptly may file a Notice of Supplemental Citation. The Notice shall set forth the citation, state the reason for the supplemental citation, and refer either to a page of a brief or to a point argued orally. The body of the Notice may not exceed 350 words. Any response shall be filed promptly and limited to 350 words.

Cross reference: See Rule 19-303.3, concerning an attorney's duty of candor to the tribunal.

(2) Supplemental Memoranda, Briefs, and Oral Argument

Upon receipt of a Notice of Supplemental Citation pursuant to subsection (e)(1) of this Rule, or on its own initiative, the Court may grant leave for, or direct the filing of, additional memoranda or supplemental briefs, and may require additional argument before, during, or after oral argument.

Source: This Rule is derived from former Rules 1030 and 830 with the exception of subsection (a)(8) which is derived from the last sentence of former Rule Z56, ~~and of~~ subsection (b)(2) which is in part derived from Rule 833 and in part new, and section (e) which is derived from Fed. R. App. P. 28 (j) and the Fourth Circuit's Rule 28.

REPORTER'S NOTE

The Court of Special Appeals ("COSA") requested an amendment to Rule 8-502 last year which permits the parties to stipulate to extend the time for filing a principal brief by 30 days and a reply brief to a date that is at least ten days before argument or submission on the brief. Some practitioners, since these changes have gone into effect, have taken the position that the current version of Rule 8-502 permits multiple such extensions, as each stipulation resets the clock. This interpretation was not the intent of the COSA when the Rule was changed last year.

The Rules Committee proposes amending section (b) of Rule 8-502 to link the 30-day extension to the original due date of the principal brief.

Stylistic changes to subsection (b)(2)(B) are also proposed.

The Committee, at the request of the Clerk of the COSA, proposes that section (c) be amended to change to eight the

number of copies to be filed in all instances. The Committee also recommends changing the number of copies to be filed in the Court of Appeals to eight.

The Court of Appeals has requested that the Committee draft for its consideration an amendment to the Maryland Rules comparable to the Federal Rules regarding citation of supplemental authority after a party's brief has been filed. The Committee proposes in response to amend Rule 8-502 by adding new section (e), based on Fed. R. App. P. 28 (j) and the Fourth Circuit's Rule 28.

MARYLAND RULES OF PROCEDURE

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

CHAPTER 500 – RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-503 by adding subsection (b)(5) addressing references to an appendix to a cross-appellant's reply brief, by adding new subsections (c)(1)(E) and (c)(2)(E) requiring a certain color for the back and cover of a cross-appellant's reply brief, by revising subsection (d)(1) concerning the application of the word count limitation, by deleting the words "filed by the appellant" from subsection (d)(3), by deleting references in section (e) to the color of the back and cover of a cross-appellant's brief, by adding to section (e) a word count limitation applicable to a reply brief filed by a cross-appellant, by deleting current section (g), by re-lettering current section (h) as section (g), and by making stylistic changes, as follows:

RULE 8-503. STYLE AND FORM OF BRIEFS

(a) Numbering of Pages; Binding

The pages of a brief shall be consecutively numbered. The brief shall be securely bound along the left margin.

(b) References

References (1) to the record extract, regardless of whether the record extract is included as an attachment to the appellant's brief or filed as a separate volume, shall be indicated as (E .....), (2) to any appendix to appellant's brief shall be indicated as (App .....), (3) to an appendix to appellee's brief shall be indicated as (Apx .....), ~~and~~ (4) to an appendix to a reply brief shall be indicated as (Rep. App .....), and (5) to an appendix to a cross-appellant's reply brief shall be indicated as (Cr. Apx .....). If the case falls within an exception listed in Rule 8-501 (b), references to the transcript of testimony contained in the record shall be indicated as (T .....) and other references to the record shall be indicated as (R .....).

(c) Covers

A brief shall have a back and cover of the following color:

(1) In the Court of Special Appeals:

(A) appellant's brief--yellow;

(B) appellee's brief--green;

(C) reply brief--light red;

(D) amicus curiae brief--gray;

(E) cross-appellant's reply brief--purple;

~~(E)~~ (F) briefs of incarcerated or institutionalized parties who are self-represented--white.

(2) In the Court of Appeals:

(A) appellant's brief--white;

(B) appellee's brief--blue;

(C) reply brief--tan;

(D) amicus curiae brief--gray;

(E) cross-appellant's reply brief--orange.

The cover page shall contain the name of the appellate court, the caption of the case on appeal, and the case number on appeal, as well as the name, address, telephone number, and e-mail address, if available, of at least one attorney for a party represented by an attorney or of the party if not represented by an attorney. If the appeal is from a decision of a trial court, the cover page shall also name the trial court and each judge of that court whose ruling is at issue in the appeal. The name typed or printed on the cover constitutes a signature for purposes of Rule 1-311.

(d) Length

(1) Principal Briefs of Parties

Except as otherwise provided in section (e) of this Rule or with permission of the Court, the principal brief of an appellant or appellee shall not exceed 9,100 words in the Court of Special Appeals or 13,000 words in the Court of Appeals. This limitation does not apply to (A) the table of contents and citations required by Rule 8-504 (a)(1); ~~(B) the citation and~~

~~text~~ (B) the information required by Rule 8-504 (a)~~(8)~~(10)~~;~~ ~~(C) a motion to dismiss and argument supporting or opposing the motion;~~ or ~~(D)~~ (C) a Certification of Word Count and Compliance with Rule 8-112 required by Rule 8-504 (a)(9) ~~under section (g) of this Rule~~.

(2) Motion to Dismiss

Except with permission of the Court, any portion of a party's brief pertaining to a motion to dismiss shall not exceed an additional 2,600 words in the Court of Special Appeals or 6,500 words in the Court of Appeals.

(3) Reply Brief

Any reply brief ~~filed by the appellant~~ shall not exceed 3,900 words in the Court of Special Appeals or 6,500 words in the Court of Appeals.

(4) Amicus Curiae Brief

Except with the permission of the Court, an amicus curiae brief:

(A) if filed in the Court of Special Appeals, shall not exceed 3,900 words; and

(B) if filed in the Court of Appeals, shall not exceed 6,500 words, except that an amicus curiae brief supporting or opposing a petition for certiorari or other extraordinary writ shall not exceed 3,900 words.

(e) Briefs of Cross-Appellant and Cross-Appellee

In cases involving cross-appeals, the principal brief filed by the appellee/cross-appellant ~~shall have a back and cover the color of an appellee's brief and~~ shall not exceed 13,000 words. The ~~responsive~~ reply brief filed by the appellant/cross-appellee ~~shall have a back and cover the color of a reply brief and~~ shall not exceed (1) 13,000 words in the Court of Appeals or (2) in the Court of Special Appeals (A) 9,100 words if no reply to the appellee's answer is included or (B) 13,000 words if a reply is included. The reply brief filed by the cross-appellant shall not exceed 3,900 words in the Court of Special Appeals or 6,500 words in the Court of Appeals.

(f) Incorporation by Reference

In a case involving more than one appellant or appellee, any appellant or appellee may adopt by reference any part of the brief of another.

~~(g) Certification of Word Count and Compliance With Rule 8-112~~

~~(1) Requirement~~

~~Except as otherwise provided by Rule 8-112(b)(3), a brief shall include a Certification of Word Count and Compliance with Rule 8-112 substantially in the form set forth in subsection (g)(2) of this Rule. The party or amicus curiae providing the certification may rely on the word count of the word-processing system used to prepare the brief.~~

~~(2) Form~~

~~A Certification of Word Count and Compliance with Rule 8-112 shall be signed by the individual making the certification and shall be substantially in the following form:~~

~~CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112~~

~~1. This brief contains _____ words, excluding the parts of the brief exempted from the word count by Rule 8-503.~~

~~2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.~~

_____

~~Signature~~

~~(h)~~ (g) Effect of Noncompliance

For noncompliance with this Rule, the appellate court may dismiss the appeal or make any other appropriate order with respect to the case, including an order that an improperly prepared brief be reproduced at the expense of the attorney for the party for whom the brief was filed.

Source: This Rule is derived as follows:
Section (a) is derived from former Rules 831 a and 1031 a.
Section (b) is derived from former Rules 831 a and 1031 a.
Section (c) is derived from former Rules 831 a and 1031 a.
Section (d) is in part derived from Rule 831 b and 1031 b and in part new.
Section (e) is new.
Section (f) is derived from Fed. R. App. P. 28(i).
~~Section (g) is new and is derived in part from Fed. R. App. P. 32.~~
Section ~~(h)~~ (g) is derived from former Rules 831 g and 1031 f.

REPORTER'S NOTE

Proposed amendments to Rule 8-503 streamline and clarify certain requirements for cases on appeal.

New subsection (b)(5) explains how to reference an appendix to a cross-appellant's reply brief.

New subsections (c)(1)(E) and (c)(2)(E) state the color for the back and cover of a cross-appellant's reply brief in the Court of Special Appeals and the Court of Appeals, respectively. The color used in the Court of Special Appeals is purple, while orange is used in the Court of Appeals. Current subsection (c)(1)(E) is re-lettered as (c)(1)(F) to account for the new subsection.

Proposed amendments to subsection (d)(1) clarify the application of the word limit to an appellant or appellee's principal brief. References to Rule 8-504 account for amendments to Rule 8-504 that are proposed contemporaneously with these changes. The limitation does not apply to the table of contents, citations required by Rule 8-504 (a)(1), the information required by Rule 8-504 (a)(10), and the Certification of Word Count and Compliance with Rule 8-112 required by Rule 8-504 (a)(9). Rule 8-504 (a)(10) requires the citation and verbatim text of all pertinent law. Rule 8-504 (a)(9) requires a Certification of Word Count and Compliance with Rule 8-112 that formerly was required by Rule 8-503 (g).

Section (e) is updated to reflect that the back and cover color of the principal brief and any reply brief filed by the appellee/cross-appellant is stated in Rule 8-503 (c).

Rule 8-503 (g) formerly addressed the requirement and form of a Certification of Word Count and Compliance with Rule 8-112. Proposed amendments to Rule 8-504 move this requirement to Rule 8-504 (a)(9). Accordingly, section (g) is deleted from Rule 8-503 to avoid repetition. Section (h) is subsequently re-lettered as section (g).

MARYLAND RULES OF PROCEDURE

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

CHAPTER 500 – RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-504 by expanding subsection (a)(4) so that reference may be made to an appendix as well as the record extract, by renumbering current subsection (a)(9) as subsection (a)(10), by renumbering current subsection (a)(10) as subsection (a)(9), by deleting the requirement in subsection (a)(9) to list font type and size, by adding a provision to subsection (a)(9) pertaining to the Certification of Word Count and Compliance with Rule 8-112, by adding new subsection (a)(9)(A) establishing the content of the form of the Certification of Word Count and Compliance with Rule 8-112, by adding new subsection (a)(11) concerning a certificate of service, by deleting the reference to "termination of parental rights" from the tagline and body of subsection (b)(2), by adding a reference to an appendix filed under seal pursuant to Rule 8-125 (b)(2), and by adding a cross reference to Rules 8-121, 8-122, 8-123, 8-124, and 8-125 following subsection (b)(2), as follows:

RULE 8-504. CONTENTS OF BRIEF

(a) Contents

A brief shall comply with the requirements of Rule 8-112 and include the following items in the order listed:

(1) A table of contents and a table of citations of cases, constitutional provisions, statutes, ordinances, rules, and regulations, with cases alphabetically arranged. When a reported Maryland case is cited, the citation shall include a reference to the official Report.

Cross reference: Citation of unreported opinions is governed by Rule 1-104.

(2) A brief statement of the case, indicating the nature of the case, the course of the proceedings, and the disposition in the lower court, except that the appellee's brief shall not contain a statement of the case unless the appellee disagrees with the statement in the appellant's brief.

(3) A statement of the questions presented, separately numbered, indicating the legal propositions involved and the questions of fact at issue expressed in the terms and circumstances of the case without unnecessary detail.

(4) A clear concise statement of the facts material to a determination of the questions presented, except that the appellee's brief shall contain a statement of only those additional facts necessary to correct or amplify the statement in the appellant's brief. Reference shall be made to the pages of the record extract <u>or appendix</u> supporting the assertions. If

pursuant to these rules or by leave of court a record extract is not filed, reference shall be made to the pages of the record or to the transcript of testimony as contained in the record. Cross reference: Rule 8-111 (b).

(5) A concise statement of the applicable standard of review for each issue, which may appear in the discussion of the issue or under a separate heading placed before the argument.

(6) Argument in support of the party's position on each issue.

(7) A short conclusion stating the precise relief sought.

(8) In the Court of Special Appeals, a statement as to whether the party filing the brief requests oral argument.

~~(9) The citation and verbatim text of all pertinent constitutional provisions, statutes, ordinances, rules, and regulations except that the appellee's brief shall contain only those not included in the appellant's brief.~~

~~(10)~~(9) If the brief is prepared with proportionally spaced type, ~~the font used and the type size in points shall be stated on the last page~~ a Certification of Word Count and Compliance with Rule 8-112 substantially in the form set forth in subsection (a)(9)(A) of this Rule. The party or amicus curiae providing the certification may rely on the word count of the word-processing system used to prepare the brief.

(A) Form

A Certification of Word Count and Compliance with Rule 8-112 shall be substantially in the following form:

CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains words, excluding the parts of the brief exempted from the word count by Rule 8-503.

2. This brief complies with the requirements stated in Rule 8-112.

(10) The citation and verbatim text of all pertinent constitutional provisions, statutes, ordinances, rules, and regulations except that the appellee's brief shall contain only those not included in the appellant's brief.

(11) Unless filed as a separate document, a certificate of service in compliance with Rule 1-323.

Cross reference: For requirements concerning the form of a brief, see Rule 8-112.

(b) Appendix

(1) Generally

Unless the material is included in the record extract pursuant to Rule 8-501, the appellant shall reproduce, as an appendix to the brief, the pertinent part of every ruling, opinion, or jury instruction of each lower court that deals with points raised by the appellant on appeal. If the appellee believes that the part reproduced by the appellant is inadequate, the appellee shall reproduce, as an appendix to the

appellee's brief, any additional part of the instructions or opinion believed necessary by the appellee.

(2) Appeals in Juvenile ~~and Termination of Parental Rights~~ and Criminal Prosecution or Conviction Cases

In an appeal from an order relating to a child entered by a court exercising juvenile jurisdiction ~~or from an order in a proceeding involving termination of parental rights~~ or an appendix required to be filed under seal as defined in Rule 8-125 (b)(2), each appendix shall be filed as a separate volume and, unless otherwise ordered by the court, shall be filed under seal.

Cross reference: See Rules 8-121, 8-122, 8-123, and 8-124.

Committee note: Rule 8-501 (j) allows a party to include in an appendix to a brief any material that inadvertently was omitted from the record extract.

. . .

Source: This Rule is derived as follows:
Section (a) is derived from former Rules 831 c and d and 1031 c 1 through 5 and d 1 through 5, with the exception of subsection (a)(6) which is derived from FRAP 28 (a)(5).
Section (b) is derived in part from Fed. R. App. P. 32 and former Rule 1031 c 6 and d 6, and is in part new.
Section (c) is derived from former Rules 831 g and 1031 f.

REPORTER'S NOTE

The Rules Committee proposes amendments to Rule 8-504 to resolve some issues with repetition and potentially confusing requirements in Rules 8-503 and 8-504. Current Rule 8-503 (g) requires a Certification of Word Count and statement about font,

spacing, and type. This statement must be signed. Current Rule 8-504 (a)(9) requires a statement on the final page of a brief concerning font type and size and whether proportionally spaced type was used. Current Rule 8-503 (c) states that the attorney's name typed on the cover of the brief constitutes a signature. To resolve these issues, the Committee proposes several changes.

Subsection (a)(4) is proposed to be amended so that reference may be made to an appendix, as well as to the record extract, to support an assertion.

Section (g) of Rule 8-503 is proposed to be moved to new subsection (a)(9)(A) of Rule 8-504.

Subsection (a)(9) is proposed to be renumbered as subsection (a)(10). Subsection (a)(10) is proposed to be renumbered as subsection (a)(9).

Renumbered subsection (a)(9) is amended to list the font type and size and to add new subsection (a)(9)(A) establishing the content of the form of the Certification of Word Count and Compliance with Rule 8-112.

Proposed new subsection (a)(11) is added concerning a certificate of service.

The reference to "termination of parental rights" is proposed to be deleted from the tagline and body of subsection (b)(2). The broader category of "juvenile cases" includes juvenile court proceedings to terminate parental rights.

A reference to an appendix filed under seal pursuant to Rule 8-125 is proposed to be added to subsection (b)(2). A cross reference to Rules 8-121, 8-122, 8-123, 8-124, and 8-125 is proposed following subsection (b)(2).

MARYLAND RULES OF PROCEDURE

TITLE 8 – APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 8-112 by replacing the reference to Rule 8-503 (g) in subsection (b)(3)(C) with a reference to Rule 8-504 (a)(9), as follows:

Rule 8-112. FORM OF COURT PAPERS

. . .

(b) Typewritten Papers - Uniformly Spaced Type

(1) Type Size

Uniformly spaced type (such as produced by typewriters) in the text and footnotes shall not be smaller than 11 point and shall not exceed 10 characters per inch.

(2) Spacing

Papers prepared with uniformly spaced type shall be double-spaced, except that headings, indented quotations, and footnotes may be single-spaced.

(3) Documents Subject to Word Count Maximums

(A) Applicability

This subsection applies to a typewritten document as to which a word count maximum is specified by the Rules in this

Title. It does not apply to a document that is commercially printed or generated by a computer printer.

(B) Page Limits

Word count maximums are replaced by page limits, as follows:

(i) if the word count maximum is 13,000, the typewritten document shall not exceed 50 pages in length;

(ii) if the word count maximum is 9,100, the typewritten document shall not exceed 35 pages in length;

(iii) if the word count maximum is 6,500, the typewritten document shall not exceed 25 pages in length;

(iv) if the word count maximum is 3,900, the typewritten document shall not exceed 15 pages in length; and

(v) if the word count maximum is 2,600, the typewritten document shall not exceed 10 pages.

(C) No Certification Required

The certification requirement of Rule ~~8-503 (g)~~ 8-504 (a)(9) does not apply.

. . .

Source: This Rule is new but is derived in part from former Rules 831 a and 1031 a.

REPORTER'S NOTE

Subsection (b)(3)(C) of Rule 8-112 is proposed to be amended to conform to the proposed amendments to Rules 8-503 and 8-504. In the proposed amendment to Rule 8-503, section (g) of that Rule is deleted and moved to subsection (a)(9) of Rule 8-504. As a result, the reference in Rule 8-112 (b)(3)(C) to Rule 8-503 (g) is replaced with a reference to Rule 8-504 (a)(9).

MARYLAND RULES OF PROCEDURE

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

CHAPTER 500 – RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-511 by adding new subsection (a)(4) referring to the proposed new procedures in section (e) pertaining to amicus curiae briefs filed in cases involving discretionary review, by deleting subsection (b)(1)(F) to remove the requirement to seek leave of the court to file an amicus curiae brief in cases involving discretionary review, by amending section (c) so that the time for filing an amicus curiae brief is tied to the time that the appellee's principal brief is due, by replacing the citation to subsection (c)(2) of this Rule in section (c) with a citation to subsection (e)(3) of this Rule, by revising section (d) so that an amicus brief filed pursuant to subsection (e)(1) or (f)(3) need not comply with the provisions of Rules 8-503 and 8-504, by adding new section (e) establishing the procedures to be followed for amicus briefs supporting or opposing discretionary review, and by making stylistic changes, as follows:

RULE 8-511. AMICUS CURIAE

(a) Authorization to File Amicus Curiae Brief

An amicus curiae brief may be filed only:

(1) upon written consent of all parties to the appeal;

(2) by the Attorney General in any appeal in which the State of Maryland may have an interest;

(3) upon request by the Court; ~~or~~

(4) as provided in subsection (e)(1) of this Rule; or

~~(4)~~(5) upon the Court's grant of a motion filed under section (b) of this Rule.

(b) Motion and Brief

(1) Content of Motion

A motion requesting permission to file an amicus curiae brief shall:

(A) identify the interest of the movant;

(B) state the reasons why the amicus curiae brief is desirable;

(C) state whether the movant requested of the parties their consent to the filing of the amicus curiae brief and, if not, why not;

(D) state the issues that the movant intends to raise; and

(E) identify every person, other than the movant, its members, or its attorneys, who made a monetary or other contribution to the preparation or submission of the brief, and identify the nature of the contribution. ~~; and~~

~~(F) if filed in the Court of Appeals to seek leave to file an amicus curiae brief supporting or opposing a petition for writ of certiorari or other extraordinary writ, state whether, if the writ is issued, the movant intends to seek consent of the parties or move for permission to file an amicus curiae brief on the issues before the Court.~~

(2) Attachment of Brief

Copies of the proposed amicus curiae brief shall be attached to two of the copies of the motion filed with the Court.

Cross reference: See Rule 8-431 (e) for the total number of copies of a motion required when the motion is filed in an appellate court.

(3) Service

The movant shall serve a copy of the motion and proposed brief on each party.

(4) If Motion Granted

If the motion is granted, the brief shall be regarded as having been filed when the motion was filed. Within ten days after the order granting the motion is filed, the amicus curiae shall file the additional number of briefs required by Rule 8-502(c).

(c) Time for Filing

~~(1) Generally.~~ Except as required by subsection ~~(c)~~(2)(e)(3) of this Rule and unless the Court orders otherwise, an

amicus curiae brief shall be filed at or before the time specified for the filing of the principal brief of the appellee.

~~(2) Time for Filing in Court of Appeals.~~

~~(A) An amicus curiae brief may be filed pursuant to section (a) of this Rule in the Court of Appeals on the question of whether the Court should issue a writ of certiorari or other extraordinary writ to hear the appeal as well as, if such a writ is issued, on the issues before the Court.~~

~~(B) An amicus curiae brief or a motion for leave to file an amicus curiae brief supporting or opposing a petition for writ of certiorari or other extraordinary writ shall be filed at or before the time any answer to the petition is due.~~

~~(C) Unless the Court orders otherwise, an amicus curiae brief on the issues before the Court if the writ is granted shall be filed at the applicable time specified in subsection (c)(1) of this Rule.~~

(d) Compliance With Rules 8-503 and 8-504

(1) Generally

An amicus curiae brief shall comply with the applicable provisions of Rules 8-503 and 8-504, except as provided in subsection (d)(2) of this Rule.

(2) Exception

An amicus curiae brief filed pursuant to subsection (e)(1) or (f)(3) of this Rule shall comply with the applicable

provisions of Rule 8-112. It may, but need not, comply with the provisions of Rules 8-503 and 8-504.

(e) Brief Supporting or Opposing Discretionary Review

(1) Motion Not Required

An amicus curiae brief may be filed in the Court of Appeals on the question of whether the Court should issue a writ of certiorari or other extraordinary writ, or in the Court of Special Appeals on the question of whether the Court should grant an application for leave to appeal. A motion requesting permission to file such an amicus brief is not required, provided that the amicus curiae brief is signed by an attorney pursuant to Rule 1-311.

(2) Required Contents

A brief filed pursuant to subsection (e)(1) of this Rule shall state whether, if the writ is issued or application is granted, the amicus curiae intends to seek consent of the parties or move for permission to file an amicus curiae brief on the issues before the Court.

(3) Time for Filing

(A) Unless the Court orders otherwise, an amicus curiae brief on the question of whether the Court of Appeals should issue a writ of certiorari or other extraordinary writ shall be filed within seven days after the petition is filed.

(B) Unless the Court orders otherwise, an amicus curiae brief on the question of whether the Court of Special Appeals should grant an application for leave to appeal shall be filed within 15 days after the record is transmitted pursuant to Rule 8-204 (c)(1).

(4) Length

A brief filed pursuant to subsection (e)(1) of this Rule shall not exceed 1,900 words.

~~(e)~~(f) Reply Brief; Oral Argument; Brief Supporting or Opposing Motion for Reconsideration

Without permission of the Court, an amicus curiae may not (1) file a reply brief, (2) participate in oral argument, or (3) file a brief in support of, or in opposition to, a motion for reconsideration. Permission may be granted only for extraordinary reasons.

~~(f)~~(g) Appellee's Reply Brief

Within ten days after the later of (1) the filing of an amicus curiae brief that is not substantially in support of the position of the appellee or (2) the entry of an order granting a motion under section (b) that permits the filing of a brief not substantially in support of the position of the appellee, the appellee may file a reply brief limited to the issues in the amicus curiae brief that are not substantially in support of the appellee's position and are not fairly covered in the

appellant's principal brief. Any such reply brief shall not exceed 3,900 words.

Source: This Rule is derived in part from Fed.R.App.P. 29 and Sup.Ct.R. 37 and is in part new.

REPORTER'S NOTE

The Rules Committee proposes amendments to Rule 8-511 to eliminate the requirement of an individual wishing to file an amicus curiae brief supporting or opposing discretionary review to seek leave of the court by motion prior to doing so. Procedures governing this proposition are established in proposed new section (e).

Section (c) is amended to conform to these changes by removing subsection (c)(2) and linking the time to file a brief to subsection (e)(3) or at or before the time specified for the filing of the appellee's principal brief.

Stylistic changes are also proposed.

MARYLAND RULES OF PROCEDURE

TITLE 8 – APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 600 – DISPOSITION

AMEND Rule 8-602 by changing the deadline in section (e) for a motion for reconsideration from ten days to 20 days after the entry of an order dismissing an appeal, as follows:

RULE 8-602. DISMISSAL BY COURT

. . .

(e) Reconsideration of Dismissal

(1) Motion for Reconsideration

No later than ~~10~~ 20 days after the entry of an order dismissing an appeal, a party may file a motion for reconsideration of the dismissal.

. . .

Source note: This Rule is in part derived from former Rules 1035 and 835 and in part new.

REPORTER'S NOTE

The Rules Committee, at the request of the Court of Special Appeals ("COSA"), proposes that section (e) of this Rule be amended to change the deadline to file a motion for reconsideration from ten days to 20 days after the entry of an order dismissing an appeal. In the opinion of the COSA, ten

days is too short of a time to file this motion, especially for incarcerated and other self-represented parties.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 400 – PROCEEDINGS IN THE COURT OF SPECIAL APPEALS

AMEND Rule 17-405 by adding senior District Court judges and retired circuit court magistrates to the list of individuals who may be approved to serve as court-designated mediators, as follows:

RULE 17-405. QUALIFICATIONS OF COURT-DESIGNATED MEDIATORS

(a) Initial Approval

To be approved as a mediator by the Chief Judge, an individual shall:

(1) be (A) an incumbent judge of the Court of Special Appeals; (B) a senior judge of the Court of Appeals, the Court of Special Appeals, ~~or~~ a circuit court, or the District Court; ~~or~~ (C) a staff attorney from the Court of Special Appeals designated by the Chief Judge; or (D) a retired circuit court magistrate;

(2) have (A) completed at least 40 hours of basic mediation training in a program meeting the requirements of Rule 17-104, or (B) conducted at least two Maryland appellate mediations prior to January 1, 2014 and completed advanced mediation training approved by the ADR Division;

(3) unless waived by the ADR Division, have observed at least two Court of Special Appeals mediation sessions and have participated in a debriefing with a staff mediator from the ADR Division after the mediations; and

(4) be familiar with the Rules in Titles 8 and 17 of the Maryland Rules.

(b) Continued Approval

To retain approval as a mediator by the Chief Judge, an individual shall:

(1) abide by mediation standards adopted by Administrative Order of the Court of Appeals and posted on the Judiciary website;

(2) comply with mediation procedures and requirements established by the Court of Special Appeals;

(3) submit to periodic monitoring by the ADR Division of mediations conducted by the individual; and

(4) unless waived by the Chief Judge, complete in each calendar year four hours of continuing mediation-related education in one or more topics set forth in Rule 17-104 or any other advanced mediation training approved by the ADR Division.

Source: This Rule is derived from former Rule 17-403 (a) (2015).

REPORTER'S NOTE

The Court of Special Appeals ("COSA") has indicated that a question has arisen as to whether senior District Court judges and retired circuit court magistrates should be eligible to serve as court-designated mediators in the COSA's Alternative Dispute Resolution program. The COSA requested that this question be posed to the Rules Committee, as the COSA does not have a formal position on this question.

The Committee proposes that subsection (a)(1) of Rule 17-405 be amended by adding senior District Court judges and retired circuit court magistrates to the categories of individuals who may be approved to serve as court-designated mediators in the COSA Alternative Dispute Resolution program.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-102 by changing the requirement in subsection (b)(2) that Title 20 is applicable only by order of the Court of Appeals so that Title 20 is automatically applicable to "other proceedings" in the Court of Appeals, and by adding a Committee note following subsection (b)(2), as follows:

RULE 20-102. APPLICATION OF TITLE

...

(b) Appellate Courts

(1) Appellate Proceedings

(A) Generally

Except as provided in subsection (b)(1)(B) of this Rule, this Title applies to all appellate proceedings in the Court of Special Appeals or Court of Appeals seeking the review of a judgment or order entered in any action.

(B) Exception

For appeals from an action to which section (a) of this Rule does not apply, the clerk of the lower court shall transmit the record in accordance with Rules 8-412 and 8-413, and, upon completion of the appellate proceeding, the clerk of

the appellate court shall transmit the mandate and return the record to the lower court in accordance with Rule 8-606 (d)(1).

(2) Other Proceedings

~~If so ordered by the Court of Appeals in a particular matter or action, the~~

This Title also applies to (A) a question certified to the Court of Appeals pursuant to the Maryland Uniform Certification of Questions of Law Act, Code, Courts Article, §§ 12-601-12-613; and (B) an original action in the Court of Appeals allowed by law.

Committee note: After the Court of Appeals has received and docketed a certification order pursuant to Rule 8-304 or Rule 8-305, parties who are registered users must file any subsequent papers electronically.

...

Source: This Rule is new.

REPORTER'S NOTE

The Rules Committee, at the request of the Clerk of the Court of Appeals, proposes that Rule 20-102 be amended so that Title 20 applies more generally to "other proceedings" in the Court of Appeals as set forth in subsection (b)(2). In the current version of this Rule, Title 20 only applies to "other proceedings" when specifically ordered so by the Court of Appeals.

A Committee note is proposed to be added following subsection (b)(2), clarifying that parties who are registered users in certification of question matters must file papers electronically.

MARYLAND RULES

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 400 – APPELLATE REVIEW

AMEND Rule 20-402 by clarifying a provision regarding certification of the record in subsection (a)(1), as follows:

Rule 20-402. TRANSMITTAL OF RECORD

(a) Certification and Transmittal

(1) Certification

Upon the filing of a notice of appeal, application for leave to appeal, or notice that the Court of Appeals has issued a writ of certiorari directed to ~~the trial~~ a lower court, the clerk of the trial court shall comply with the requirements of Title 8 of the Maryland Rules and prepare a certification of the record.

. . .

Source: This Rule is new.

REPORTER'S NOTE

Proposed amendments to Rule 20-402 alter a reference to the "trial court" in subsection (a)(1) to be "lower court." The Rules Committee was advised that when the Court of Appeals issues a writ of certiorari, the writ is directed to the court that issued the decision to be reviewed, which is typically the Court of Special Appeals but can be the trial court in certain circumstances.

Regardless of the direction of the writ, the Clerk of the Court of Appeals has advised that her office prefers to have the electronic record of the case certified and transmitted by the trial court, which has the most complete record. In some situations, the local clerks are reluctant to certify and transmit the record where the writ of certiorari is directed to the Court of Special Appeals and not the trial court. The proposed amendment clarifies that the writ of certiorari is directed to "a lower court" and instructs the trial court to comply with Title 8.

MARYLAND RULES OF PROCEDURE

TITLE 15 – OTHER SPECIAL PROCEEDINGS

CHAPTER 900 – NAME - CHANGE OF

AMEND Rule 15-901 by deleting language pertaining to venue from section (b); by adding new subsections (b)(1) and (b)(2) pertaining to venue for petitions by an adult and on behalf of a minor, respectively; by adding new subsection (c)(1)(B) pertaining to venue; by re-lettering the subsequent subsections in subsection (c)(1); by altering subsection (c)(1)(G) pertaining to consent to the name change of a minor; by altering a cross reference following subsection (c)(1); by adding new subsection (c)(2)(B) pertaining to written consents to the name change of a minor; by moving current section (e) to new section (d); by re-captioning section (d) to pertain to notice to parents, guardians, and custodians who do not consent to a petition on behalf of a minor; by deleting current subsection (e)(2) pertaining to publication; by deleting certain provisions in current section (d) so that service must comply with Rule 2-121; by re-lettering current section (f) as section (e) pertaining to an objection to a petition; by adding language to section (e) pertaining to failure by a parent, guardian, or custodian to object to a petition on behalf of a minor; by adding a Committee note following new section (e) regarding the

right to object to a petition by an adult; by re-lettering current section (g) as section (f) pertaining to action by the court and hearings; by creating new subsection (f)(1) with language from current section (g) pertaining to court action on a petition by an adult; by adding a Committee note following subsection (f)(1) regarding the 30-day delay before the court may enter an order on a petition for a name change for an adult; by adding new subsection (f)(2) pertaining to court action and hearing requirements for a petition on behalf of a minor; and by making stylistic changes, as follows:

Rule 15-901. ACTION FOR CHANGE OF NAME

(a) Applicability

This Rule applies to actions for change of name other than in connection with an adoption or divorce.

(b) Venue

~~An action for change of name shall be brought in the county where the person whose name is sought to be changed resides.~~

(1) Change of Name of an Adult

An action for change of name of an adult shall be brought in the county where the adult resides, carries on a regular business, is employed, habitually engages in a vocation, or was born.

(2) Change of Name of a Minor

An action for change of name of a minor shall be brought by an adult petitioner on behalf of the minor in the county where the minor resides or where a parent, guardian, or custodian of the minor resides.

(c) Petition

(1) Contents

The action for change of name shall be commenced by filing a petition captioned "In the Matter of ..." [stating the name of the ~~person~~ individual whose name is sought to be changed] "for change of name to ..." [stating the change of name desired]. The petition shall be under oath and shall contain at least the following information:

(A) the name, address, and date and place of birth of the ~~person~~ individual whose name is sought to be changed;

(B) a statement as to why venue is appropriate;

~~(B)~~ (C) whether the ~~person~~ individual whose name is sought to be changed has ever been known by any other name and, if so, the name or names and the circumstances under which they were used;

~~(C)~~ (D) the change of name desired;

~~(D)~~ (E) all reasons for the requested change;

~~(E)~~ (F) a certification that the petitioner is not requesting the name change for any illegal or fraudulent purpose;

~~(F)~~ (G) if the ~~person~~ individual whose name is sought to be changed is a minor, (i) a statement explaining why the petitioner believes that the name change is in the best interest of the minor; (ii) the names and addresses of ~~that~~ the ~~person's~~ minor's parents and any guardian or custodian; (iii) whether each of those persons consents to the name change; (iv) whether the petitioner has reason to believe that any parent, guardian, or custodian is unfamiliar with the English language and what language the petitioner reasonably believes the individual can understand; (v) if the minor is at least ten years old, whether the minor consents to the name change; and (vi) if the minor is younger than ten years old, a statement that the minor does not object to the name change; and

~~(G)~~ (H) whether the ~~person~~ individual whose name is sought to be changed has ever registered as a sexual offender and, if so, ~~the~~ each full ~~name(s)~~ name, ~~(~~including ~~suffixes)~~ any suffix, under which the ~~person~~ individual was registered.

Cross reference: See Code, Criminal Procedure Article, § 11-705, which requires a registered sexual offender whose name has been changed by order of court to send written notice of the change to ~~the Department of Public Safety and Correctional Services~~ each law enforcement unit where the registrant resides or habitually lives within ~~seven~~ three days after the order is entered.

(2) Documents to Be Attached to Petition

The petitioner shall attach to the petition:

(A) a copy of a birth certificate or other documentary evidence from which the court can find that the current name of the person whose name is sought to be changed is as alleged; and~~.~~

(B) if the individual whose name is sought to be changed is a minor, (i) the written consent of each parent, guardian, and custodian of the minor or an explanation why the consent is not attached, and (ii) the written consent of the minor, if the minor is at least ten years old.

~~(c) Notice~~ (d) Minors – Notice to Nonconsenting Parent, Guardian, or Custodian

~~(1) Issued by Clerk~~

Upon the filing of ~~the~~ a petition for change of name of a minor, if the written consent of each parent, guardian, and custodian of the minor was not filed pursuant to subsection (c)(2)(B) of this Rule, the clerk shall sign and issue a ~~notice~~ Notice that ~~(A)~~ (1) includes the caption of the action, ~~(B)~~ (2) describes the substance of the petition and the relief sought, and ~~(C)~~ (3) states that any objection to the name change shall be filed no later than 30 days after service of the petition. If the petition states that a nonconsenting parent, guardian, or

custodian may be unfamiliar with the English language, the clerk shall issue two versions of the Notice, one in English and one in the other language indicated in the petition. ~~the latest date by which an objection to the petition may be filed.~~

~~(2) Publication~~

~~Unless the court on motion of the petitioner orders otherwise, the notice shall be published one time in a newspaper of general circulation in the county in which the action was pending at least fifteen days before the date specified in the notice for filing an objection to the petition. The petitioner shall thereafter file a certificate of publication.~~

~~(d) Service of Petition – When Required~~

~~If the person whose name is sought to be changed is a minor, a~~ The Notice, in English and, if applicable, in the additional language indicated in the petition, a copy of the petition, and any attachments~~, and the notice issued pursuant to section (c) of this Rule~~ shall be served ~~upon that person's parents and any guardian or custodian~~ in the manner provided by Rule 2-121 upon each nonconsenting parent, guardian, or custodian of the minor. ~~When proof is made by affidavit that good faith efforts to serve a parent, guardian, or custodian pursuant to Rule 2-121 (a) have not succeeded and that Rule 2-121 (b) is inapplicable or that service pursuant to that Rule is impracticable, the court may order that service may be made by~~

~~(1) the publication required by subsection (e)(2) of this Rule and (2) or mailing a copy of the petition, any attachments, and notice by first class mail to the last known address of the parent, guardian, or custodian to be served.~~

~~(f)~~ (e) Objection to Petition

Any person may file an objection to the petition. The objection ~~shall be filed within the time specified in the notice and~~ shall be supported by an affidavit ~~which~~ that sets forth the reasons for the objection. The affidavit shall be made on personal knowledge, shall set forth facts that would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit. The objection and affidavit shall be served upon the petitioner in accordance with Rule 1-321. The petitioner may file a response within 15 days after being served with the objection and affidavit. A parent, guardian, or custodian of a minor who does not file an objection within 30 days after being served in accordance with section (d) of this Rule shall be deemed to have consented to the name change of the minor. ~~A person desiring a hearing shall so request in the objection or response under the heading "Request for Hearing."~~

Committee note: Nothing in this Rule is intended to abrogate the right of a person who learns of a requested name change to object to the name change where there is personal knowledge of an illegal or fraudulent purpose or harm to the rights of others.

~~(g)~~ (f) Action by Court; Hearing

(1) Name Change of Adult

~~After the time for filing objections and responses has expired, the~~ The court may hold a hearing or may rule on ~~the~~ a petition to change the name of an adult without a hearing and shall enter an appropriate order, except that the court shall not deny the petition without a hearing ~~if one was requested by the petitioner~~. The court may not enter an order earlier than 30 days after the petition was filed.

Committee note: Although there is no publication or other required notice of a requested name change of an adult, if a person learns of a requested name change, the 30-day delay in the entry of an order after the petition is filed affords a period of time within which an objection could be filed.

(2) Name Change of Minor

The court may hold a hearing or may rule on a petition to change the name of a minor without a hearing and enter an appropriate order if (A) the written consent of the minor, if required, has been filed, and (B) each parent, guardian, and custodian (i) has filed a written consent pursuant to subsection (c)(2)(B) of this Rule, or (ii) having been served pursuant to section (d) of this Rule, did not timely file an objection. In all other cases in which a name change of a minor is requested, the court shall hold a hearing and enter an appropriate order no earlier than 30 days after all nonconsenting parents, guardians,

or custodians have been served in accordance with section (d) of this Rule.

Source: This Rule is derived in part from former Rules BH70 through BH75 and is in part new.

REPORTER'S NOTE

Proposed amendments to Rule 15-901 conform the Rule to a recent statutory change and address recommendations by the Maryland Judicial Council Domestic Law Committee's LGBTQ+ Family Law Workgroup.

Section (b) is amended to strike the current language related to venue and add new subsections (b)(1) and (b)(2). Subsection (b)(1) governs venue for a petition by an adult. It is derived in part from Code, Courts Article, § 6-201. The Rules Committee was advised that certain circumstances may exist where an individual born in Maryland but now living in another state or country may need to seek a name change in Maryland. In response, the Committee recommends allowing an adult to file a petition under Rule 15-901 in the county where the adult was born. Subsection (b)(2) governs venue for a petition on behalf of a minor. It is derived from Code, Courts Article, § 6-202(5), which applies to certain family law actions related to a child.

Section (c) is amended to add additional required information in a petition. New subsection (c)(1)(B) requires a statement regarding venue in light of the provision permitting a petition to be filed in the county where the adult petitioner was born. The remaining subsections in (c)(1) are re-lettered. Subsection (c)(1)(G) requires a petition on behalf of a minor to state why the petitioner believes their name change is in the minor's best interest and whether parents, guardians, and custodians of the minor consent to the name change. Subsection (c)(1)(G) also requires a statement if the petitioner has reason to believe that a parent, guardian, or custodian may be unfamiliar with the English language. This information is used when the clerk generates the Notice in section (d). If the minor is at least ten years old, the consent of the minor is also required. If the minor is younger, the requirement is that the minor does not object to the name change. This language is

derived from the adoption statutes, including Code, Family Law Article, §§ 5-338, 5-3A-35, and 5-3B-35. The cross reference following subsection (c)(1) is amended to conform with current law. Subsection (c)(2) is amended to add subsection (c)(2)(B), which requires the consents mentioned in subsection (c)(1)(G) to be attached to the petition.

Sections (d) and (e) are reversed. New section (d) applies only to Notice to nonconsenting parents, guardians, and custodians of a minor. The clerk must issue a Notice to inform the parent, guardian, or custodian of the action and the right to object. If the petitioner disclosed in the petition that a parent, guardian, or custodian may be unfamiliar with the English language, the clerk must issue the notice in English and in the language indicated in the petition. The Access to Justice Office in the Administrative Office of the Courts advised that a form notice can be translated into multiple languages, though case-specific documents cannot be translated. Service of the notice is in the manner provided by Rule 2-121.

Section (e), applicable to the name change of an adult or a minor, states that any person may file an objection to the petition. A parent, guardian, or custodian of a minor who fails to file an objection within 30 days of service is deemed to have consented to the name change of the minor. A Committee note following the section states that a person with knowledge of any fraud, illegal purpose, or harm to the rights of others may object.

Former subsection (e)(2), publication, is deleted. Code, Courts Article, § 3-2201 requires the court to waive the publication requirement on motion by the petitioner. The Workgroup informed the Rules Committee that after consultation with the Maryland State Police and a representative for various credit reporting agencies, it was determined that publication is an antiquated method of providing notice and is not used by those entities to track name changes. An increasing number of states have eliminated the publication requirement without any substitute notice method, including New York (by statute) and New Jersey (by court rule) in 2020. Other states that do not require publication sometimes require specific notice to interested persons, such as creditors and law enforcement, or require additional documentation, such as a background check. The Family/Domestic Subcommittee of the Rules Committee discussed the necessity of public notice for an adult name change and what, if any, standing another individual may have to object. Currently, there will be a public record of the name

change through court records, although no notice will occur if the petitioner requests publication waiver, as is now permitted by law. Unless the file is shielded or sealed due to safety concerns or other good cause, the name change action can be located in court records, including Maryland Judiciary Case Search.

Section (f) governs action by the court on a petition. New subsection (f)(1) pertains to the name change of an adult. It permits the court to hold a hearing or rule without a hearing and enter an appropriate order. The court may not deny a petition without a hearing and may not enter an order earlier than 30 days after the petition is filed. A Committee note explains that the 30-day waiting period is to permit a person who learns of the name change to object, if there is cause.

New subsection (f)(2) applies to petitions on behalf of a minor. After the notices issued pursuant to section (d) have been served, the court may hold a hearing or rule without a hearing and enter an appropriate order so long as the minor consents to the name change, if required, and the required consents have been filed or a nonconsenting parent, guardian, or custodian has been served and has not timely objected. Where a parent, guardian, or custodian objects, the court must hold a hearing. The hearing cannot be held earlier than 30 days after all nonconsenting parents, guardians, and custodians have been served.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

CHAPTER 100 – ADOPTION; PRIVATE AGENCY GUARDIANSHIP

AMEND Rule 9-105 by deleting section (d) and by re-lettering sections (e) through (g) as (d) through (f), as follows:

RULE 9-105. SHOW CAUSE ORDER; DISABILITY OF A PARTY; OTHER NOTICE

. . .

~~(d) Notice of Name Change~~

~~If the person to be adopted is an adult and the petitioner desires to change the name of the person to be adopted to a surname other than that of the petitioner, notice of a proposed change of name shall also be given in the manner provided in Rule 15-901.~~

. . .

~~(e)~~ (d) Form of Show Cause Order

. . .

~~(f)~~ (e) Form of Notice of Objection

. . .

~~(g)~~ (f) Form of Notice for Service by Publication and Posting

. . .

Source: This Rule is in part derived from former Rule D74 and is in part new.

REPORTER'S NOTE

The proposed deletion of section (d) in Rule 9-105 is a conforming amendment necessitated by the proposed amendments to Rule 15-901. Section (d) required a petitioner adopting an adult who seeks a name change other than to the surname of the petitioner to comply with the notice requirements of Rule 15-901. The proposed amendments to Rule 15-901 delete the notice and publication requirement for adult name change petitions.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

CHAPTER 100 – ADOPTION; PRIVATE AGENCY GUARDIANSHIP

AMEND Rule 9-103 by adding an exception to subsection (b)(2)(A), by adding new subsection (b)(2)(B) governing certain petitions filed pursuant to a statute, and by re-lettering current subsection (b)(2)(B) as subsection (b)(2)(C), as follows:

RULE 9-103. PETITION

(a) Titling of Case

A proceeding shall be titled "In re Adoption/Guardianship of _____ (first name and first initial of last name of prospective adoptee or ward)."

(b) Petition for Adoption

(1) Contents

A petition for adoption shall be signed and verified by each petitioner and shall contain the following information:

(A) The name, address, age, business or employment, and employer of each petitioner;

(B) The name, sex, and date and place of birth of the person to be adopted;

(C) The name, address, and age of each parent of the person to be adopted;

(D) Any relationship of the person to be adopted to each petitioner;

(E) The name, address, and age of each child of each petitioner;

(F) A statement of how the person to be adopted was located (including names and addresses of all intermediaries or surrogates), attaching a copy of all advertisements used to locate the person, and a copy of any surrogacy contract;

Committee note: If the text of an advertisement was used verbatim more than once, the requirement that a copy of all advertisements be attached to the petition may be satisfied by attaching a single copy of the advertisement, together with a list of the publications in which the advertisement appeared and the dates on which it appeared.

(G) If the person to be adopted is a minor, the names and addresses of all persons who have had legal or physical care, custody, or control of the minor since the minor's birth and the period of time during which each of those persons has had care, custody, or control, but it is not necessary to identify the names and addresses of foster parents, other than a petitioner, who have taken care of the minor only while the minor has been committed to the custody of a child placement agency;

(H) If the person to be adopted is a minor who has been transported from another state to this State for purposes of

placement for adoption, a statement of whether there has been compliance with the Interstate Compact on the Placement of Children (ICPC);

(I) If applicable, the reason why the spouse of the petitioner is not joining in the petition;

(J) If there is a guardian with the right to consent to adoption for the person to be adopted, the name and address of the guardian and a reference to the proceeding in which the guardian was appointed;

(K) Facts known to each petitioner that may indicate that a party has a disability that makes the party incapable of consenting or participating effectively in the proceedings, or, if no such facts are known to the petitioner, a statement to that effect;

(L) Facts known to each petitioner that may entitle the person to be adopted or a parent of that person to the appointment of an attorney by the court;

(M) If a petitioner desires to change the name of the person to be adopted, the name that is desired;

(N) As to each petitioner, a statement whether the petitioner has ever been convicted of a crime other than a minor traffic violation and, if so, the offense and the date and place of the conviction;

(O) That the petitioner is not aware that any required consent has been revoked; and

(P) If placement pending final action on the petition is sought in accordance with Code, Family Law Article, § 5-3B-12, a request that the court approve the proposed placement.

(2) Exhibits

(A) Except for an adoption pursuant to Code, Family Law Article, § 5-3B-27, ~~The~~ the following documents shall accompany the petition as exhibits:

(i) A certified copy of the birth certificate or "proof of live birth" of the person to be adopted;

(ii) A certified copy of the marriage certificate of each married petitioner;

(iii) A certified copy of all judgments of divorce of each petitioner;

(iv) A certified copy of any death certificate of a person whose consent would be required if that person were living;

(v) A certified copy of all orders concerning temporary custody or guardianship of the person to be adopted;

(vi) A copy of any existing adoption home study by a licensed child placement agency concerning a petitioner, criminal background reports, or child abuse clearances;

(vii) A document evidencing the annual income of each petitioner;

(viii) The original of all consents to the adoption, any required affidavits of translators or attorneys, and, if available, a copy of any written statement by the consenting person indicating a desire to revoke the consent, whether or not that statement constitutes a valid revocation;

Cross reference: See Code, Family Law Article, §§ 5-331, 5-338, and 5-339 as to a Public Agency Adoption without Prior TPR; 5-345, 5-350, and 5-351 as to a Public Agency Adoption after TPR; 5-3A-13, 5-3A-18, and 5-3A-19 as to a Private Agency Guardianship; 5-3A-35 as to a Private Agency Adoption; and 5-3B-20 and 5-3B-21 as to an Independent Adoption.

(ix) If applicable, proof of guardianship or relinquishment of parental rights granted by an administrative, executive, or judicial body of a state or other jurisdiction; a certification that the guardianship or relinquishment was granted in compliance with the jurisdiction's laws; and any appropriate translation of documents required to allow the child to enter the United States;

Cross reference: See Code, Family Law Article, §§ 5-305, 5-331, and 5-338 as to a Public Agency Adoption without Prior TPR; 5-305 and 5-345 as to a Public Agency Adoption after TPR; 5-3A-05, 5-3A-13, and 5-3A-18 as to a Private Agency Guardianship; 5-3A-05 as to a Private Agency Adoption; and 5-3B-04 and 5-3B-20 as to an Independent Adoption.

(x) If a parent of the person to be adopted cannot be identified or located, an affidavit of each petitioner and the

other parent describing the attempts to identify and locate the unknown or missing parent;

Cross reference: See Code, Family Law Article, §§ 5-331 and 5-334 as to a Public Agency Adoption without Prior TPR and 5-3B-15 as to an Independent Adoption.

(xi) A copy of any agreement between a parent of the person to be adopted and a petitioner relating to the proposed adoption with any required redaction;

Cross reference: See Code, Family Law Article, §§ 5-308 and 5-331 as to a Public Agency Adoption without Prior TPR; 5-308 and 5-345 as to a Public Agency Adoption after TPR; 5-3A-08 as to a Private Agency Adoption; and 5-3B-07 as to an Independent Adoption.

(xii) If the adoption is subject to the Interstate Compact on the Placement of Children, the appropriate ICPC approval forms;

Cross reference: Code, Family Law Article, § 5-601.

(xiii) A brief statement of the health of each petitioner signed by a physician or other health care provider if applicable; and

(xiv) If required, a notice of filing as prescribed by Code, Family Law Article:

(1) § 5-331 in a Public Agency Adoption without Prior TPR; or

(2) § 5-345 in a Public Agency Adoption after TPR.

(B) If the petition is filed pursuant to Code, Family Law Article, § 5-3B-27 by the spouse of the prospective adoptee's mother or an individual who consented to the prospective adoptee's conception by means of assisted reproduction, the following documents shall accompany the petition as exhibits:

(i) A certified copy of the petitioner's and prospective adoptee's mother's marriage certificate or evidence of the parties' shared express intent to become parents of the child by means of assisted reproduction, including a copy of any written agreement consenting to the conception of the prospective adoptee by means of assisted reproduction;

(ii) A certified copy of the prospective adoptee's birth certificate;

(iii) A statement explaining the circumstances of the prospective adoptee's conception in detail sufficient to identify any individual who may be entitled to notice or whose consent may be required under this subtitle;

(iv) The original of all consents to the adoption, any required affidavits of translators or attorneys, and, if available, a copy of any written statement by the consenting person indicating a desire to revoke the consent, whether or not that statement constitutes a valid revocation; and

(v) An affidavit of counsel for a child, if the child is represented.

Cross reference: Code, Family Law Article, § 5-3B-27.

~~(B)~~ (C) The following documents shall be filed before a judgment of adoption is entered:

(i) Any post-placement report relating to the adoption, if applicable;

Cross reference: See Code, Family Law Article, §§ 5-337 as to a Public Agency Adoption without Prior TPR; 5-349 as to a Public Agency Adoption after TPR; 5-3A-31 and 5-3A-34 as to a Private Agency Adoption; and 5-3B-16 as to an Independent Adoption.

(ii) A brief statement of the health of the child by a physician or other health care provider;

(iii) If required by law, an accounting of all payments and disbursements of any money or item of value made by or on behalf of each petitioner in connection with the adoption;

Cross reference: See Code, Family Law Article, § 5-3B-24 as to an Independent Adoption.

(iv) An affidavit of counsel for a parent, if required by Code, Family Law Article:

(1) §§ 5-307 and 5-339 in a Public Agency Adoption without Prior TPR;

(2) §§ 5-3A-07 and 5-3A-19 in a Private Agency Guardianship; or

(3) §§ 5-3B-06 and 5-3B-21 in an Independent Adoption.

(v) An affidavit of counsel for a child, if the child is represented;

Cross reference: See Code, Family Law Article, §§ 5-307 and 5-338 as to a Public Agency Adoption without Prior TPR; 5-307 and 5-350 as to a Public Agency Adoption after TPR; 5-3A-07 and 5-3A-35 as to a Private Agency Adoption; and 5-3B-06 and 5-3B-20 as to an Independent Adoption.

(vi) If the adoption is subject to the Interstate Compact on the Placement of Children, the required post-placement form;

(vii) A proposed judgment of adoption; and

(viii) A Maryland Department of Health Certificate of Adoption Form.

Cross reference: Code, Health - General Article, § 4-211(f).

(c) Petition for Guardianship

A petition for guardianship shall state all facts required by subsection (b)(1) of this Rule, to the extent that the requirements are applicable and known to the petitioner. It shall be accompanied by all documents required to be filed as exhibits by subsection (b)(2) of this Rule, to the extent the documents are applicable. The petition shall also state the license number of the child placement agency.

Cross reference: See Code, Family Law Article, § 5-3A-13 as to a Private Agency Guardianship.

(d) If Facts Unknown or Documents Unavailable

If a fact required by subsection (b)(1) or section (c) of this Rule is unknown to a petitioner or if a document required by subsection (b)(2) or section (c) is unavailable, the

petitioner shall so state and give the reason in the petition or in a subsequent affidavit. If a document required to be submitted with the petition becomes available after the petition is filed, the petitioner shall file it as soon as it becomes available.

(e) Disclosure of Facts Known to Child Placement Agency

If any fact required by subsection (b)(1) of this Rule to be stated is known to a child placement agency and the agency declines to disclose it to a petitioner, the agency shall disclose the fact to the court in writing at the time the petition is filed.

Source: This Rule is derived in part from former Rule D72, in part from former Rule D80, and is in part new.

REPORTER'S NOTE

Proposed amendments to Rule 9-103 conform the Rule to the provisions in Code, Family Law Article, § 5-3B-27. The statute was added in 2019 to streamline adoptions by individuals using assisted reproduction. The statute contains a list of documents to file along with an adoption petition pursuant to that Code section. The Maryland Judicial Council Domestic Law Committee's LGBTQ+ Family Law Workgroup informed the Committee that since the passage of the statute, there has been confusion about whether the required filings listed in the statute replace the required attachments in Rule 9-103 or are supplemental. Certain attachments in Rule 9-103 (b)(2)(A) are either duplicative of the statute or irrelevant to the type of adoption governed by the statute.

Subsection (b)(2)(A) is amended to exclude adoptions pursuant to Code, Family Law Article, § 5-3B-27. New subsection (b)(2)(B) lists the required attachments to a petition for adoption pursuant to that statute. Current subsection (b)(2)(B) is re-lettered as (b)(2)(C).

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

CHAPTER 200 – DIVORCE, ANNULMENT, ALIMONY, CHILD SUPPORT, AND CHILD CUSTODY

AMEND Rule 9-205 by modifying the tagline of section (a), by making stylistic changes to section (a), by adding new subsection (a)(2)(A) defining "abuse," by adding new subsection (a)(2)(B) defining "coercive control," and by deleting a reference to Code, Family Law Article, § 4-501 and adding a reference to coercive control in subsection (b)(2), as follows:

RULE 9-205. MEDIATION OF CHILD CUSTODY AND VISITATION DISPUTES

(a) ~~Scope of Rule~~ Applicability; Definitions

(1) This Rule applies to any action or proceeding under this Chapter in which the custody of or visitation with a minor child is an issue, including:

~~(1)~~ (A) an initial action to determine custody or visitation;

~~(2)~~ (B) an action to modify an existing order or judgment as to custody or visitation; and

~~(3)~~ (C) a petition for contempt by reason of non-compliance with an order or judgment governing custody or visitation.

(2) In this Rule, the following definitions apply:

(A) "Abuse" has the meaning stated in Code, Family Law Article, § 4-501.

(B) "Coercive control" means a pattern of emotional or psychological manipulation, maltreatment, or intimidation to compel an individual by force or threat of force to engage in conduct from which the individual has a right to abstain or to abstain from conduct in which the individual has a right to engage.

(b) Duty of Court

(1) Promptly after an action subject to this Rule is at issue, the court shall determine whether:

(A) mediation of the dispute as to custody or visitation is appropriate and likely would be beneficial to the parties or the child; and

(B) a mediator possessing the qualifications set forth in section (c) of this Rule is available to mediate the dispute.

(2) If a party or a child represents to the court in good faith that there is a genuine issue of abuse~~, as defined in Code, Family Law Article, § 4-501,~~ of the party or child or coercive control of a party and that, as a result, mediation would be inappropriate, the court may not order mediation.

(3) If the court concludes that mediation is appropriate and likely to be beneficial to the parties or the child and that a qualified mediator is available, it shall enter an order

requiring the parties to mediate the custody or visitation dispute. The order may stay some or all further proceedings in the action pending the mediation on terms and conditions set forth in the order.

Cross reference: With respect to subsection (b)(2) of this Rule, see Rule 1-341 and Rules 19-303.1 and 19-303.3 of the Maryland Attorneys' Rules of Professional Conduct.

...

REPORTER'S NOTE

Rule 9-205 addresses mediation for child custody and visitation disputes. Pursuant to Rule 9-205 (b), the court may not order mediation if a party or a child represents to the court that there is a genuine issue of abuse and mediation would be inappropriate. The Family Mediation and Abuse Screening Workgroup of the Domestic Law Committee asked the Rules Committee to consider whether language about coercive control should be added to the Rule. The Workgroup raised concerns that Rule 9-205 does not currently include non-physical controlling behaviors in the definition of "abuse." Proposed amendments to Rule 9-205 address issues raised by the Workgroup.

The tagline of section (a) is amended to reference both the applicability and definitions of the Rule. Stylistic changes to section (a) include re-lettering the subsections. New subsection (a)(2) provides definitions that apply in the Rule, including definitions of "abuse" and "coercive control" in subsections (a)(2)(A) and (a)(2)(B), respectively.

Proposed amendments to subsection (b)(2) delete a reference to Code, Family Law Article, § 4-501, which is now included in the definitions section of the Rule. A reference to coercive control is added to subsection (b)(2), providing that the court may not order mediation if a party or a child represents to the

court in good faith that there is a genuine issue of the coercive control of a party, rendering mediation inappropriate.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

CHAPTER 200 – DIVORCE, ANNULMENT, ALIMONY, CHILD SUPPORT, AND CHILD CUSTODY

AMEND Rule 9-205.3 by revising the definition of "specific issue evaluation" in subsection (b)(7); by deleting the current Committee note after subsection (b)(7) and adding a new Committee note describing specific issue evaluations; by deleting and adding certain language to subsection (c)(2) to provide that, unless waived, a specific issue evaluation assessor must have the qualifications of a custody evaluator; by adding a Committee note after section (c) clarifying the court's ability to order preliminary screening or alcohol and substance use testing; by adding to subsection (d)(2) a requirement that a custody evaluator complete or commit to completing a certain training program; by adding new subsection (e)(3) concerning the selection of an assessor to perform a specific issue evaluation; by requiring custody evaluations to include interviews with certain individuals in subsection (f)(1)(B); by adding new subsection (f)(1)(F) requiring custody evaluations to include contact with high neutrality/low affiliation collateral sources; by adding a Committee note explaining the term "high neutrality/low affiliation" after subsection (f)(1)(F); by adding new subsection (f)(1)(G) requiring custody evaluations to include screening for intimate partner violence; by re-lettering current subsections (f)(1)(F) and (f)(1)(G) as (f)(1)(H) and (f)(1)(I), respectively; by adding language to

subsection (f)(2)(A) and deleting subsection (f)(2)(D); by re-lettering current subsections (f)(2)(E) through (f)(2)(G) as subsections (f)(2)(D) through (f)(2)(F); by adding new subsection (f)(3) addressing the elements of a specific issue evaluation; by renumbering current subsection (f)(3) as subsection (f)(4) and making the subsection applicable to specific issue evaluation assessors; by deleting certain language from subsection (g)(2); by clarifying that subsection (g)(7) applies to custody evaluations and adding references to relevant subsections; by adding new subsection (g)(8) concerning contents of an order of appointment for a specific issue evaluation; by renumbering current subsection (g)(8) as subsection (g)(9); by adding language to subsection (i)(1)(A) clarifying the presentation and receipt of reports and transcripts by the court; by requiring that written reports for custody evaluations be furnished to the parties and to the court under seal at least 45 days before the hearing date; by adding new subsection (i)(2) addressing the submission of a report of a specific issue evaluation; by renumbering current subsections (i)(2) and (i)(3) as subsections (i)(3) and (i)(4), respectively; by adding language to subsections (i)(3) and (i)(4) requiring that reports be furnished to the court under seal; by adding a Committee note after section (i) describing access to written reports; and by making stylistic changes, as follows:

RULE 9-205.3. CUSTODY AND VISITATION-RELATED ASSESSMENTS

(a) Applicability

This Rule applies to the appointment or approval by a court of a person to perform an assessment in an action under this Chapter in which child custody or visitation is at issue.

Committee note: In this Rule, when an assessor is selected by the court, the term "appointment" is used. When the assessor is selected by the parties and the selection is incorporated into a court order, the term "approval" is used.

(b) Definitions

In this Rule, the following definitions apply:

(1) Assessment

"Assessment" includes a custody evaluation, a home study, a mental health evaluation, and a specific issue evaluation.

(2) Assessor

"Assessor" means an individual who performs an assessment.

(3) Custody Evaluation

"Custody evaluation" means a study and analysis of the needs and development of a child who is the subject of an action or proceeding under this Chapter and of the abilities of the parties to care for the child and meet the child's needs.

(4) Custody Evaluator

"Custody evaluator" means an individual appointed or approved by the court to perform a custody evaluation.

(5) Home Study

"Home study" means an inspection of a party's home that focuses upon the safety and suitability of the physical surroundings and living environment for the child.

(6) Mental Health Evaluation

"Mental health evaluation" means an evaluation of an individual's mental health performed by a psychiatrist or psychologist who has the qualifications set forth in subsection (d)(1)(A) or (B) of this Rule. A mental health evaluation may include psychological testing.

(7) Specific Issue Evaluation

"Specific issue evaluation" means a ~~targeted~~ focused investigation into a specific issue raised by a party, the child's attorney, or the court affecting the safety, health, or welfare of the child as may affect the child's best interests.

~~Committee note: An example of a specific issue evaluation is an evaluation of a party as to whom the issue of a problem with alcohol consumption has been raised, performed by an individual with expertise in alcoholism.~~

Committee note: A specific issue evaluation is not a "mini" custody evaluation. A custody evaluation is a comprehensive study of the general functioning of a family and of the parties' parenting capacities. A specific issue evaluation is an inquiry, narrow in scope, into a particular issue or issues that predominate in a case. The issue or issues are defined by questions posed by the court to the assessor in an order. The evaluation primarily is fact-finding, but the court may opt to receive a recommendation. Examples of questions that could be the subject of specific issue evaluations are questions concerning the appropriate school for a child with special needs and how best to arrange physical custody and visitation for a child when one parent is relocating.

(8) State

"State" includes the District of Columbia.

(c) Authority

(1) Generally

On motion of a party or child's counsel, or on its own initiative, the court may order an assessment to aid the court in evaluating the health, safety, welfare, or best interests of a child in a contested custody or visitation case.

(2) Appointment or Approval

The court may appoint or approve any person deemed competent by the court to perform a home study ~~or a specific issue evaluation~~. The court may not appoint or approve a person to perform a custody evaluation or specific issue evaluation unless (A) the assessor has the qualifications set forth in subsections (d)(1) and (d)(2) of this Rule, or (B) the qualifications have been waived for the assessor pursuant to subsection (d)(3) of this Rule.

(3) Cost

The court may not order the cost of an assessment to be paid, in whole or in part, by a party without giving the parties notice and an opportunity to object.

Committee note: Nothing in this Rule precludes the court from ordering preliminary screening or testing for alcohol and substance use.

(d) Qualifications of Custody Evaluator

(1) Education and Licensing

A custody evaluator shall be:

(A) a physician licensed in any State who is board-certified in psychiatry or has completed a psychiatry residency accredited by the Accreditation Council for Graduate Medical Education or a successor to that Council;

(B) a Maryland licensed psychologist or a psychologist with an equivalent level of licensure in any other state;

(C) a Maryland licensed clinical marriage and family therapist or a clinical marriage and family therapist with an equivalent level of licensure in any other state; ~~or~~

(D) a Maryland licensed certified social worker-clinical or a clinical social worker with an equivalent level of licensure in any other state;

(E) (i) a Maryland licensed graduate or master social worker with at least two years of experience in (a) one or more of the areas listed in subsection (d)(2) of this Rule, (b) performing custody evaluations, or (c) any combination of subsections (a) and (b); or (ii) a graduate or master social worker with an equivalent level of licensure and experience in any other state; or

(F) a Maryland licensed clinical professional counselor or a clinical professional counselor with an equivalent level of licensure in any other state.

(2) Training and Experience

Unless waived by the court, a custody evaluator shall have completed, or commit to completing, the next available training program that conforms with guidelines established by the Administrative Office of the Courts. The current guidelines shall be posted on the Judiciary's website. In addition to complying with the continuing requirements of his or her field, a custody evaluator shall have training or experience in observing or performing custody evaluations and shall have current knowledge in the following areas:

(A) domestic violence;

(B) child neglect and abuse;

(C) family conflict and dynamics;

(D) child and adult development; and

(E) impact of divorce and separation on children and adults.

(3) Waiver of Requirements

If a court employee has been performing custody evaluations on a regular basis as an employee of, or under contract with, the court for at least five years prior to January 1, 2016, the court may waive any of the requirements set forth in subsection (d)(1) of this Rule, provided that the individual participates in at least 20 hours per year of continuing education relevant to the performance of custody

evaluations, including course work in one or more of the areas listed in subsection (d)(2) of this Rule.

(e) Custody Evaluator Lists and Selection

(1) Custody Evaluator Lists

If the circuit court for a county appoints custody evaluators who are not court employees, the family support services coordinator for the court shall maintain a list of qualified custody evaluators. An individual, other than a court employee, who seeks appointment by a circuit court as a custody evaluator shall submit an application to the family support services coordinator for that court. If the applicant has the qualifications set forth in section (d) of this Rule, the applicant's name shall be placed on a list of qualified individuals. The family support services coordinator, upon request, shall make the list and the information submitted by each individual on the list available to the public.

(2) Selection of Custody Evaluator

(A) By the Parties

By agreement, the parties may employ a custody evaluator of their own choosing who may, but need not, be on the court's list. The parties may, but need not, request the court to enter a consent order approving the agreement and selection. The court shall enter the order if one is requested and the court finds that the custody evaluator has the qualifications

set forth in section (d) and that the agreement contains the relevant information set forth in section (g) of this Rule.

(B) By the Court

An appointment of an individual, other than a court employee, as a custody evaluator by the court shall be made from the list maintained by the family support services coordinator. In appointing a custody evaluator from a list, the court is not required to choose at random or in any particular order from among the qualified evaluators on the list. The court should endeavor to use the services of as many qualified individuals as practicable, but the court may consider, in light of the issues and circumstances presented by the action or the parties, any special training, background, experience, expertise, or temperament of the available prospective appointees. An individual appointed by the court to serve as a custody evaluator shall have the qualifications set forth in section (d) of this Rule.

(3) Selection of Assessor to Perform Specific Issue Evaluation

Selection of an assessor to perform a specific issue evaluation shall be made from the same list and by the same process as pertains to the selection of a custody evaluator.

(f) Description of Custody Evaluation

(1) Mandatory Elements

Subject to any protective order of the court, a custody evaluation shall include:

(A) a review of the relevant court records pertaining to the litigation;

(B) an interview of each party and any adult who performs a caretaking role for the child or lives in a household with the child;

(C) an interview of the child, unless the custody evaluator determines and explains that by reason of age, disability, or lack of maturity, the child lacks capacity to be interviewed;

(D) a review of any relevant educational, medical, and legal records pertaining to the child;

(E) if feasible, observations of the child with each party, whenever possible in that party's household;

(F) contact with any high neutrality/low affiliation collateral sources of information, as determined by the assessor;

Committee note: "High neutrality/low affiliation" is a term of art that refers to impartial, objective collateral sources of information. For example, in a custody contest in which the parties are taking opposing positions about whether the child needs to continue taking a certain medication, the child's treating doctor would be a high neutrality/low affiliation source, especially if he or she had dealt with both parties.

(G) screening for intimate partner violence;

~~(F)~~ (H) factual findings about the needs of the child and the capacity of each party to meet the child's needs; and

~~(G)~~ (I) a custody and visitation recommendation based upon an analysis of the facts found or, if such a recommendation cannot be made, an explanation of why.

(2) Optional Elements — Generally

Subject to subsection (f)(3) of this Rule, at the discretion of the custody evaluator, a custody evaluation also may include:

(A) contact with collateral sources of information that are not high neutrality/low affiliation;

(B) a review of additional records;

(C) employment verification;

~~(D) an interview of any other individual residing in the household;~~

~~(E)~~ (D) a mental health evaluation;

~~(F)~~ (E) consultation with other experts to develop information that is beyond the scope of the evaluator's practice or area of expertise; and

~~(G)~~ (F) an investigation into any other relevant information about the child's needs.

(3) Elements of Specific Issue Evaluation

Subject to any protective order of the court, a specific issue evaluation may include any of the elements listed in

subsections (f)(1)(A) through (G) and (f)(2) of this Rule. The specific issue evaluation shall include fact-finding pertaining to each issue identified by the court and, if requested by the court, a recommendation as to each.

~~(3)~~(4) Optional Elements Requiring Court Approval

The custody evaluator or specific issue evaluation assessor may not include an optional element listed in subsection (f)(2)(E), (F), or (G) if any additional cost is to be assessed for the element unless, after notice to the parties and an opportunity to object, the court approved inclusion of the element.

(g) Order of Appointment

An order appointing or approving a person to perform an assessment shall include:

(1) the name, business address, and telephone number of the person being appointed or approved;

(2) ~~if there are allegations of domestic violence committed by or against a party or child,~~ any provisions the court deems necessary to address the safety and protection of the parties, all children of the parties, any other children residing in the home of a party, and the person being appointed or approved;

(3) a description of the task or tasks the person being appointed or approved is to undertake;

(4) a provision concerning payment of any fee, expense, or charge, including a statement of any hourly rate that will be charged which, as to a court appointment, may not exceed the maximum rate established under section (n) of this Rule and, if applicable, a time estimate for the assessment;

(5) the term of the appointment or approval and any deadlines pertaining to the submission of reports to the parties and the court, including the dates of any pretrial or settlement conferences associated with the furnishing of reports;

(6) any restrictions upon the copying and distribution of reports, whether pursuant to this Rule, agreement of the parties, or entry of a separate protective order;

(7) as to a custody evaluation, whether a written report pursuant to subsection (i)(1)(B) of this Rule or an oral report on the record pursuant to subsection (i)(1)(A) of this Rule is required; ~~and~~

(8) as to a specific issue evaluation, each issue to be evaluated and whether a recommendation is requested as to each; and

~~(8)~~(9) any other provisions the court deems necessary.

(h) Removal or Resignation of Person Appointed or Approved to Perform an Assessment

(1) Removal

The court may remove a person appointed or approved to perform an assessment upon a showing of good cause.

(2) Resignation

A person appointed or approved to perform an assessment may resign prior to completing the assessment and preparing a report pursuant to section (i) of this Rule only upon a showing of good cause, notice to the parties, an opportunity to be heard, and approval of the court.

(i) Report of Assessor

(1) Custody Evaluation Report

A custody evaluator shall prepare a report and provide the parties access to the report in accordance with subsection (i)(1)(A) or (i)(1)(B) of this Rule.

(A) Oral Report on the Record

If the court orders a pretrial or settlement conference to be held at least 45 days before the scheduled trial date or hearing at which the evaluation may be offered or considered, and the order appointing or approving the custody evaluator does not require a written report, the custody evaluator may present the custody evaluation report orally to the parties and the court on the record at the conference. The custody evaluator shall produce and provide to the court and parties at the conference a written list containing an adequate description of all documents reviewed in connection with the

custody evaluation. If custody and access are not resolved at the conference, and no written report has been provided, the court shall (i) provide a transcript of the oral report to the parties free of charge and, if a copy of the transcript is prepared for the court's file, maintain that copy under seal, or (ii) direct the custody evaluator to prepare a written report and furnish it to the parties and the court in accordance with subsection (i)(1)(B) of this Rule. Absent the consent of the parties, the judge or magistrate who presides over a settlement conference at which an oral report is presented shall not preside over a hearing or trial on the merits of the custody dispute.

(B) Written Report Prepared by the Custody Evaluator

If an oral report is not prepared and presented pursuant to subsection (i)(1)(A) of this Rule, the custody evaluator shall prepare a written report of the custody evaluation and shall include in the report a list containing an adequate description of all documents reviewed in connection with the custody evaluation. The report shall be furnished to the parties and to the court under seal at least ~~30~~ 45 days before the scheduled trial date or hearing at which the evaluation may be offered or considered. The court may shorten or extend the time for good cause shown but the report shall be

furnished to the parties no later than 15 days before the scheduled trial or hearing.

(2) Report of Specific Issue Evaluation

An assessor who performed a specific issue evaluation shall prepare a written report that addresses each issue identified by the court in its order of appointment or approval and, if requested by the court, make a recommendation. The report shall be furnished to the parties and to the court, under seal, as soon as practicable after completion of the evaluation and, if a date is specified in the order of appointment or approval, by that date. The report shall include a list containing an adequate description of all documents reviewed in connection with the specific issue evaluation.

~~(2)~~(3) Report of Home Study ~~or Specific Issue Evaluation~~

Unless preparation of a written report is waived by the parties, an assessor who performed a home study ~~or a specific issue evaluation~~ shall prepare a written report of the ~~assessment~~ home study and furnish it to the parties and to the court under seal. The report shall be furnished as soon as practicable after completion of the ~~assessment~~ home study and, if a date is specified in the order of appointment or approval, by that date.

~~(3)~~(4) Report of Mental Health Evaluation

An assessor who performed a mental health evaluation shall prepare a written report. The report shall be made ~~and make it~~ available to the parties solely for use in the case and shall be furnished to the court under seal. The report shall be made available and furnished as soon as practicable after completion of the evaluation and, if a date is specified in the order of appointment or approval, by that date.

Committee note: An assessor's written report submitted to the court in accordance with section (i) of this Rule shall be kept by the court under seal. The only access to these reports by a judge or magistrate shall be in accordance with subsections (k)(2) and (k)(3) of this Rule. Each circuit court, through MDEC if available or otherwise, shall devise the means for keeping these reports under seal.

(j) Copying and Dissemination of Report

A party may copy a written report of an assessment or the transcript of an oral report prepared pursuant to subsection (i)(1)(A) of this Rule but, except as permitted by the court, shall not disseminate the report or transcript other than to individuals intended to be called as experts by the party.

Cross reference: See subsection (g)(6) of this Rule concerning the inclusion of restrictions on copying and distribution of reports in an order of appointment or approval of an assessor. See the Rules in Title 15, Chapter 200, concerning proceedings for contempt of court for violation of a court order.

(k) Court Access to Written Report

(1) Generally

Except as otherwise provided by this Rule, the court may receive access to a report by an individual appointed or

approved by the court to perform an assessment only if the report has been admitted into evidence at a hearing or trial in the case.

(2) Advance Access to Report by Stipulation of the Parties

Upon consent of the parties, the court may receive and read the assessor's report in advance of the hearing or trial.

(3) Access to Report by Settlement Judge or Magistrate

A judge or magistrate conducting a settlement conference shall have access to the assessor's report.

(l) Discovery

(1) Generally

Except as provided in this section, an individual who performs an assessment under this Rule is subject to the Maryland Rules applicable to discovery in civil actions.

(2) Deposition of Court-Paid Assessor

Unless leave of court is obtained, any deposition of an assessor who is a court employee or is working under contract for the court and paid by the court shall: (A) be held at the courthouse where the action is pending or other court-approved location; (B) take place after the date on which an oral or written report is presented to the parties; and (C) not exceed two hours, with the time to be divided equally between the parties.

(m) Testimony and Report of Assessor at Hearing or Trial

(1) Subpoena for Assessor

A party requesting the presence of the assessor at a hearing or trial shall subpoena the assessor no less than ten days before the hearing or trial.

(2) Admission of Report Into Evidence Without Presence of Assessor

The court may admit an assessor's report into evidence without the presence of the assessor, subject to objections based other than on the presence or absence of the assessor. If the assessor is present, a party may call the assessor for cross-examination.

Committee note: The admissibility of an assessor's report pursuant to subsection (m)(2) of this Rule does not preclude the court or a party from calling the assessor to testify as a witness at a hearing or trial.

(n) Fees

(1) Applicability

Section (n) of this Rule does not apply to a circuit court for a county in which all custody evaluations are performed by court employees, free of charge to the litigants.

(2) Fee Schedules

Subject to the approval of the Chief Judge of the Court of Appeals, the county administrative judge of each circuit court shall develop and adopt maximum fee schedules for custody evaluations. In developing the fee schedules, the county

administrative judge shall take into account the availability of qualified individuals willing to provide custody evaluation services and the ability of litigants to pay for those services. A custody evaluator appointed by the court may not charge or accept a fee for custody evaluation services in that action in excess of the fee allowed by the applicable schedule. Violation of this subsection shall be cause for removal of the individual from all lists maintained pursuant to subsection (e)(1) of this Rule.

(3) Allocation of Fees and Expenses

As permitted by law, the court may order the parties or a party to pay the reasonable and necessary fees and expenses incurred by an individual appointed by the court to perform an assessment in the case. The court may fairly allocate the reasonable and necessary fees of the assessment between or among the parties. In the event of the removal or resignation of an assessor, the court may consider the extent to which any fees already paid to the assessor should be returned.

Source: This Rule is new.

REPORTER'S NOTE

Amendments to Rule 9-205.3 were proposed to the Rules Committee by the Custody Evaluator Standards & Training Workgroup of the Judicial Council's Domestic Law Committee. The Workgroup reviewed Rule 9-205.3 and the best practices for

custody evaluations. Changes proposed by the Workgroup aim to re-purpose the specific issue evaluation in custody cases, to expand the use of custody evaluations, and to ensure that the courts may rely on accurate assessments in custody matters.

The Workgroup noted several concerns about specific issue evaluations, including confusion about the use of such evaluations. Accordingly, amendments to Rule 9-205.3 clarify the definition of "specific issue evaluation." Changes to subsection (b)(7) substitute the word "focused" for "targeted" and note that the investigation concerns issues affecting the safety, health, or welfare of the child as may affect the child's best interests. The current Committee note following the subsection, providing an example of a specific issue evaluation, is deleted and replaced with a Committee note differentiating specific issue evaluations and custody evaluations. The new Committee note provides guidance on the purpose of specific issue evaluations and includes examples of possible questions for fact-finding.

The Workgroup also highlighted confusion about who may be qualified to perform a specific issue evaluation and questioned the value of an evaluation prepared by an individual without sufficient qualifications. The addition of certain language to subsection (c)(2) addresses this concern. Proposed amendments provide that, unless waived by the court, a person appointed to perform a specific issue evaluation must have the same qualifications as a custody evaluator. A Committee note following section (c) clarifies that the court may still order preliminary screening or testing for alcohol and substance use.

Section (d) of the Rule addresses the training and experience required to be appointed or approved as a custody evaluator. Proposed amendments require a custody evaluator to complete a training program, unless waived by the court, that conforms with guidelines established by the Administrative Office of the Courts and posted on the Judiciary's website. Recognizing that the training may be offered at limited times, subsection (d)(2) permits a custody evaluator to commit to completing the next available training program.

New subsection (e)(3) clarifies that selection of an individual to perform a specific issue evaluation uses the same procedure employed to select a custody evaluator.

Subsection (f)(1) lists the mandatory elements of a custody evaluation. To improve the reliability and usefulness of

custody evaluations, the Workgroup recommended making additional elements of an evaluation mandatory. Amendments to subsection (f)(1)(B) require that custody evaluations include an interview with any adult who performs a caretaking role for or lives in the household with the child. New subsection (f)(1)(F) requires contact with high neutrality/low affiliation collateral sources of information. A Committee note following the subsection explains the term "high neutrality/low affiliation" and provides examples in custody evaluations. New subsection (f)(1)(G) requires screening for intimate partner violence as an element of a custody evaluation. The subsequent subsections are re-lettered accordingly.

Subsection (f)(2) contains the optional elements of a custody evaluation. Amendments to subsection (f)(2)(A) reflect that contact with high neutrality/low affiliation collateral sources is now a mandatory element of an evaluation. Similarly, current subsection (f)(2)(D) is deleted because an interview with any other individual residing in the household is now mandatory in custody evaluations. Subsections (f)(2)(E) through (f)(2)(G) are re-lettered to account for the deletion.

New subsection (f)(3) addresses the elements of a specific issue evaluation. A specific issue evaluation may include any of the elements listed in subsections (f)(1)(A) through (f)(1)(G), as well as any elements listed in subsection (f)(2) of the Rule. Subsection (f)(3) states that the evaluation is to include fact-finding and, if requested by the court, a recommendation. This subsection reflects the more limited nature of a specific issue evaluation, differing from a custody evaluation.

Current subsection (f)(3) is renumbered as (f)(4). Amendments to the section clarify that the subsection is applicable to both custody evaluators and specific issue evaluation assessors.

Amendments to section (g) modify the information required in an order appointing or approving a person to perform an assessment. Certain language is deleted from subsection (g)(2) to reflect that the court must include any provisions deemed necessary to address safety concerns, regardless of whether allegations of domestic violence are raised. Stylistic changes to subsection (g)(7) note that the subsection applies only to custody evaluations and add references to relevant subsections of the Rule regarding written and oral reports. New subsection (g)(8) provides that an order appointing or approving an

assessor for a specific issue evaluation must include each issue to be evaluated and whether a recommendation is requested as to each. Subsection (g)(8) ensures that the assessor is informed of the parameters of a specific issue evaluation. Current subsection (g)(8) is renumbered as subsection (g)(9) to account for the addition of the new subsection.

The completion and delivery of a custody evaluation report is addressed in subsection (i)(1). Amendments to subsection (i)(1)(A) clarify that an oral report on the record may be presented to the court, as well as to the parties. In addition, a transcript of the oral report prepared for the court's file must be maintained under seal. Further amendments provide that, if prepared, a subsequent written report shall also be furnished to the court. Subsection (i)(1)(B) provides that a written report of a custody evaluator shall be furnished to the court under seal. The time period to file the report is modified from at least 30 days before the scheduled trial or hearing to 45 days before the event. The additional 15 days provides more opportunity for the parties to review the report and adequately prepare for the hearing.

New subsection (i)(2) explains the process for a written report for a specific issue evaluation. An assessor is required to prepare a written report and furnish the report to the parties and to the court under seal. Subsection (i)(2) further provides that the report is to be filed as soon as practicable after completion of the evaluation or by any date specified in the order of appointment or approval. The report must include a list of all documents reviewed for the evaluation.

Proposed amendments delete references to specific issue evaluations in subsection (i)(3) because the evaluations are addressed in new subsection (i)(2). Additional amendments to subsections (i)(3) and (i)(4) clarify that home studies and mental health evaluations shall be furnished to the court under seal. Stylistic changes are also made in subsection (i)(4).

A new Committee note after section (i) reiterates that written reports must be filed under seal. The note further highlights that access to reports is available only in accordance with subsections (k)(2) and (k)(3) of this Rule.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-101 by adding new section (e) defining "digital signature" and by conforming the lettering of subsequent sections, as follows:

RULE 20-101. DEFINITIONS

...

(e) Digital Signature

A digital signature means the visual image of the signer's handwritten signature or the signer's cursive signature that was affixed using a digital program.

~~(e)~~ (f) Filer

"Filer" means a person who is accessing the MDEC system for the purpose of filing a submission and includes each person whose signature appears on the submission for that purpose.

Committee note: The internal processing of documents filed by registered users, on the one hand, and those transmitted by judges, judicial appointees, clerks, and judicial personnel, on the other, is different. The latter are entered directly into the MDEC electronic case management system, whereas the former are subject to clerk review under Rule 20-203. For purposes of these Rules, however, the term "filer" encompasses both groups.

~~(f)~~ (g) Hand-Signed or Handwritten Signature

"Hand-signed or handwritten signature" means the signer's original genuine signature on a paper document.

~~(g)~~ (h) Hyperlink

"Hyperlink" means an electronic link embedded in an electronic document that enables a reader to view the linked document.

~~(h)~~ (i) Judge

"Judge" means a judge of the Court of Appeals, Court of Special Appeals, a circuit court, or the District Court of Maryland and includes a senior judge when designated to sit in one of those courts.

~~(i)~~ (j) Judicial Appointee

"Judicial appointee" means a judicial appointee, as defined in Rule 18-200.3.

~~(j)~~ (k) Judicial Personnel

"Judicial personnel" means an employee of the Maryland Judiciary, even if paid by a county, who is employed in a category approved for access to the MDEC system by the State Court Administrator.

~~(k)~~ (l) MDEC or MDEC System

"MDEC" or "MDEC system" means the system of electronic filing and case management established by the Court of Appeals.

Committee note: "MDEC" is an acronym for Maryland Electronic Courts. The MDEC system has two components. (1) The electronic filing system permits users to file submissions electronically

through a primary electronic service provider (PESP) subject to clerk review under Rule 20-203. The PESP transmits registered users' submissions directly into the MDEC electronic filing system and collects, accounts for, and transmits any fees payable for the submission. The PESP also accepts submissions from approved secondary electronic service providers (SESP) that filers may use as an intermediary. (2) The second component - the electronic case management system - accepts submissions filed through the PESP, maintains the official electronic record in an MDEC county, and performs other case management functions.

~~(l)~~ (m) MDEC Action

"MDEC action" means an action to which this Title is made applicable by Rule 20-102.

~~(m)~~ (n) MDEC County

"MDEC County" means a county in which, pursuant to an administrative order of the Chief Judge of the Court of Appeals posted on the Judiciary website, MDEC has been implemented.

~~(n)~~ (o) MDEC Start Date

"MDEC Start Date" means the date specified in an administrative order of the Chief Judge of the Court of Appeals posted on the Judiciary website from and after which a county first becomes an MDEC County.

~~(o)~~ (p) MDEC System Outage

(1) For registered users other than judges, judicial appointees, clerks, and judicial personnel, "MDEC system outage" means the inability of the primary electronic service provider (PESP) to receive submissions by means of the MDEC electronic filing system.

(2) For judges, judicial appointees, clerks, and judicial personnel, "MDEC system outage" means the inability of the MDEC electronic filing system or the MDEC electronic case management system to receive electronic submissions.

~~(p)~~ (q) Redact

"Redact" means to exclude information from a document accessible to the public.

~~(q)~~ (r) Registered User

"Registered user" means an individual authorized to use the MDEC system by the State Court Administrator pursuant to Rule 20-104.

~~(r)~~ (s) Restricted Information

"Restricted information" means information that, by Rule or other law, is not subject to public inspection or is prohibited from being included in a court record absent a court order.

Committee note: There are several Rules and statutes that (1) make certain categories of records inaccessible to the public except by court order or (2) preclude certain information from being included in judicial records that otherwise are accessible to the public. See generally the Rules in Title 16, Chapter 900 and Rule 1-322.1. Filers of submissions under MDEC need to be aware of those provisions and alert the clerk to whether a document, or a part of a document, included in a submission is that kind of document or contains that kind of information. See Rules 20-201 (h), 20-201.1, and 20-203 (d), (e), and (f). Failure to comply with the requirements in those Rules may result in rejection or striking of the submission.

~~(s)~~ (t) Scan

"Scan" means to convert printed text or images to an electronic format compatible with MDEC.

~~(t)~~ (u) Signature

Unless otherwise specified, "signature" means the signer's typewritten name accompanied by a visual image of the signer's handwritten signature or by the symbol /s/.

Cross reference: Rule 20-107.

~~(u)~~ (v) Submission

"Submission" means a pleading or other document filed in an action. "Submission" does not include an item offered or admitted into evidence in open court.

Cross reference: See Rule 20-402.

~~(v)~~ (w) Tangible Item

"Tangible item" means an item that is not required to be filed electronically. A tangible item by itself is not a submission; it may either accompany a submission or be offered in open court.

Cross reference: See Rule 20-106 (c)(2) for items not required to be filed electronically.

Committee note: Examples of tangible items include an item of physical evidence, an oversize document, and a document that cannot be legibly scanned or would otherwise be incomprehensible if converted to electronic form.

~~(w)~~ (x) Trial Court

"Trial court" means the District Court of Maryland and a circuit court, even when the circuit court is acting in an appellate capacity.

Committee note: "Trial court" does not include an orphans' court, even when, as in Harford and Montgomery Counties, a judge of the circuit court is sitting as a judge of the orphans' court.

Source: This Rule is new.

REPORTER'S NOTE

Proposed amendments to Rule 20-101 add a definition of "digital signature" as new section (e). The definition is needed as a result of proposed amendments to Rule 20-107 permitting documents signed under oath, affirmation, or with verification in an MDEC jurisdiction to be signed by hand or by affixing the signer's digital signature.

Former sections (e) through (w) are re-lettered as sections (f) through (x) to conform with the addition of new section (e).

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-107 by updating a cross reference after section (a); by adding language to subsection (d)(1) permitting signers to affix a digital signature to a document under oath, affirmation, or with verification; by making stylistic changes; and by updating a reference in subsection (d)(2), as follows:

RULE 20-107. MDEC SIGNATURE

(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 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.

Cross reference: For the definition of "signature" applicable to MDEC submissions, see Rule 20-101 ~~(t)~~ (u).

...

(d) Signature Under Oath, Affirmation, or With Verification

(1) Generally

When a person is required to sign a document under oath, affirmation, or with verification, the signer shall hand-sign the document or affix the signer's digital signature to the document. If the signature is hand-signed, ~~The~~ the filer shall scan the ~~hand-signed~~ document and file the scanned document electronically. The filer shall retain the original hand-signed document or a copy of the document with the digital signature at least until the action is concluded or for such longer period ordered by the court. At any time prior to the conclusion of the action, the court may order the filer to produce the original ~~hand-signed~~ document.

(2) Actions for Nonpayment of Rent

In an action for nonpayment of rent under Code, Real Property Article, § 8-401, a person who signs a document under oath, affirmation, or with verification may use a signature as defined in Rule 20-101 ~~(t)~~ (u). A person who signs a document under this subsection is subject to the provisions of section (e).

...

REPORTER'S NOTE

The proposed conforming amendment to the cross reference after section (a) reflects proposed amendments to Rule 20-101.

Proposed amendments to Rule 20-107 (d) reflect the growing use of digital signatures. Rule 20-107 (d) currently requires that signatures under oath, affirmation, or with verification be hand-signed and scanned when filing in MDEC jurisdictions. As a result, clerks may issue deficiency notices if a filing under oath, affirmation, or with verification does not appear to include a hand-signed signature. When viewing a document electronically, however, it is difficult to determine if a document is hand-signed or if a "wet" signature has been digitized. As the use of remote and electronic means for conducting business increases, the use of digital signatures has grown more accepted and reliable. For example, programs such as Adobe and DocuSign may be used to create "original" signatures in real estate transactions.

Subsection (d)(1) is amended to indicate that a document signed under oath, affirmation, or with verification shall be hand-signed or affixed with the signer's digital signature. Additional language and stylistic changes to the subsection account for the permitted use of digital signatures.

The updated reference in subsection (d)(2) is necessitated by proposed amendments to Rule 20-101.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-106 by adding new section (f) pertaining to the indexing, pre-marking, and pre-filing of documentary exhibits in a circuit court hearing or trial, as follows:

RULE 20-106. WHEN ELECTRONIC FILING REQUIRED; EXCEPTIONS

. . .

(e) Exhibits and Other Documents Offered in Open Court

(1) Exhibits

(A) Generally

Unless otherwise approved by the court, a document offered into evidence as an exhibit in open court shall be offered in paper form. The document shall be appropriately marked.

Committee note: In a document-laden action, if practicable, the court and the parties are encouraged to agree to electronically prefiling documents to be offered into evidence, instead of offering them in paper form. Prefiling merely facilitates the offering of the document and does not constitute, of itself, an admission of the documents.

(B) Scanning and Return of Document

As soon as practicable, the clerk shall scan the document into the MDEC system and return the document to the party who offered it at the conclusion of the proceeding, unless

the court orders otherwise. If immediate scanning is not feasible, the clerk shall scan the document as soon as practicable and notify the person who offered it when and where the document may be retrieved.

(2) Documents Other than Exhibits

(A) Generally

Except as otherwise provided in subsection (e)(2)(B) of this Rule, if a document in paper form is offered in open court for inclusion in the record, but not as an exhibit, the court shall accept the document, and the clerk shall follow the procedure set forth in subsection (e)(1)(B) of this Rule.

Committee note: Examples of documents other than exhibits offered for inclusion in the record are written motions made in open court, proposed voir dire questions, proposed jury instructions, communications from a jury, and special verdict sheets.

(B) Certain Submissions by Registered Users

If a registered user offers a submission that requires prepayment of a fee, or an entry of appearance, whether or not a fee is required, in open court for inclusion in the record, but is not as an exhibit, the court may accept the submission conditionally, subject to it being electronically filed by the registered user. In criminal proceedings, the submission shall be filed by the end of the day that the submission was offered in court. In all proceedings other than criminal, the submission shall be filed no later than the end of the next

business day after the submission was offered in court. If the registered user fails to file by the applicable deadline, the court may strike the submission.

(f) Pre-filing of Documentary Exhibits

(1) Applicability

This section applies to documents proposed to be offered into evidence at a scheduled hearing or trial in a circuit court. This section does not apply (A) to an exhibit attached to a pleading or other paper or (B) to a rebuttal or impeachment exhibit. If the trial is to be a virtual jury trial conducted pursuant to Rule 2-807, proposed exhibits shall be filed and handled in accordance with section (c) of that Rule.

(2) Generally

Proposed documentary exhibits in a pending action may be pre-filed in accordance with this Rule and, if directed by the court, shall be pre-filed in accordance with this Rule.

(3) Procedure

Unless otherwise directed by the court, the proposed exhibits shall be indexed, pre-numbered, and pre-filed with the clerk at least three days prior to the date of the scheduled hearing or trial and served on the other parties. The clerk shall enter on the docket that proposed exhibits were filed but those documents shall not be accessible until they have been offered into evidence.

Source: This Rule is new.

REPORTER'S NOTE

Proposed amendments to Rule 20-106 address a concern raised by circuit court clerks with whether documentary exhibits in an MDEC action should be pre-filed. Currently, the practice varies from jurisdiction to jurisdiction, and the Rules Committee proposes amendments to Rule 20-106 to ensure that a uniform procedure is adopted throughout the state.

Proposed new section (f) is added to permit or, if directed by the court, require documentary exhibits proposed to be offered into evidence in a circuit court hearing or trial to be pre-filed. Ordinarily, the pre-filed documents must be indexed, pre-numbered, and filed at least three days prior to the hearing or trial. The section provides that the prefiling of exhibits is entered on the docket, but the documents are not publicly accessible until offered into evidence. The section does not apply to exhibits that are attached to a pleading or other paper, nor does it apply to rebuttal or impeachment exhibits.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 – TRIAL

AMEND Rule 2-504 by adding new subsection (b)(2)(J) pertaining to pre-filing documentary exhibits and by making stylistic changes, as follows:

RULE 2-504. SCHEDULING ORDER

(a) Order Required

(1) Unless otherwise ordered by the County Administrative Judge for one or more specified categories of actions, the court shall enter a scheduling order in every civil action, whether or not the court orders a scheduling conference pursuant to Rule 2-504.1.

(2) The County Administrative Judge shall prescribe the general format of scheduling orders to be entered pursuant to this Rule. A copy of the prescribed format shall be furnished to the Chief Judge of the Court of Appeals.

(3) Unless the court orders a scheduling conference pursuant to Rule 2-504.1, the scheduling order shall be entered as soon as practicable, but no later than 30 days after an answer is filed by any defendant. If the court orders a scheduling

conference, the scheduling order shall be entered promptly after conclusion of the conference.

(b) Contents of Scheduling Order

(1) Required

A scheduling order shall contain:

(A) an assignment of the action to an appropriate scheduling category of a differentiated case management system established pursuant to Rule 16-302;

(B) one or more dates by which each party shall identify each person whom the party expects to call as an expert witness at trial, including all information specified in Rule 2-402 (g)(1);

(C) one or more dates by which each party shall file the notice required by Rule 2-504.3 (b) concerning computer-generated evidence;

(D) a date by which all discovery must be completed;

(E) a date by which all dispositive motions must be filed, which shall be no earlier than 15 days after the date by which all discovery must be completed;

Cross reference: See Rule 2-501 (a), which provides that after the date by which all dispositive motions are to be filed, a motion for summary judgment may be filed only with the permission of the court.

(F) a date by which any additional parties must be joined;

(G) a date by which amendments to the pleadings are allowed as of right; and

(H) any other matter resolved at a scheduling conference held pursuant to Rule 2-504.1.

(2) Permitted

A scheduling order also may contain:

(A) any limitations on discovery otherwise permitted under these rules, including reasonable limitations on the number of interrogatories, depositions, and other forms of discovery;

(B) the resolution of any disputes existing between the parties relating to discovery;

(C) a specific referral to or direction to pursue an available and appropriate form of alternative dispute resolution, including a requirement that individuals with authority to settle be present or readily available for consultation during the alternative dispute resolution proceeding, provided that the referral or direction conforms to the limitations of Rule 2-504.1 (e);

(D) an order designating or providing for the designation of a neutral expert to be called as the court's witness;

(E) in an action involving child custody or child access, an order appointing child's counsel in accordance with Rule 9-205.1;

(F) a further scheduling conference or pretrial conference date;

(G) provisions for discovery of electronically stored information;

(H) a process by which the parties may assert claims of privilege or of protection after production;

(I) procedures and requirements the court finds necessary when any proceedings in the action will be conducted by remote electronic participation pursuant to Title 2, Chapter 800 of these Rules; ~~and~~

(J) a requirement that, to the extent practicable, all documentary exhibits in an MDEC action be indexed, pre-numbered, and pre-filed in accordance with Rule 20-106 (f); and

~~(J)~~ (K) any other matter pertinent to the management of the action.

(c) Modification of Order

The scheduling order controls the subsequent course of the action but shall be modified by the court to prevent injustice.

Cross reference: See Rule 5-706 for authority of the court to appoint expert witnesses.

Source: This Rule is in part new and in part derived as follows:
Subsection (b)(2)(G) is new and is derived from the 2006 version of Fed. R. Civ. P. 16(b)(5).
Subsection (b)(2)(H) is new and is derived from the 2006 version of Fed. R. Civ. P. 16(b)(6).

REPORTER'S NOTE

Proposed amendments to Rule 2-504 conform to proposed changes to Rule 20-106. These changes address a concern raised by circuit court clerks with whether documentary exhibits in an MDEC action should be pre-filed. Currently, the practice varies from jurisdiction to jurisdiction, and the Rules Committee proposes amendments to section (b) to ensure that a uniform procedure is adopted throughout the state.

Proposed new subsection (b)(2)(J) is added to permit a scheduling order to require documentary exhibits to be indexed, pre-marked, and pre-filed. Stylistic changes are also proposed.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-109 by adding new section (e) concerning access to court records by Judiciary contractors, by adding new section (f) concerning access to court records by court-designated ADR practitioners, by re-lettering subsequent sections, and by adding new section (j) and a Committee note concerning access to court records by certain registered users who serve as staff to a Court-Appointed Special Advocate Program, 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 for a party in an MDEC action shall have full access, including remote access, to all case records in that action. An attorney for a victim or

victim's representative shall have access, including remote access, to case records as provided in Rule 1-326 (d).

(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) Judiciary Contractors

The State Court Administrator, by written directive, may allow appropriate access for Judiciary contractors from their respective work stations to judicial records to the extent that such access is necessary to the performance of their official duties.

(f) Court-Designated ADR Practitioners

(1) Definition

In this section, "ADR practitioner" means an individual who conducts ADR under the Rules in Title 17, and includes a mediator designated pursuant to Rule 9-205.

(2) Access to Case Records

During the period of designation of a court-designated ADR practitioner in an MDEC action, and subject to any protective order issued by the court or other law, the ADR practitioner shall have full access, including remote access, to all case records in that 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.

~~(e)~~ (g) 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)(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)~~ (h) 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)~~ (i) 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.

(j) CASA Program

(1) Definition

In this section, "CASA program" means a Court-Appointed Special Advocate Program created pursuant to Code, Courts Article, § 3-830.

Committee note: CASA programs provide trained volunteers (1) to provide background information to the Juvenile Courts to aid them in making decisions in the child's best interest, and (2) to ensure that children who are the subject of proceedings within the jurisdiction of the court are provided appropriate case planning and services. See Code, Courts Article, §§ 3-830 and 3-8A-32. CASA programs are county-based. They are created in a county with the support of the Juvenile Court for that county. The overall CASA program is administered by the Administrative Office of the Courts, which may adopt rules governing the operation of the program, including supervision of the volunteers.

More than a dozen CASA programs have been created throughout the State, some of which serve the Juvenile Courts in more than one county. Upon an appointment to assist a child in a particular case, the director of the program assigns a volunteer attached to that program to provide that assistance. The confidentiality that applies to court records in juvenile cases does not prohibit review of a court record by a "Court-Appointed Special Advocate for the child" in a proceeding involving that child. See Code, Courts Article, §§ 3-827(a)(2) and 3-8A-27(b)(2). The purpose of this section is to clarify how that access and ability to file reports may be accomplished through MDEC.

(2) Registered Users; Reports

Each CASA program shall inform the clerk of the circuit court for each county within its authorized service area in writing of the name of and contact information for not more than two staff persons who are registered users authorized by the program to have remote access and to file reports through MDEC on behalf of the program. Except as otherwise ordered by the court, only those registered users may file reports and have remote access to court records on behalf of the program. CASA program registered users must file reports through MDEC if the program's service area is located in an MDEC jurisdiction.

(3) Limitations; Access

The ability to file reports and have remote access to court records shall be limited to cases in which the CASA program or a volunteer on behalf of the program has been appointed by the court to provide service and is allowed only for the period during which service is being provided in that case pursuant to the order of appointment. Unless otherwise ordered by the court, access shall include notices of hearings and all other records not under seal.

(4) Control of Records

The registered user with remote access (A) shall keep exclusive control over the records obtained and (B) may not permit such records to be shared with or copied for anyone other than (i) an authorized volunteer designated by the CASA program

to provide service to the child pursuant to the order of appointment and (ii) CASA program staff authorized to supervise the volunteer. Any order expunging the court records in a case in which the CASA program participated shall include the expungement of records in that case obtained and maintained by the program.

Source: This Rule is new.

REPORTER'S NOTE

The Rules Committee received several requests to provide MDEC access to certain defined groups through amendments to Rule 20-109.

Amendments to Rule 20-109 were requested to grant Judiciary contractors appropriate access to judicial records. Judiciary contractors, including the attorneys of the Court Help Center, rely on MDEC to remotely view case records and to provide assistance to clients. Information available through Case Search is insufficient to provide the required services. For example, the Court Help Center assists individuals seeking expungements. Due to Chapter 31, 2021 Laws of Maryland (HB 1336 of the 2020 Regular Session), charges that resulted in acquittal, dismissal, or nolle prosequi are automatically removed from Case Search. Access to MDEC is needed to view these types of case records and advise individuals seeking assistance. New section (e) provides that the State Court Administrator may allow Judiciary contractors access to judicial records from their work stations to the extent such access is needed to perform their official duties.

Additional amendments to Rule 20-109 were requested 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 (f) 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 (f) 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 the circuit courts. The last sentence of section (f) clarifies that, unless terminated earlier, a designation is terminated when the subject case is closed.

Following section (f) 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.

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

The Committee was also asked to consider amendments to Rule 20-109 to provide MDEC access, including remote access, to Court-Appointed Special Advocate Programs ("CASA programs"). Providing certain MDEC access to CASA programs would ensure timely access to case information. Due to an inability to access case records remotely through MDEC, CASA programs have experienced issues that negatively impact their services, including failure to receive court orders appointing CASAs, missed hearing notices, and an inability to review court records prior to assigning a volunteer.

New subsection (j)(1) defines the term "CASA program" used throughout the section. A proposed Committee note follows subsection (j)(1), providing background information and details about the administration of CASA programs. The Committee note describes the purpose of section (j) to clarify how CASA programs may access and file reports through MDEC.

Proposed subsection (j)(2) requires that each CASA program provide the clerk in each relevant county with the name and contact information of not more than two staff persons, in writing, to have remote access and file reports on behalf of the program. The subsection also provides that only those registered users may have remote access and file reports on behalf of the CASA program. Reports must be filed through MDEC in MDEC jurisdictions.

A CASA program's ability to file and have remote access is restricted by new subsection (j)(3), providing that it is limited to cases in which the program or a volunteer on behalf of the program has been appointed. The access is allowed only for the period that service is provided. Subsection (j)(3) further notes that access includes hearing notices and all records not under seal.

Subsection (j)(4) addresses the CASA program's control over case records. The subsection states that the registered user shall keep exclusive control over the obtained records and may not permit such records to be shared with or copied for anyone other than an authorized volunteer designated to provide services pursuant to the order of appointment and CASA program staff authorized to supervise the volunteer. The last sentence of subsection (j)(4) notes that any order expunging court records in a case in which the CASA program participated shall include the expungement of records maintained by the CASA program.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 1 – GENERAL PROVISIONS

AMEND Rule 16-903 by deleting a cross reference after section (p), as follows:

RULE 16-903. DEFINITIONS

In this Chapter, the following definitions apply except as otherwise expressly provided or as necessary implication requires:

...

(p) Special Judicial Unit

"Special Judicial Unit" means (1) the State Board of Law Examiners, the Accommodations Review Committee, and character committees; (2) the Attorney Grievance Commission and Bar Counsel; (3) the Commission on Judicial Disabilities, the Judicial Inquiry Board, and Investigative Counsel; and (4) the Client Protection Fund.

~~Cross reference: See Rule 20-109 (c).~~

...

REPORTER'S NOTE

Rule 16-903 was derived from former Rule 16-902 (2019). Upon review for conforming amendments based on proposed changes to Rule 20-109, it was determined that a cross reference transposed from the former Rule is obsolete in current Rule 16-903. A proposed amendment deletes the cross reference to Rule 20-109 after section (p).

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 200 – FILING AND SERVICE

AMEND Rule 20-201.1 by requiring the clerk to reject a submission without prejudice when a filer fails to comply with certain requirements pertaining to the filing of redacted and unredacted versions of the submission, and by making stylistic changes, as follows:

RULE 20-201.1. RESTRICTED INFORMATION

(a) Statement in Submission; Notice Regarding Restricted Information

(1) Requirement

Each submission filed pursuant to Rule 20-201 that contains restricted information shall state prominently on the first page that it contains restricted information. Except for categories of actions specified in Rule 16-914 (a) or in the Policies and Procedures adopted by the State Court Administrator pursuant to Rule 20-103 (b), if the submission contains restricted information, it shall be accompanied by a completed Notice Regarding Restricted Information on a form approved by the State Court Administrator. The completed Notice shall be subject to public inspection.

(2) Failure to File Notice Regarding Restricted Information

If the filer fails to file a completed Notice of Restricted Information as required, the clerk shall reject the submission without prejudice to refile the submission accompanied by the Notice. The clerk shall enter on the docket that a submission was received but was rejected for non-compliance with Rule 20-201.1 (a).

(b) Submission Not Subject to Public Inspection

If the submission, as a whole, is not subject to public inspection by Rule, other law, or court order, the filer shall cite the grounds for such an assertion in the Notice.

(c) Submission Containing Restricted Information

(1) Requirements

If a filer believes that a submission contains both restricted information that is not subject to public inspection and information that is subject to public inspection, and that the restricted information is necessary to be included in the submission, the filer shall ~~(1)~~ (A) file both an unredacted version of the submission, noting prominently in the title of the version that the version is "unredacted--to be shielded," and a redacted version of the submission that excludes the restricted information, noting prominently in the title of the version that the version is "redacted," and ~~(2)~~ (B) state in the Notice the grounds for the assertion that some information is

restricted information and for including the restricted information in the submission.

(2) Failure to File Required Versions

If the filer fails to file both an unredacted and a redacted version of a submission when required under subsection (c)(1) of this Rule, the clerk shall reject the submission without prejudice to refile the submission with both versions included. The clerk shall enter on the docket that a submission was received but was rejected for non-compliance with Rule 20-201.1 (c).

Cross reference: See Rule 20-203 (e), requiring the unredacted version to be shielded.

. . .

REPORTER'S NOTE

The Rules Committee is advised that courts have been receiving some submissions containing restricted information, accompanied by the Notice required by section (a) of Rule 20-201.1, but not containing a redacted version of the submission. Proposed new subsection (c)(2) requires the clerk to reject a submission containing restricted information, without prejudice, unless both a redacted and an unredacted version of the submission are included.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 2 – LIMITATIONS ON ACCESS

AMEND Rule 16-913 by replacing references to a jury commissioner in subsection (a)(5) with references to a unit within the Administrative Office of the Courts selected by the State Court Administrator and by adding a cross reference after subsection (a)(5), as follows:

RULE 16-913. ACCCESS 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 unit within the Administrative Office of the Courts selected by the State Court Administrator, ~~a jury commissioner~~ the unit 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.

Cross reference: See Code, Courts Article, § 8-105.

...

REPORTER'S NOTE

Rule 16-913 concerns access to administrative records. Records relating to jurors are addressed in section (a). Current subsection (a)(5) states that the Board of Elections and the Motor Vehicle Administration shall be provided with certain data by a jury commissioner. The Committee was informed that Judicial Information Systems, not a jury commissioner, now transmits the data addressed in subsection (a)(5). Amendments are therefore proposed to conform the Rule to current business practice. References to a jury commissioner are replaced with references to a unit within the Administrative Office of the Courts selected by the State Court Administrator.

A cross reference to the statutory provision requiring the Rules to provide for the disclosure of information to the State Board of Elections and the Motor Vehicle Administration has been added after subsection (a)(5).

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 200 – GENERAL PROVISIONS – CIRCUIT AND DISTRICT COURTS

AMEND Rule 16-207 by replacing the phrase "post-termination" with the phrase "violation of probation" in the Committee note after section (f), by expanding the Committee note concerning disqualification of a judge, by adding a case citation to the Committee note, and by making stylistic changes to the Committee note, as follows:

RULE 16-207. PROBLEM-SOLVING COURT PROGRAMS

(a) Definition

(1) Generally

Except as provided in subsection (a)(2) of this Rule, "problem-solving court program" means a specialized court docket or program that addresses matters under a court's jurisdiction through a multi-disciplinary and integrated approach incorporating collaboration by the court with other governmental entities, community organizations, and parties.

(2) Exceptions

(A) The mere fact that a court may receive evidence or reports from an educational, health, rehabilitation, or social service agency or may refer a person before the court to such an

agency as a condition of probation or other dispositional option does not make the proceeding a problem-solving court program.

(B) Juvenile court truancy programs specifically authorized by statute do not constitute problem-solving court programs within the meaning of this Rule.

(b) Applicability

This Rule applies in its entirety to problem-solving court programs submitted for approval on or after July 1, 2019. Sections (a), (e), (f), and (g) of this Rule apply also to problem-solving court programs in existence on July 1, 2019.

(c) Submission of Plan

After initial consultation with the Office of Problem-Solving Courts and any officials whose participation in the programs will be required, the County Administrative Judge of a circuit court or a District Administrative Judge of the District Court may prepare and submit to the Office of Problem-Solving Courts a detailed plan for a problem-solving court program in a form approved by the State Court Administrator.

Committee note: Examples of officials to be consulted, depending on the nature of the proposed program, include individuals in the Office of the State's Attorney, Office of the Public Defender; Department of Juvenile Services; health, addiction, and education agencies; the Division of Parole and Probation; and the Department of Human Services.

(d) Approval of Plan

After review of the plan and consultation with such other judicial entities as the State Court Administrator may direct, the Office of Problem-Solving Courts shall submit the plan, together with any comments and a recommendation, to the State Court Administrator. The State Court Administrator shall review the materials and make a recommendation to the Chief Judge of the Court of Appeals. The program shall not be implemented until it is approved by order of the Chief Judge of the Court of Appeals.

(e) Acceptance of Participant into Program

(1) Written Agreement Required

As a condition of acceptance into a program and after the advice of an attorney, if any, a prospective participant shall execute a written agreement that sets forth:

(A) the requirements of the program;

(B) the protocols of the program, including protocols concerning the authority of the judge to initiate, permit, and consider ex parte communications pursuant to Rule 18-102.9 of the Maryland Code of Judicial Conduct;

(C) the range of sanctions that may be imposed while the participant is in the program, if any; and

(D) any rights waived by the participant, including rights under Rule 4-215 or Code, Courts Article, § 3-8A-20.

Committee note: The written agreement shall be in addition to any advisements that are required under Rule 4-215 or Code, Courts Article, § 3-8A-20, if applicable.

(2) Examination on the Record

The court may not accept the prospective participant into the program until, after examining the prospective participant on the record, the court determines and announces on the record that the prospective participant understands the agreement and knowingly and voluntarily enters into the agreement.

(3) Agreement to be Made Part of the Record

A copy of the agreement shall be made part of the record.

(f) Immediate Sanctions; Loss of Liberty or Termination from Program

If permitted by the program and in accordance with the protocols of the program, the court, for good cause, may impose an immediate sanction on a participant, except that if the participant is considered for the imposition of a sanction involving the loss of liberty or termination from the program, the participant shall be afforded notice, an opportunity to be heard, and the right to be represented by an attorney before the court makes its decision. If a hearing is required by section (f) of this Rule and the participant is not represented by an attorney, the court shall comply with Rule 4-215 in a criminal

action or Code, Courts Article, § 3-8A-20 in a delinquency action before holding the hearing.

Committee note: In considering whether a judge should be disqualified pursuant to Rule 18-102.11 of the Maryland Code of Judicial Conduct from ~~post-termination~~ conducting violation of probation proceedings involving a ~~participant~~ defendant who has been terminated from a problem-solving court program, the judge should be sensitive to any exposure to ex parte communications or inadmissible information that the judge may have received while the participant was in the program. Even in cases where the judge does not have personal bias or prejudice that would require disqualification, if presiding over the violation of probation proceedings might reasonably create the appearance of impropriety, the judge should disqualify himself or herself. See *Conner v. State*, 472 Md. 722 (2021).

(g) Credit for Incarceration Time Served

If a participant is terminated from a program, any period of time during which the participant was incarcerated as a sanction during participation in the program shall be credited against any sentence imposed or directed to be executed in the action.

(h) Continued Program Operation

(1) Monitoring

Each problem-solving court program shall provide the Office of Problem-Solving Courts with the information requested by that Office regarding the program.

(2) Report and Recommendation

(A) The Office of Problem-Solving Courts shall submit to the Chief Judge of the Court of Appeals, through the State Court Administrator, annual reports and recommendations as to the

status and operations of the various problem-solving court programs. The Office of Problem-Solving Courts shall provide to the Chief Judge of the District Court a copy of each report and recommendation that pertains to a problem-solving court program in the District Court.

(B) The Chief Judge of the Court of Appeals may require information regarding the status and operation of a problem-solving court program and may direct that a program be altered or terminated.

Source: This Rule is derived from former Rule 16-206 (2016).

REPORTER'S NOTE

On March 26, 2021, *Conner v. State,* 472 Md. 722 (2021) was filed. In *Conner*, the Court of Appeals held that, under the specific facts of the case, a drug court participant was not denied his right to an impartial tribunal when a judge who presided over the participant in drug court proceedings also presided over the participant's revocation of probation proceeding. At the conclusion of the Opinion, the Court "refer[red] to the Rules Committee the issue of whether specific additional or different guidance for recusal of judges who have participated in Drug Court proceedings, whether by presiding or by receiving communications as a member of the therapeutic team, should be incorporated into Rule 18-102.11 and/or Rule 16-207." *Id.* at 751. After considering comments from several judges and others involved in problem-solving courts, amendments are proposed to Rule 16-207.

As demonstrated in *Conner*, termination from a problem-solving court may occur simultaneously with a violation of probation hearing. Accordingly, the term "post-termination proceedings" as used in the Committee note after section (f) is inaccurate. A proposed amendment to the Committee note

eliminates the reference to "post-termination proceedings" and substitutes the phrase "violation of probation proceedings."

A proposed addition to the Committee note provides further guidance to judges considering motions for disqualification in problem-solving courts. The new sentence emphasizes that judges must consider whether presiding over the violation of probation proceedings of a former problem-solving court participant might reasonably create the appearance of impropriety. A citation to *Connor v. State* is also added to the Committee note.

Additional stylistic changes are proposed to the first sentence of the Committee note, including adding the word "conducting" before the proposed phrase "violation of probation proceedings" and replacing the term "participant" with "defendant."

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 200 – GENERAL PROVISIONS – CIRCUIT AND DISTRICT COURTS

AMEND Rule 16-208 by deleting subsection (b)(2)(E)(ii), by adding the words "or use" to subsection (b)(2)(F), by adding new subsection (b)(3)(A) generally permitting the use of electronic devices in a courtroom by an attorney subject to certain conditions, and by adding new subsection (b)(3)(B) to provide that reasonable and lawful use of an electronic device by an attorney may not be denied without a finding of good cause made upon the record, as follows:

Rule 16-208. CELL PHONES; OTHER ELECTRONIC DEVICES; CAMERAS

(a) Definitions

In this Rule the following definitions apply:

(1) Court Facility

"Court facility" means the building in which a circuit court or the District Court is located. If the court is in a building that also is occupied by county or State executive agencies having no substantial connection with the court, "court facility" means only that part of the building occupied by the court.

(2) Electronic Device

"Electronic device" means (A) a cell phone, a computer, and any other device that is capable of transmitting, receiving, or recording messages, images, sounds, data, or other information by electronic means or that, in appearance, purports to be a cell phone, computer, or such other device; and (B) a camera, regardless of whether it operates electronically, mechanically, or otherwise and regardless of whether images are recorded by using digital technology, film, light-sensitive plates, or other means. "Electronic device" does not include court equipment used by judicial officials or personnel.

(3) Local Administrative Judge

"Local Administrative Judge" means the County Administrative Judge in a circuit court and the District Administrative Judge in the District Court.

(b) Possession and Use of Electronic Devices

(1) Generally

Subject to inspection by court security personnel and the restrictions and prohibitions set forth in section (b) of this Rule, a person may (A) bring an electronic device into a court facility and (B) use the electronic device for the purpose of sending and receiving phone calls and electronic messages and for any other lawful purpose not otherwise prohibited.

(2) Restrictions and Prohibitions

(A) Rule 5-615 Order

An electronic device may not be used to facilitate or achieve a violation of an order entered pursuant to Rule 5-615 (d).

(B) Photographs and Video

Except as permitted in accordance with this Rule, Rules 16-502, 16-503, 16-504, or 16-603, or as expressly permitted by the Local Administrative Judge, a person may not (i) take or record a photograph, video, or other visual image in a court facility, or (ii) transmit a photograph, video, or other visual image from or within a court facility.

Committee note: The prohibition set forth in subsection (b)(2)(B) of this Rule includes still photography and moving visual images. It is anticipated that permission will be granted for the taking of photographs at ceremonial functions.

(C) Interference with Court Proceedings or Work

An electronic device shall not be used in a manner that interferes with court proceedings or the work of court personnel.

Committee note: An example of a use prohibited by subsection (b)(2)(C) of this Rule is a loud conversation on a cell phone near a court employee's work station or in a hallway near the door to a courtroom.

(D) Jury Deliberation Room

An electronic device may not be brought into a jury deliberation room after deliberations have begun.

(E) Courtroom

~~(i)~~ Except with the express permission of the presiding judge or as otherwise permitted by this Rule, Rules 16-502, 16-503, 16-504, or 16-603, all electronic devices inside a courtroom shall remain off and no electronic device may be used to receive, transmit, or record sound, visual images, data, or other information.

~~(ii) Subject to subsection (b)(2)(F) of this Rule, the court shall liberally allow the attorneys in a proceeding currently being heard, their employees, and agents to make reasonable and lawful use of an electronic device in connection with the proceeding.~~

(F) Security or Privacy Issues in a Particular Case

Upon a finding that the circumstances of a particular case raise special security or privacy issues that justify a restriction on the possession or use of electronic devices, the Local Administrative Judge or the presiding judge may enter an order limiting or prohibiting the possession of electronic devices in a courtroom or other designated areas of the court facility. The order shall provide for notice of the designated areas and for the collection of the devices and their return when the individual who possessed the device leaves the courtroom or other area. No liability shall accrue to the security personnel or any other court official or employee for any loss or misplacement of or damage to the device.

(3) Reasonable and Lawful Use by Attorneys

(A) Generally

Subject to subsection (b)(2)(F) of this Rule, the attorneys in a proceeding currently being heard, their employees, and their agents are permitted the reasonable and lawful use of an electronic device in connection with the proceeding provided that:

(i) the electronic device makes no audible sound;

(ii) the electronic device is positioned so the screen is unseen by the trier of fact or any witness;

(iii) the electronic device is not used to record any part of the proceeding; and

(iv) the electronic device is not used to communicate with any other person during the proceeding without the express permission of the court.

(B) Denial of Use

A court may not deny reasonable and lawful use of an electronic device in a courtroom by an attorney, except upon a finding of good cause made on the record.

(c) Violation of Rule

(1) Security personnel or other court personnel may confiscate and retain an electronic device that is used in violation of this Rule, subject to further order of the court or until the owner leaves the building. No liability shall accrue

to the security personnel or any other court official or employee for any loss or misplacement of or damage to the device.

(2) An individual who willfully violates this Rule or any reasonable limitation imposed by the local administrative judge or the presiding judge may be found in contempt of court and sanctioned in accordance with the Rules in Title 15, Chapter 200.

(d) Notice

Notice of the provisions of sections (b) and (c) of this Rule shall be:

(1) posted prominently at the court facility;

(2) included on the main Judiciary website and the website of each court; and

(3) disseminated to the public by any other means approved in an administrative order of the Chief Judge of the Court of Appeals.

Source: This Rule is derived from former Rule 16-110 (2016).

REPORTER'S NOTE

Proposed amendments to Rule 16-208 modify the procedures that govern the use of an electronic device in a courtroom by an attorney. The changes address a concern raised by a practitioner with inconsistent permissions granted by various courts regarding the use of technology by attorneys during court

proceedings. The Committee is advised that, in some instances, an Assistant State's Attorney is permitted to use a computer at the trial table, but the defendant's attorney is denied the same privilege, and that in other instances, neither attorney is permitted to use a computer at the trial table.

Current subsection (b)(2)(E)(ii) is deleted, and the words "or use" are added to subsection (b)(2)(F).

A revised standard for the use of an electronic device by an attorney during a proceeding is included in new subsection (b)(3)(A), which is derived from current subsection (b)(2)(E)(ii). The current standard of "liberally allowed" is changed to generally permitted, subject to certain conditions that are listed in new subsections (b)(3)(A)(i)-(iv). New subsection (b)(3)(B) provides that an attorney may not be denied the reasonable and lawful use of an electronic device in a courtroom without a finding of good cause made upon the record.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 300 – CIRCUIT COURTS – ADMINISTRATION AND CASE MANAGEMENT

AMEND Rule 16-308 by renumbering current section (c) as subsection (c)(1), by adding a tagline to subsection (c)(1), by making stylistic changes to subsection (c)(1), and by adding new subsections (c)(2) and (c)(3) pertaining to cases presumptively assigned to or excluded from the business and technology case management program, as follows:

RULE 16-308. BUSINESS AND TECHNOLOGY CASE MANAGEMENT PROGRAM

...

(c) Assignment of Actions to the Program

(1) Generally

On written request of a party or on the court's own initiative, the County Administrative Judge or that judge's designee may assign the action to the program if the judge determines that the action presents commercial or technological issues of such a complex or novel nature that specialized treatment is likely to improve the administration of justice. Factors that the judge may consider in making the determination include: ~~(1)~~ (A) the nature of the relief sought, ~~(2)~~ (B) the

number and diverse interests of the parties, ~~(3)~~ (C) the anticipated nature and extent of pretrial discovery and motions, ~~(4)~~ (D) whether the parties agree to waive venue if assignment of the action to the program makes that necessary, ~~(5)~~ (E) the degree of novelty and complexity of the factual, legal, or evidentiary issues presented, ~~(6)~~ (F) whether business or technology issues predominate over other issues presented in the action, and ~~(7)~~ (G) the willingness of the parties to participate in ADR procedures.

(2) Presumptive Assignment to Program

Actions in which the dispute involves the following presumptively shall be assigned to the program:

(A) disputes arising under:

(i) the Maryland Antitrust Act; or

(ii) the Maryland Securities Act, if involving significant complexity;

(B) disputes involving the internal governance or affairs of business entities, including the rights or obligations between or among stockholders, partners, and members or the liability or indemnity of officers, directors, managers, trustees, or partners, if the dispute involves significant complexity;

(C) stockholder derivative actions;

(D) actions of the following types if they involve significant complexity, including complex technical or accounting evidence:

(i) breach of contract, fraud, misrepresentation, or statutory violations arising out of business dealings;

(ii) trade secret, non-compete, non-solicitation, or confidentiality agreements; or

(iii) business torts, including actions for unfair competition or violations of the Maryland Uniform Trade Secret or Unfair and Deceptive Trade Practices Acts;

(E) declaratory judgment and indemnification actions brought by or against insurers where the subject insurance policy is a business or commercial policy and where the underlying dispute otherwise would be assigned to the program;

(F) stockholder or commercial class actions; or

(G) the following types of technology disputes if the evidence will involve technical issues of significant complexity:

(i) technology development, maintenance, and consulting agreements, including software, network, and internet website development and maintenance agreements;

(ii) agreements for developing or hosting internet websites for business entities;

(iii) technology licensing agreements, including software and biotechnology licensing agreements or any agreement involving the licensing of any intellectual property rights, including patent rights; or

(iv) actions arising under the Maryland Uniform Computer Information Transactions Act, including alleged breaches of the warranty provisions provided in such Act.

(3) Presumptive Exclusion from Program

Actions in which the dispute involves the following presumptively shall be excluded from the program:

(A) personal injury, survival, or wrongful death actions;

(B) medical and other professional malpractice actions;

(C) landlord-tenant actions;

(D) professional fee disputes;

(E) employment disputes, other than those listed in subsection (c)(2) of this Rule;

(F) administrative agency, tax, zoning, and other appeals;

(G) criminal matters, including computer-related crimes; or

(H) proceedings to enforce judgments of any type.

...

REPORTER'S NOTE

The Maryland Judiciary Workgroup on Business and Technology made several recommendations concerning the handling of complex commercial disputes in Maryland. Among the recommendations, the Workgroup suggested that more specific criteria be established for determining whether to assign a case to the business and technology case management program ("the program"). To ensure more consistency statewide, the Workgroup proposed that certain case types be presumptively assigned to and certain case types be presumptively excluded from the program.

Rule 16-308 establishes the program. Section (c) addresses the assignment of actions to the program. Proposed amendments to section (c) create subsection (c)(1) using the current language of section (c), with stylistic changes. A tagline is added to subsection (c)(1).

New subsections (c)(2) and (c)(3) are also proposed. Subsection (c)(2) lists the types of actions that presumptively are to be assigned to the program. Subsection (c)(3) lists the types of actions that presumptively are to be excluded from the program.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 – TRIAL

AMEND Rule 2-506 by creating new subsection (b)(1) using language from current section (b) and adding language concerning the contents of a notice of dismissal upon stipulated terms; by creating new subsection (b)(2) using the remaining language from current section (b), with stylistic changes, and adding language addressing the filing and service requirements of a motion to enforce stipulated terms; and by adding a Committee note after section (b) concerning the filing of the written settlement agreement or disclosure of its terms and the signing of an affidavit of non-compliance, as follows:

RULE 2-506. VOLUNTARY DISMISSAL

...

(b) Dismissal Upon Stipulated Terms

(1) Notice of Dismissal

If an action is settled upon written stipulated terms and dismissed, the plaintiff shall file a notice of dismissal that: (A) states that the parties have entered into a written settlement agreement; (B) if the agreement specifies a date by which all terms of the agreement are to be satisfied, states

that date; and (C) states that the agreement includes a provision obligating the parties to keep the court and other parties to the agreement informed in writing of their current addresses until satisfaction of the agreement.

(2) Enforcement of Stipulated Terms

The action may be reopened ~~at any time~~ upon ~~request of any~~ motion of a party to the settlement to enforce the stipulated terms through the entry of judgment or other appropriate relief. A copy of the settlement agreement and an affidavit of non-compliance stating the balance due or stipulated term to be enforced shall accompany the motion. Service of the motion and accompanying documents shall be made in accordance with Rule 1-321 (a).

Committee note: Except in conjunction with a motion to enforce the stipulated terms, the parties are not required to file a copy of the written settlement agreement or disclose its terms. An affidavit of non-compliance filed pursuant to subsection (b)(2) of this Rule may be signed by a party, an attorney for the party, or other person with knowledge of the non-compliance.

...

REPORTER'S NOTE

Attorneys have recently raised concerns or questions about dismissals upon stipulated terms in the District Court and in the circuit courts. First, when a party fails to comply with the stipulated terms of an agreement, the opposing party can file a motion and request entry of a judgment. While some courts have entered judgment based on the motion, other courts have required that a summons be reissued and served before the

entry of a judgment. The Rules Committee has been asked to clarify the form of service required when a party moves to reopen a case based on another party's failure to comply with stipulated terms.

Second, a concern has been raised about the confidentiality of the stipulated terms. Attorneys often file form Stipulations of Dismissal that indicate the action was settled upon written stipulated terms between the parties. The details of the settlement are not provided in the dismissal. In some jurisdictions, judges have refused to permit dismissal unless the terms of the settlement are provided. The Committee has been asked to clarify whether parties have a right to maintain confidentiality regarding the terms of a settlement.

Dismissals upon stipulated terms are addressed in the circuit court and in the District Court by Rules 2-506 and 3-506, respectively. Proposed amendments to Rules 2-506 and 3-506 separate section (b) into two subsections. New subsection (b)(1) addresses the requirements of the notice of dismissal. The notice shall state that the parties have entered into a written settlement agreement, provide the date, if specified in the agreement, by which all terms of the agreement are to be satisfied, and state that the agreement obligates the parties to keep the court and other parties to the agreement informed in writing of their current addresses until satisfaction of the agreement.

New subsection (b)(2) concerns the enforcement of stipulated terms. Amendments clarify the process by which a case may be reopened for enforcement of an agreement. The action may be reopened upon motion of a party to the settlement. The motion shall be accompanied by a copy of the agreement and an affidavit of non-compliance. Service of the motion is to be completed in accordance with Rule 1-321. Personal service pursuant to Rule 2-121 or Rule 3-121 is not required because, pursuant to subsection (b)(1), the parties' agreement requires that they maintain current addresses with the court and other parties until the agreement is satisfied.

A Committee note after the subsection highlights that parties are not required to file a copy of a written settlement agreement or disclose its terms unless moving to enforce the stipulated terms. The Committee note further explains that an affidavit of non-compliance as required by subsection (b)(2) may be signed by a party, an attorney for the party, or a person with knowledge of the non-compliance.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 500 – TRIAL

AMEND Rule 3-506 by creating new subsection (b)(1) using language from current section (b) and adding language concerning the contents of a notice of dismissal upon stipulated terms; by creating new subsection (b)(2) using the remaining language from current section (b), with stylistic changes, and adding language addressing the filing and service requirements of a motion to enforce the stipulated terms; and by adding a Committee note after section (b) concerning the filing of the written settlement agreement or disclosure of its terms and the signing of an affidavit of non-compliance, as follows:

RULE 3-506. VOLUNTARY DISMISSAL

...

(b) Dismissal Upon Stipulated Terms

(1) Notice of Dismissal

If an action is settled upon written stipulated terms and dismissed, the plaintiff shall file a notice of dismissal that: (A) states that the parties have entered into a written settlement agreement; (B) if the agreement specifies a date by which all terms of the agreement are to be satisfied, states

that date; and (C) states that the agreement includes a provision obligating the parties to keep the court and other parties to the agreement informed in writing of their current addresses until satisfaction of the agreement.

(2) Enforcement of Stipulated Terms

The action may be reopened ~~at any time~~ upon ~~request of any~~ motion of a party to the settlement to enforce the stipulated terms through the entry of judgment or other appropriate relief. A copy of the settlement agreement and an affidavit of non-compliance stating the balance due or stipulated term to be enforced shall accompany the motion. Service of the motion and accompanying documents shall be made in accordance with Rule 1-321 (a).

Committee note: Except in conjunction with a motion to enforce the stipulated terms, the parties are not required to file a copy of the written settlement agreement or disclose its terms. An affidavit of non-compliance filed pursuant to subsection (b)(2) of this Rule may be signed by a party, an attorney for the party, or other person with knowledge of the non-compliance.

...

REPORTER'S NOTE

Attorneys have recently raised concerns or questions about dismissals upon stipulated terms pursuant to Rules 2-506 and 3-506. For discussion of the proposed amendments, see the Reporter's note to Rule 2-506.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 – TRIAL

AMEND Rule 2-551 to clarify section (c) by deleting certain language and adding a reference to arguments presented, to specify the number of copies of memoranda required to be filed in an MDEC county and a non-MDEC county, and to add a cross reference following section (c), as follows:

RULE 2-551. IN BANC REVIEW

. . .

(c) Memoranda

Within 30 days after the filing of the notice for in banc review the party seeking review shall file ~~four copies of~~ a memorandum stating concisely the questions presented, any facts necessary to decide them, and supporting argument. Within 15 days thereafter, an opposing party who wishes to dispute the ~~statement of~~ questions, ~~or~~ facts, or arguments presented shall file ~~four copies of~~ a memorandum stating the alternative questions presented, any additional or different facts, and supporting argument. ~~In the absence of such dispute, an opposing party may file a memorandum of argument.~~ Any person filing a memorandum under this section who is not required to

file electronically under MDEC shall file four copies of the memorandum in paper form.

Cross reference: See Rule 20-101 (l) for the definition of MDEC.

. . .

Source: This Rule is new, is consistent with Md. Const., Art. IV, § 22, and replaces former Rule 510.

REPORTER'S NOTE

A practitioner brought an issue with Rule 2-551 to the attention of the Rules Committee. Current Rule 2-551 requires that "four copies" of the memorandum be filed. Now that most of the counties in Maryland are MDEC counties and paper copies no longer are filed by MDEC users, this existing language can be confusing. The current practice in MDEC counties is to electronically file one copy in MDEC.

This proposed change to section (c) of Rule 2-551 brings the current practice in MDEC counties into conformance with the Rule, requiring only one copy of the memorandum to be filed. The requirement to file four copies of the memorandum is maintained in non-MDEC counties. A cross reference to the definition of "MDEC" contained in Rule 20-101 is also proposed to be added following section (c).

Clarifying stylistic changes also are proposed.

MARYLAND RULES

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 – TRIAL

AMEND Rule 2-535 by adding a Committee note following section (a), as follows:

Rule 2-535. REVISORY POWER

(a) Generally

On motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment and, if the action was tried before the court, may take any action that it could have taken under Rule 2-534. A motion filed after the announcement or signing by the trial court of a judgment or the return of a verdict but before entry of the judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.

Committee note: When reviewing a motion to vacate a judgment based on a party's failure to appear at a proceeding, the court must consider relevant emergency circumstances that contributed to the failure to appear, if presented with information by the moving party. In the event of a public health or other declared emergency, factors to consider include lack of transportation due to the emergency, lack of access to a platform to participate in a remote proceeding, stay-at-home or quarantine orders issued by a governmental authority, or a medically verifiable immunocompromised status of the party or a member of the party's household.

(b) Fraud, Mistake, Irregularity

On motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity.

Committee note: This section is intended to be as comprehensive as Code, Courts Article, § 6-408.

(c) Newly-Discovered Evidence

On motion of any party filed within 30 days after entry of judgment, the court may grant a new trial on the ground of newly-discovered evidence that could not have been discovered by due diligence in time to move for a new trial pursuant to Rule 2-533.

(d) Clerical Mistakes

Clerical mistakes in judgments, orders, or other parts of the record may be corrected by the court at any time on its own initiative, or on motion of any party after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed by the appellate court, and thereafter with leave of the appellate court.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 625 a.
Section (b) is derived from former Rule 625 a.
Section (c) is derived from former Rule 625 b.
Section (d) is derived from the 1948 version of Fed. R. Civ. P. 60 (a) and former Rule 681.

REPORTER'S NOTE

Proposed amendments to Rule 2-535 are recommended by the Maryland Judicial Council Court Access and Community Relations Committee and the Maryland Attorney General's COVID-19 Access to Justice Task Force. Due to concerns that the ongoing pandemic and the related move toward remote proceedings, where possible, may disproportionately impact low-income and self-represented litigants who fail to appear due to technology or health problems, the Committee recommends the addition of a Committee note following section (a).

The proposed Committee note following section (a) informs judges and litigants that emergency circumstances that contribute to a party's failure to appear must be considered in determining whether it is appropriate to vacate a judgment that was entered against the non-appearing party. The second sentence specifically identifies factors to consider where a party claims that the party's absence was due to a declared emergency.

MARYLAND RULES

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 500 – TRIAL

AMEND Rule 3-535 by adding a Committee note following section (a), as follows:

Rule 3-535. REVISORY POWER

(a) Generally

On motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment and may take any action that it could have taken under Rule 3-534.

Committee note: When reviewing a motion to vacate a judgment based on a party's failure to appear at a proceeding, the court must consider relevant emergency circumstances that contributed to the failure to appear, if presented with information by the moving party. In the event of a public health or other declared emergency, factors to consider include lack of transportation due to the emergency, lack of access to a platform to participate in a remote proceeding, stay-at-home or quarantine orders issued by a governmental authority, or a medically verifiable immunocompromised status of the party or a member of the party's household.

Cross reference: For default judgments relating to citations issued for certain record-keeping violations, see Code, Transportation Article, § 15-115.

(b) Fraud, Mistake, Irregularity

On motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity.

Committee note: This section is intended to be as comprehensive as Code, Courts Article, § 6-408.

(c) Newly-Discovered Evidence

On motion of any party filed within 30 days after entry of judgment, the court may grant a new trial on the ground of newly-discovered evidence that could not have been discovered by due diligence in time to move for a new trial pursuant to Rule 3-533.

(d) Clerical Mistakes

Clerical mistakes in judgments, orders, or other parts of the record may be corrected by the court at any time on its own initiative, or on motion of any party after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed by the appellate court, and thereafter with leave of the appellate court.

Source: This Rule is derived as follows:
Section (a) is derived from former M.D.R. 625 a.
Section (b) is derived from former M.D.R. 625 a.
Section (c) is derived from former M.D.R. 625 b.
Section (d) is derived from the 1948 version of Fed. R. Civ. P. 60 (a) and former Rule 681.

REPORTER'S NOTE

Proposed amendments to Rule 3-535 are recommended by the Maryland Judicial Council Court Access and Community Relations Committee and the Maryland Attorney General's COVID-19 Access to

Justice Task Force. See the Reporter's note to Rule 2-535 for more information.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 2-649 by adding language related to a judgment debtor's economic interest in a limited liability company, as follows:

RULE 2-649. CHARGING ORDER

(a) Issuance of Order

Upon the written request of a judgment creditor of a partner or member holding an economic interest in a limited liability company, the court where the judgment was entered or recorded may issue an order charging the partnership interest or limited liability company interest of the judgment debtor with payment of all amounts due on the judgment. The court may order such other relief as it deems necessary and appropriate, including the appointment of a receiver for the judgment debtor's share of the partnership or limited liability company profits and any other money that is or becomes due to the judgment debtor by reason of the partnership or limited liability company interest.

(b) Service

The order shall be served on the partnership or limited liability company in the manner provided by Chapter 100 of this Title for service of process to obtain personal jurisdiction. The order may be served in or outside the county. Promptly after service of the order upon the partnership or limited liability company, the person making service shall mail a copy of the request and order to the judgment debtor's last known address. Proof of service and mailing shall be filed as provided in Rule 2-126. Subsequent pleadings and papers shall be served on the creditor, debtor, and partnership or limited liability company in the manner provided by Rule 1-321.

Committee note: If a person served pursuant to this Rule is a plaintiff as well as a person upon whom service on a defendant entity is authorized by the Rule, the validity of service on the plaintiff to give notice to the defendant entity is subject to appropriate due process constraints.

Source: This Rule is new.

REPORTER'S NOTE

Proposed amendments to Rules 2-649 and 3-649 extend the provisions of those Rules to a judgment debtor's membership interest in a limited liability company in addition to a partnership. The Rules permit the court, on written request by a creditor, to issue an order charging the partnership interest of a judgment debtor. Section (b) provides that service shall be on the partnership pursuant to Title 2, Chapter 100. After service on the partnership, a copy of the request and order is mailed to the judgment debtor. The service mechanism allows the creditor to serve the partnership first and prevent dissipation of assets.

Code, Corporations and Associations Article, §§ 9A-504 and 4A-607, the statutory provisions for charging orders against partnership interest and LLC membership interest, are nearly identical, but the Rules do not permit an attorney to obtain a charging order and serve the LLC without first notifying the judgment debtor. The proposed amendments add economic interest in an LLC to the charging order Rules.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 3-649 by adding language related to a judgment debtor's economic interest in a limited liability company, as follows:

RULE 3-649. CHARGING ORDER

(a) Issuance of Order

Upon the written request of a judgment creditor of a partner or member holding an economic interest in a limited liability company, the court where the judgment was entered or recorded may issue an order charging the partnership interest or limited liability company interest of the judgment debtor with payment of all amounts due on the judgment. The court may order such other relief as it deems necessary and appropriate, including the appointment of a receiver for the judgment debtor's share of the partnership or limited liability company profits and any other money that is or becomes due to the judgment debtor by reason of the partnership or limited liability company interest.

(b) Service

The order shall be served on the partnership or limited liability company in the manner provided by Chapter 100 of this Title for service of process to obtain personal jurisdiction. The order may be served in or outside the county. Promptly after service of the order upon the partnership or limited liability company, the person making service shall mail a copy of the request and order to the judgment debtor's last known address. Proof of service and mailing shall be filed as provided in Rule 3-126. Subsequent pleadings and papers shall be served on the creditor, debtor, and partnership or limited liability company in the manner provided by Rule 1-321.

Committee note: If a person served pursuant to this Rule is a plaintiff as well as a person upon whom service on a defendant entity is authorized by the Rule, the validity of service on the plaintiff to give notice to the defendant entity is subject to appropriate due process constraints.

Source: This Rule is new.

REPORTER'S NOTE

Proposed amendments to Rules 2-649 and 3-649 extend the provisions of those Rules to a judgment debtor's membership interest in a limited liability company in addition to a partnership. See the Reporter's note to Rule 2-649 for more information.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 700 – SPECIAL PROCEEDINGS

AMEND Rule 3-731 by deleting the text of the form from section (b) and by requiring that the petition be substantially in the form approved by the State Court Administrator, posted on the Judiciary website, and available in the offices of the clerks of the District Court, as follows:

RULE 3-731. PEACE ORDERS

(a) Generally

Proceedings for a peace order are governed by Code, Courts Article, Title 3, Subtitle 15.

(b) Form of Petition

A petition for relief under the statute shall be <u>substantially in the form approved by the State Court Administrator, posted on the Judiciary website, and available in the offices of the clerks of the District Court.</u> ~~in substantially the following form:~~

~~(Caption)~~

~~PETITION FOR PEACE ORDER~~

~~*(Note: Fill in the following, checking the appropriate boxes. IF YOU NEED ADDITIONAL PAPER, ASK THE CLERK.)*~~

~~1. I want protection from _____~~
~~Respondent~~

~~The Respondent committed the following acts against _____~~

~~_____~~
~~Victim~~

~~within the past 30 days on the dates stated below.~~

~~*(Check all that apply)*~~

~~☐ kicking ☐ punching ☐ choking ☐ slapping~~

~~☐ shooting ☐ rape or other sexual offense (or attempt)~~

~~☐ hitting with object ☐ stabbing ☐ shoving~~

~~☐ threats of violence ☐ harassment ☐ stalking~~

~~☐ detaining against will ☐ trespass~~

~~☐ malicious destruction of property~~

~~☐ other _____~~

~~The details of what happened are: *(Describe injuries. State the date(s) and place(s) where these acts occurred. Be as specific as you can):*~~

~~_____~~

~~_____~~

~~_____~~

~~2. I know of the following court cases involving the Respondent and me:~~

Court	Kind of Case	Year Filed	Results or Status (if you know)

3. Describe all other harm the Respondent has caused you and give date(s), if known.

_____

_____

_____

_____

4. I want the Respondent to be ordered:

[X] NOT to commit or threaten to commit any of the acts listed in paragraph 1 against _____
Name

☐ NOT to contact, attempt to contact, or harass _____

_____
Name

☐ NOT to go to the residence(s) at _____

_____
Address

☐ NOT to go to the school(s) at _____

_____
Name of school and address

☐ To go to counseling ☐ To go to mediation

☐ To pay the filing fees and court costs

☐ Other specific relief: _____

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

~~_____~~
~~_____~~
~~Date Petitioner~~

~~NOTICE TO PETITIONER~~

~~Any individual who knowingly provides false information in a Petition for Peace Order is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $1,000 or imprisonment not exceeding 90 days or both.~~

(c) Modification; Rescission; Extension

Upon the filing of a motion, a judge may modify, rescind, or extend a peace order. Modification, rescission, and extension of peace orders are governed by Code, Courts and Judicial Proceedings Article, § 3-1506(a). If a motion to extend a final peace order is filed before the original expiration date of the peace order, and the hearing is not held by that date, the peace order shall be automatically extended until the hearing is held. The motion shall be presented to a judge forthwith.

Committee note: Although Code, Courts and Judicial Proceedings Article, § 3-1506(a) automatically extends a peace order under certain circumstances, judges are encouraged to issue an order even when the automatic extension is applicable.

Source: This Rule is new.

REPORTER'S NOTE

Title 3, Subtitle 15 of the Courts Article sets forth the requirements for a peace order, including who is eligible for relief and what qualifying acts may be alleged. Chapter 341, 2021 Laws of Maryland (HB 289), enables an employer to file a petition for a peace order based on a respondent's actions towards the petitioner's employee. A petition by an employer must allege the commission of an act listed in Code, Courts Article, § 3-1503 against the petitioner's employee at the employee's workplace.

Rule 3-731 concerns petitions for peace orders filed in the District Court. Proposed amendments delete the form from section (b) and instead require the petition to be substantially in the form approved by the State Court Administrator, posted on the Judiciary website, and available in the offices of the clerks of the District Court. By removing the form from the Rule, the Committee will no longer need to transmit proposed amendments to the Court of Appeals every time there is a legislative change to the statutes concerning peace orders.

MARYLAND RULES OF PROCEDURE

TITLE 12 – PROPERTY ACTIONS

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 12-102 to modify the filings in land records required by section (b) to create constructive notice of a pending action, to make stylistic changes to section (b), to add a Committee Note following section (b), to amend the tagline of section (c), to replace the word "or" with "and" and replace "created" with "recorded" in subsection (c)(1), to rename subsection (c)(2), to add language to subsection (c)(2)(A) clarifying when a lis pendens is terminated after a dismissal, to make stylistic changes to subsections (c)(2)(A) and (c)(2)(B), to delete and add language to subsection (c)(2)(C), to create new section (d) with language from current subsection (c)(2) and new language addressing the required actions of a plaintiff upon termination of a lis pendens, to add language to section (d) requiring a notice to be substantially in the form approved by the State Court Administrator and posted on the Judiciary website, to create new section (e) with language from current subsection (c)(2) and new language addressing a plaintiff's failure to file a termination notice within 10 days after termination of the lis pendens, to make stylistic changes to section (e), to replace the phrase "enter an order

terminating the lis pendens" with the phrase "authorize any interested person to file the notice of termination" in section (e), to add the word "good" before "reasons" in section (e), and to delete current subsection (c)(3), as follows:

Rule 12-102. LIS PENDENS

(a) Scope

This Rule applies to an action filed in a circuit court or in the United States District Court for the District of Maryland that affects title to or a leasehold interest in real property located in this State.

(b) Creation - Constructive Notice

In an action to which the doctrine of lis pendens applies, the filing in the land records of a county in which real property that is the subject of the action is located of either (1) a certified copy of the complaint giving rise to the lis pendens or (2) a Notice of Lis Pendens, substantially in the form approved by the State Court Administrator and posted on the Judiciary website, ~~of the complaint~~ is constructive notice of the ~~lis pendens~~ pending action as to the subject real property located in that ~~the~~ county. ~~in which the complaint is filed. In any other county, there is constructive notice only after the party seeking the lis pendens files either a certified copy of~~

~~the complaint or a notice giving rise to the lis pendens, with the clerk in the other county.~~

Committee Note: The amendments to Rule 12-102 (b) adopted by the Court of Appeals by Rules Order dated [xx/xx/2022, effective yy/yy/2022], changed the procedure for providing notice of a lis pendens by requiring that either a notice substantially in the form approved by the State Court Administrator or a certified copy of the complaint giving rise to the lis pendens be recorded in the land records of each county in which the affected real property is located. Prior to these amendments, notice of a lis pendens was effected either by the filing of the complaint in the county in which the affected real property was located, or, if the property was located in another county, by filing a certified copy of the complaint or a notice with the clerk in that county. Since the amendments are prospective, practitioners and title searchers should continue to review filings of a complaint for notice of lis pendens as to actions filed before [yy/yy/2022] using the procedure that was followed before [yy/yy/2022].

(c) Termination of Lis Pendens

(1) While Action Is Pending

On motion of a person in interest and for good cause, the court in the county in which the action is pending may enter an order terminating the lis pendens in that county ~~or~~ and any other county in which the lis pendens has been ~~created~~ recorded.

(2) ~~Upon Conclusion of Action~~ Termination as a Matter of Law

~~If~~ A lis pendens is terminated:

(A) by an order of court dismissing the action, ~~is dismissed~~ if a timely appeal is not taken, or if an appeal is taken, the appeal is dismissed or the dismissal is affirmed; ~~or~~

(B) ~~judgment is entered in favor of the defendant and~~ by entry of a judgment in favor of the defendant, if a timely appeal is not taken or the judgment is affirmed on appeal;~~,~~ or

(C) ~~judgment in favor of the plaintiff is reversed on appeal, vacated, or satisfied,~~ by the mandate of an appellate court reversing a judgment in favor of the plaintiff.

(d) Duty of Plaintiff to File Notice of Termination of Lis Pendens

Upon termination of a lis pendens pursuant to section (c) of this Rule, the plaintiff shall ~~file~~ record a notice of termination of lis pendens in the land records of each county in which the lis pendens was recorded ~~certified copy of the appropriate docket entry with the clerk in each county in which a certified copy of the complaint or notice was filed~~ pursuant to section (b) of this Rule. The notice shall be substantially in the form approved by the State Court Administrator and posted on the Judiciary website.

(e) Failure to File Termination Notice

Within 10 days after termination of the lis pendens, ~~If~~ if the plaintiff fails to comply with ~~this subsection~~ section (d) of this Rule, the court with jurisdiction over the action, on motion of any person in interest and upon such notice as the court deems appropriate in the circumstances, may ~~enter an order terminating the lis pendens~~ authorize any interested person to

file the notice of termination. In the order ~~terminating the lis pendens~~, the court shall direct the plaintiff to pay the costs and expenses incurred by the person obtaining the order, including reasonable attorney's fees, unless the court finds that the plaintiff had a good reason justifying the failure to comply.

~~(3) Duty of Clerk~~

~~Upon entry of an order terminating a lis pendens, the clerk of the court of entry shall transmit a certified copy of the order to the clerk in any other county specified in the order~~.

Source: This Rule is derived ~~as follows:~~ in part from former Rules BD1, BD2, and BD3 and is in part new.
~~Section (a) is new.~~
~~Section (b) is derived from former Rule BD1 and BD2.~~
~~Section (c) is derived from former Rule BD3.~~

REPORTER'S NOTE

The Judiciary's Major Projects Committee recently brought to the attention of the Rules Committee potential issues with *lis pendens* procedures in Maryland, noting that to create constructive notice that a property is subject to the outcome of a pending action, most states require parties to file notice with the appropriate land records office. In contrast, Maryland Rule 12-102 (b) states that the filing of a complaint is constructive notice of the *lis pendens* as to real property in the county where the complaint was filed. Constructive notice is created in any other county by the filing of either a certified copy of the complaint or a notice with the clerk of the other county. Requiring notice of a pending action or a copy of the complaint to be filed in the land records of the county in which the real property that is the subject of the

action is located, regardless of the county where the complaint was filed, would assist title searchers and bring Maryland procedure into conformance with the majority of states. Proposed amendments to Rule 12-102 are intended to create a uniform practice for treatment of *lis pendens* actions.

Amendments to section (b) delete provisions that permit the filing of a complaint to serve as constructive notice in the county where the complaint is filed. To create constructive notice of the pending action, new language requires filing a certified copy of the complaint or a notice in the land records of the county in which the real property that is the subject of the action is located. A Committee note following section (b) is added to remind practitioners that the previous version of this Rule did not require any additional affirmative act to obtain constructive notice, and that any search for *lis pendens* matters conducted that will encompass actions filed prior to the effective date of a Rules Order adopting the proposed changes will need to encompass the parameters of the current version of this Rule.

The tagline of section (c) is amended to state that it addresses the termination of a *lis pendens*. Replacing certain terms in subsection (c)(1) clarifies that the court in the county in which the action is pending may terminate the *lis pendens* in any county where the *lis pendens* was recorded. Subsection (c)(2) is renamed to address termination of a *lis pendens* as a matter of law. Language added to subsection (c)(2)(A) clarifies that, if a case is dismissed, the *lis pendens* is terminated as a matter of law only when a timely appeal is not taken or when the dismissal is affirmed on appeal. Stylistic amendments are proposed to subsection (c)(2)(B). The language in subsection (c)(2)(C) is deleted and replaced with language addressing only the reversal of a judgment in favor of the plaintiff. Reference to a judgment in favor of the plaintiff that is "vacated" is deleted because the *lis pendens* is not terminated by that disposition. Reference to a judgment in favor of the plaintiff that is "satisfied" is also deleted because the term is typically used in regard to money judgments. The creation and termination of money judgments serving as liens on real property are addressed in Title 2, Chapter 600 and Title 3, Chapter 600.

New section (d) uses language from current subsection (c)(2) and new language to state the duty of a plaintiff to file a notice after termination of a *lis pendens* pursuant to section (c). The proposed amendments change the filing required by the

plaintiff and require that a notice of withdrawal be substantially in the form approved by the State Court Administrator and posted on the Judiciary website.

New section (e) combines language from current subsection (c)(2) and new language to address the result of a plaintiff's failure to file a notice of termination. Proposed amendments require a notice to be filed within ten days after termination of the *lis pendens* and permit a court upon motion to authorize any interested person to file the notice of termination. An additional amendment clarifies that the plaintiff's reason justifying the failure to comply must be "good" to avoid being directed to pay costs and expenses. Stylistic changes also are proposed.

Current subsection (c)(3) is deleted because the clerk no longer is required to transmit copies of orders terminating a *lis pendens* to other counties.

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 100 – APPLICABILITY AND CITATION

AMEND Rule 1-101 by adding a reference to Rule 20-101 (e), by updating other references in subsection (t), and by making a stylistic correction, as follows:

RULE 1-101. APPLICABILITY

...

(t) Title 20

Title 20 applies to electronic filing and case management in the trial and appellate courts of this State as specified in Rule 20-102. Where practicable, Rules 20-101 (e), 20-101 ~~(f)~~ (g), 20-101 ~~(t)~~ (u), and 20-107 may be applied to the signature of a judge, judicial officer, judicial appointee, or court clerk in proceedings in a county that is not an MDEC County to the same extent they apply in an MDEC County, and ~~(2)~~ Rules 20-403 through 20-406 may be applied in appeals and other proceedings in the Court of Appeals and Court of Special Appeals arising out of a court that is a non-MDEC court to the same extent they apply in matters arising out of a court in an MDEC County.

REPORTER'S NOTE

Rule 1-101 (t) provides that, where practicable, the "hand-signed or handwritten signature" and "signature" definitions of Rule 20-101 may be applied to the signature of a judge, judicial officer, judicial appointee, or court clerk in a non-MDEC county to the extent the definitions apply in an MDEC county. A proposed amendment to section (t) adds a reference to the new "digital definition" signature added by proposed amendments to Rule 20-101.

Additional conforming amendments update references in section (t) as a result of proposed amendments to Rule 20-101.

A stylistic correction, deleting "(2)," also is made.

MARYLAND RULES

TITLE 1 – GENERAL PROVISIONS

CHAPTER 200 – CONSTRUCTION, INTERPRETATION, AND DEFINITIONS

AMEND Rule 1-205 by updating a cross reference following section (a), as follows:

Rule 1-205. ADDRESS OF PARTICIPANT IN ADDRESS CONFIDENTIALITY PROGRAM

(a) Generally

If an individual who is a participant in the Address Confidentiality Program presents an address designated by the State Secretary of State as a substitute address, the court shall accept that address as the individual's address.

Cross reference: See Code, ~~Family Law Article, §§4-519 through 4-530 and~~ State Government Article, §§ 7-301 through 7-313, establishing an Address Confidentiality Program for victims of domestic violence, sexual assault, stalking, harassment, or human trafficking.

. . .

REPORTER'S NOTE

Chapter 124, 2021 Laws of Maryland (SB 109), merges and expands eligibility for the state's programs for address confidentiality. The Address Confidentiality Program is now governed solely by Title 7, Subtitle 3 of the State Government Article. In addition to victims of domestic violence and human trafficking, the program applies to victims of sexual assault, stalking, or harassment. The cross reference following section

(a) is updated to reflect the repeal of the Family Law Article provisions and the expanded eligibility.

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 300 – GENERAL PROVISIONS

AMEND Rule 1-324 by updating a reference in section (b), as follows:

RULE 1-324. NOTIFICATION OF ORDERS, RULINGS, AND COURT PROCEEDINGS

...

(b) Notification When Attorney Has Entered Limited Appearance

If, in an action that is not an MDEC action as defined in Rule 20-101 ~~(n)~~(m), an attorney has entered a limited appearance for a party pursuant to Rule 2-131 or Rule 3-131 and the automated operating system of the clerk's office does not permit the sending of notifications to both the party and the attorney, the clerk shall send all notifications required by section (a) of this Rule to the attorney as if the attorney had entered a general appearance. The clerk shall inform the attorney that, until the limited appearance is terminated, all notifications in the action will be sent to the attorney and that it is the attorney's responsibility to forward to the client notifications pertaining to matters not within the scope of the limited appearance. The attorney promptly shall forward to the client

all such notifications, including any received after termination of the limited appearance.

...

REPORTER'S NOTE

The proposed conforming amendment to Rule 1-324 updates a reference in section (b) as a result of proposed amendments to Rule 20-101.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-251 by adding a citation to the cross reference after subsection (b)(3), as follows:

RULE 4-251. MOTIONS IN DISTRICT COURT

...

(b) When Made; Determination

(1) A motion asserting a defect in the charging document other than its failure to show jurisdiction in the court or its failure to charge an offense shall be made and determined before the first witness is sworn and before evidence is received on the merits.

(2) A motion filed before trial to suppress evidence or to exclude evidence by reason of any objection or defense shall be determined at trial.

(3) A motion to transfer jurisdiction of an action to the juvenile court shall be determined within 10 days after the hearing on the motion.

Cross reference: See Rule 4-223 for the procedure for detaining a juvenile defendant pending a determination of transfer of the case to the juvenile court. See also *Davis v. State*, 474 Md. 439 (2021) for discussion of the statutory factors in Code, Criminal Procedure Article, § 4-202(d) governing transfer of jurisdiction to the juvenile court.

(4) Other motions, including a motion under Code, Courts Article, § 10-923, may be determined at any appropriate time.

...

REPORTER'S NOTE

On June 12, 2021, the Court of Appeals issued a decision in *Davis v. State*, 474 Md. 439 (2021), addressing a trial court's denial of a child's request for waiver to the juvenile court in a criminal action. The Court addressed the statutory factors governing transfer of jurisdiction in Code, Criminal Procedure Article, § 4-202(d). A proposed amendment to Rule 4-251 adds a cross reference to the recent decision after subsection (b)(3), including a short description of the relevance to the subsection.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-252 by adding a citation to the cross reference after subsection (g)(2), as follows:

RULE 4-252. MOTIONS IN CIRCUIT COURT

...

(g) Determination

(1) Generally

Motions filed pursuant to this Rule shall be determined before trial and, to the extent practicable, before the day of trial, except that the court may defer until after trial its determination of a motion to dismiss for failure to obtain a speedy trial. If factual issues are involved in determining the motion, the court shall state its findings on the record.

(2) Motions Concerning Transfer of Jurisdiction to the Juvenile Court

A motion to transfer jurisdiction of an action to the juvenile court shall be determined within 10 days after the hearing on the motion.

Cross reference: See Rule 4-223 for the procedure for detaining a juvenile defendant pending a determination of transfer of the case to the juvenile court. See also *Davis v. State*, 474 Md. 439 (2021) for discussion of the statutory factors in Code,

Criminal Procedure Article, § 4-202(d) governing transfer of jurisdiction to the juvenile court.

...

REPORTER'S NOTE

Davis v. State, 474 Md. 439 (2021), addresses a trial court's denial of a child's request for waiver to the juvenile court in a criminal action. The Court addressed the statutory factors governing transfer of jurisdiction in Code, Criminal Procedure Article, § 4-202(d). A proposed amendment to Rule 4-252 adds a cross reference to the recent decision after subsection (g)(2), including a short description of the relevance to the subsection.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 300 – TRIAL AND SENTENCING

AMEND Rule 4-342 by adding a cross reference to *Mainor v. State* following section (e), as follows:

Rule 4-342. SENTENCING – PROCEDURE

. . .

(e) Allocution and Information in Mitigation

Before imposing sentence, the court shall afford the defendant the opportunity, personally and through counsel, to make a statement and to present information in mitigation of punishment.

Cross reference: See *Mainor v. State*, 475 Md. 487 (2021).

. . .

Source: This Rule is derived as follows:
Section (a) is new.
Section (b) is derived from former Rule 772 b and M.D.R. 772 a.
Section (c) is derived from former Rule 772 c and M.D.R. 772 b.
Section (d) is new.
Section (e) is derived from former Rule 772 d and M.D.R. 772 c.
Section (f) is derived from former Rule 772 e and M.D.R. 772 d.
Section (g) is derived from former Rule 772 f and M.D.R. 772 e.
Section (h) is in part derived from former Rule 772 h and M.D.R. 772 g and in part new.
Section (i) is new.
Section (j) is new.
Section (k) is new.

REPORTER'S NOTE

A cross reference to *Mainor v. State*, 475 Md. 487 (2021), is proposed to be added following section (e) of Rule 4-342. In this opinion, the Court reiterates that a defendant has an "absolute right to allocution, which includes an absolute right to present mitigating information, prior to sentencing." *Id.* at 501.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 600 – CRIMINAL INVESTIGATIONS AND MISCECLLANEOUS PROVISIONS

AMEND Rule 4-601 by adding a cross reference after subsection (b)(1), by changing 15 days to ten days in subsection (h)(1), and by updating a cross reference after subsection (h)(1), as follows:

RULE 4-601. SEARCH WARRANTS

...

(b) Submission of Application

(1) Method of Submission

An applicant may submit an application for a search warrant by (A) delivery of three copies of (i) the application, (ii) a supporting affidavit, and (iii) a proposed search warrant in person or by secure facsimile; or (B) transmission of those documents 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 proposed warrant shall be sent in an electronic text format specified by the State Court Administrator, and the judge shall print and retain a copy of the documents.

Cross reference: See Code, Criminal Procedure Article, § 1-203(a)(2)(vi) regarding requirements for no-knock search warrants.

(2) Request for Sealing Affidavit

The application may include a request that the affidavit be sealed pursuant to Code, Criminal Procedure Article, § 1-203(e).

(3) Discussion about Application

Upon receipt of an application, the judge may discuss it with the applicant in person or by telephone, video conferencing, or other electronic means.

Committee note: A discussion between the applicant and the judge may be explanatory in nature but may not be for the purpose of adding or changing any statement in the affidavit that is material to the determination of probable cause. Probable cause must be determined from the four corners of the affidavit. See *Abeokuto v. State*, 391 Md. 289, 338 (2006); *Valdez v. State*, 300 Md. 160, 168 (1984) (The four-corners rule "prevents consideration of evidence that seeks to supplement or controvert the truth of grounds stated in the affidavit.").

...

(h) Unexecuted Warrants

(1) A search warrant is valid for ~~15~~ ten days from the date it was issued and may be served only within that time. After the expiration of ~~15~~ ten days, the warrant is void.

Cross reference: See Code, Criminal Procedure Article, § 1-203(a)~~(4)~~(5).

(2) A search warrant that becomes void under subsection (h)(1) of this Rule shall be returned to the judge who issued

it. The judge may destroy the warrant and related papers or make any other disposition the judge deems proper.

...

REPORTER'S NOTE

Chapter 62, 2021 Laws of Maryland (SB 178) addresses requirements for no-knock search warrants and other aspects of the warrant process. Chapter 62 also states that searches and seizures under the authority of a search warrant shall be made within ten, formerly 15, days after the search warrant is issued.

Rule 4-601 concerns search warrants. A proposed cross reference is added after subsection (b)(1) highlighting where to find the statutory requirements for no-knock warrants. Pursuant to the Chapter 62 amendments to Code, Criminal Procedure Article, § 1-203, subsection (h)(1) is amended to change 15 days to ten days. A cross reference after subsection (h)(1) is updated to account for the renumbering of sections by Chapter 62.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 600 – CRIMINAL INVESTIGATIONS AND MISCECLLANEOUS PROVISIONS

AMEND Rule 4-612 by adding new subsections (b)(1), (b)(2), and (b)(3) concerning the submission of an application for an order; by re-lettering former section (b) as new subsection (c)(1); by adding a tagline to and deleting certain language from new subsection (c)(1); and by adding new subsection (c)(2), as follows:

RULE 4-612. ORDER FOR CELL SITE SIMULATOR OR ELECTRONIC DEVICE LOCATION INFORMATION

(a) Definitions

The definitions in Code, Criminal Procedure Article, § 1-203.1(a) apply in this Rule.

(b) Submission of Application for Order

(1) Generally

The application for an order for cell site simulator or electronic device location information shall conform to the requirements of Code, Criminal Procedure Article, § 1-203.1.

(2) Method of Submission

An applicant may submit the application by delivering the application, the affidavit, and a proposed court order to a judge (A) in-person or (B) by secure and reliable facsimile or electronic mail that permits the judge to print the complete text of the documents.

(3) Discussion About Application

Upon receipt of an application, the judge may discuss it with the applicant in person or by telephone, video conferencing, or other electronic means.

~~(b)~~ (c) Issuance of Order

(1) Generally

A court may issue an order authorizing or directing a law enforcement officer to use a cell site simulator or obtain location information from an electronic device if there is probable cause to believe that a misdemeanor or felony has been or will be committed by the owner or user of the electronic device or by an individual about whom the information sought by the cell site simulator or the location information is being sought, and the information sought by the cell site simulator or the location information being sought (1) is evidence of or will lead to evidence of the misdemeanor or felony being investigated or (2) will lead to the apprehension of an individual for whom an arrest warrant has been previously issued. The ~~application for the order, the~~ order issued~~,~~ and the notice of the order

shall conform to the requirements of Code, Criminal Procedure Article, § 1-203.1.

(2) Method of Issuance

The judge may issue an order authorizing or directing a law enforcement officer to use a cell site simulator or obtain location information from an electronic device by (A) signing an order and recording on it the date and time of issuance, and (B) delivering the signed and dated order, along with a copy of the application and affidavit, to the applicant in person or by secure and reliable facsimile or electronic mail that permits the applicant to print the complete text of the documents.

Source: This Rule is new.

REPORTER'S NOTE

Chapter 392, 2021 Laws of Maryland (HB 477) amends Code, Criminal Procedure Article, § 1-203.1 to create a process by which an application for a court order to use a cell site simulator or to obtain location information may be submitted to a judge. Amendments to Rule 4-612 are proposed to account for the details added to § 1-203.1 by Chapter 392.

New section (b) addresses the submission of an application for the order. Subsection (b)(1) provides that submissions must generally comply with Code, Criminal Procedure Article, § 1-203.1. Subsection (b)(2) sets forth the different methods of submission, either in-person or by secure and reliable fax or electronic mail. Subsection (b)(3) indicates the methods by which the court may discuss an application with the applicant.

Former section (c), with the deletion of certain language, is renamed as subsection (c)(1) and provides general information about the issuance of orders. New subsection (c)(2) addresses

the method of issuance of an order authorizing or directing a law enforcement officer to use a cell site simulator or obtain location information from an electronic device. Issuance of such orders involves signing the order and recording the date and time of issuance, as well as delivering certain documents to the applicant in person or by secure and reliable facsimile or electronic mail.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 600 – CRIMINAL INVESTIGATIONS AND MISCELLANEOUS PROVISIONS

ADD new Rule 4-613, as follows:

RULE 4-613. ORDER FOR FORENSIC GENETIC GENEALOGICAL DNA ANALYSIS AND SEARCH

(a) Applicability; Definitions

(1) Applicability

This Rule applies to orders for a forensic genetic genealogical DNA analysis and search ("FGGS") pursuant to Code, Criminal Procedure Article, § 17-102.

(2) Definitions

The definitions contained in Code, Criminal Procedure, § 17-101 apply in this Rule.

(b) Issuance of Order

A court shall issue an order authorizing the initiation of a FGGS if the FGGS is certified before the court in accordance with Code, Criminal Procedure Article, § 17-102. The application for the order, the order issued, and the notice of the order shall conform to the requirements of Code, Criminal Procedure Article, § 17-102.

Cross reference: See Code, Criminal Procedure Article, § 17-102(g) for requirements to collect a DNA sample.

(c) Orders to Destroy Samples and Information

(1) Issuance

Except as provided in Code, Criminal Procedure Article, § 17-102(h)(1)(ii), on completion of (A) a FGGS investigation that does not result in a prosecution or results in an acquittal, (B) a sentence and postconviction litigation associated with a conviction obtained through the use of FGGS, or (C) any criminal prosecution that may arise from the FGGS, the authorizing court or any court that has jurisdiction over any criminal case that arose from the FGGS shall issue orders to all persons in possession of DNA samples gathered in the FGGS and all genetic genealogy information derived from the FGG analysis of those samples to destroy the samples and information.

(2) Notice to Court

If a FGGS investigation does not result in a prosecution, the law enforcement agent who sought authorization of the FGGS shall notify the court in writing when the investigation is completed. If a FGGS investigation results in prosecution, the prosecutor shall notify the court in writing when an order to destroy samples and information pursuant to subsection (c)(1) of this Rule may be issued.

(3) Content

The orders shall (A) require the removal and destruction of any FGG profiles previously uploaded to direct-to-consumer or publicly available open-data personal genomics databases and (B) provide notice by certified delivery to individuals entitled to notice pursuant to Code, Criminal Procedure Article, § 17-102(h)(3).

Source: This Rule is new.

REPORTER'S NOTE

Chapters 681/682, 2021 Laws of Maryland (HB 240/SB 187) set forth the requirements to seek judicial authorization for a forensic genetic genealogical DNA analysis and search ("FGGS"). Proposed new Rule 4-613 addresses this process.

Section (a) addresses the applicability of the Rule and the relevant definitions. Subsection (a)(1) clarifies that the Rule applies to an application for a FGGS. Subsection (a)(2) states that the definitions in Code, Criminal Procedure Article, § 17-101 apply to the Rule.

Section (b) concerns the issuance of an order authorizing a FGGS. The court shall authorize the FGGS if the FGGS is certified before the court in accordance with Code, Criminal Procedure Article, § 17-102. Additional language explains that the application for the order, the order issued, and the notice of the order shall conform to the requirements of the Code section. A cross reference following section (b) cites the Code section permitting covert collection of a DNA sample.

Section (c) implements Code, Criminal Procedure Article, § 17-102(h) requiring the destruction of samples and information at a certain time after a FGGS. Provisions concerning the necessary court order are included in the section.

MARYLAND RULES OF PROCEDURE

TITLE 5 – EVIDENCE

CHAPTER 600 – WITNESSES

AMEND Rule 5-611 by updating a cross reference following section (a), as follows:

RULE 5-611. MODE AND ORDER OF INTERROGATION AND PRESENTATION: CONTROL BY COURT; SCOPE OF CROSS-EXAMINATION; LEADING QUESTIONS

(a) Control by Court

The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

Cross reference: For the ~~Court Dog and Child Witness Program~~ Court Dog Program, see Code, Courts Article, § 9-501.

. . .

Source: This Rule is derived from F.R.Ev. 611.

REPORTER'S NOTE

Chapters 181/182, 2021 Laws of Maryland (HB 186/SB 7) rename the Court Dog and Child Witness Program, authorized in Code, Courts and Judicial Proceedings Article, § 9-501, to be the Court Dog Program. Proposed amendments to Rules 5-611 and 5-615 amend cross references to conform to the new name for the program.

MARYLAND RULES OF PROCEDURE

TITLE 5 – EVIDENCE

CHAPTER 600 – WITNESSES

AMEND Rule 5-615 by updating a cross reference following section (c) as follows:

RULE 5-615. EXCLUSION OF WITNESSES

...

(c) Permissive Non-Exclusion

The court may permit a child witness's parents or another person having a supportive relationship with the child to remain in court during the child's testimony.

Cross reference: For the ~~Court Dog and Child Witness Program~~ Court Dog Program, see Code, Courts Article, § 9-501.

...

Source: This Rule is derived from F.R.Ev. 615 and Rules 2-513, 3-513, and 4-321.

REPORTER'S NOTE

Chapters 181/182, 2021 Laws of Maryland (HB 186/SB 7) rename the Court Dog and Child Witness Program, authorized in Code, Courts and Judicial Proceedings Article, § 9-501, to be the Court Dog Program. Proposed amendments to Rules 5-611 and 5-615 amend cross references to conform to the new name for the program.

MARYLAND RULES OF PROCEDURE

TITLE 6 – SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 6-151 by updating a cross reference, as follows:

Rule 6-151. FILING A WILL

Promptly after learning of the decedent's death, the custodian of a document appearing to be the last will of the decedent shall file it with the register even if it is not to be offered for probate. The will shall be filed in the county in which administration should be had pursuant to Rule 6-111. A prior will need not be filed with the register unless (a) the custodian learns that the subsequent will has been declared invalid or is being or may be contested, (b) the custodian is requested to produce it in connection with a proceeding to interpret the subsequent will, or (c) the court orders the custodian to produce it. A will to be offered for probate, unless previously filed, shall be filed in conjunction with the filing of a petition for administrative or judicial probate or administration of a small estate.

Cross reference: Code, Estates and Trusts Article, ~~§§ 4-202, and 4-102~~ §§ 4-102 and 4-203.

REPORTER'S NOTE

The proposed amendment to Rule 6-151 was necessitated by Chapter 513, 2021 Laws of Maryland (HB 1266), which changes the numbering of certain statutes in the Estates and Trusts Article. Code, Estates and Trusts Article, § 4-202 is now § 4-203.

MARYLAND RULES

TITLE 9 – FAMILY LAW ACTIONS

CHAPTER 400 – TERMINATION OF PARENTAL RIGHTS UNDER CODE, FAMILY LAW ARTICLE, TITLE 5, SUBTITLE 14

AMEND Rule 9-402 by updating a cross reference following section (b), as follows:

Rule 9-402. ACTION

. . .

(b) Where Action Filed

The action shall be brought in a circuit court.

Cross reference: See Code, ~~Family Law Article §4-519, et seq., and~~ State Government Article, § 7-301, et seq.

. . .

REPORTER'S NOTE

Chapter 124, 2021 Laws of Maryland (SB 109), merges and expands eligibility for the state's programs for address confidentiality. The Address Confidentiality Program is now governed solely by Title 7, Subtitle 3 of the State Government Article. Proposed amendments to Rule 9-402 delete the repealed statutory provisions.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 300 – CIRCUIT COURTS – ADMINISTRATION AND CASE MANAGEMENT

AMEND Rule 16-302 by substituting "susceptible or older adult" for "vulnerable adult" in subsection (b)(2)(A) and in a Committee note following the subsection and by adding a cross reference after subsection (b)(2)(A), as follows:

RULE 16-302. ASSIGNMENT OF ACTIONS FOR TRIAL; CASE MANAGEMENT PLAN

(a) Generally

The County Administrative Judge in each county shall supervise the assignment of actions for trial in a manner that maximizes the efficient use of available judicial personnel, brings pending actions to trial, and disposes of them as expeditiously as feasible.

(b) Case Management Plan; Information Report

(1) Development and Implementation

(A) The County Administrative Judge shall develop and, upon approval by the Chief Judge of the Court of Appeals, implement a case management plan for the prompt and efficient scheduling and disposition of actions in the circuit court. The

plan shall include a system of differentiated case management in which actions are classified according to complexity and priority and are assigned to a scheduling category based on that classification and, to the extent practicable, follow any template established by the Chief Judge of the Court of Appeals.

(B) The County Administrative Judge shall send a copy of the plan and all amendments to it to the State Court Administrator. The State Court Administrator shall review the plan or amendments and transmit the plan or amendments, together with any recommended changes, to the Chief Judge of the Court of Appeals.

(C) The County Administrative Judge shall monitor the operation of the plan, develop any necessary amendments to it, and, upon approval by the Chief Judge of the Court of Appeals, implement the amended plan.

(2) Family Law Actions

(A) The plan shall include appropriate procedures for the granting of emergency relief and expedited case processing in family law actions when there is a credible prospect of imminent and substantial physical or emotional harm to a child or ~~vulnerable~~ susceptible or older adult.

Committee note: The intent of this subsection is that the case management plan contain procedures for assuring that the court can and will deal immediately with a credible prospect of imminent and substantial physical or emotional harm to a child or ~~vulnerable~~ susceptible or older adult, at least to stabilize

the situation pending further expedited proceedings. Circumstances requiring expedited processing include threats to imminently terminate services necessary to the physical or mental health or sustenance of the child or ~~vulnerable~~ susceptible or older adult or the imminent removal of the child or ~~vulnerable~~ susceptible or older adult from the jurisdiction of the court.

Cross reference: See Code, Estates and Trust Article, § 13-601 for definitions of the terms "older adult" and "susceptible adult."

. . .

Source: This Rule is derived in part from former Rule 16-202 (2016) and is in part new.

REPORTER'S NOTE

Chapter 311, 2021 Laws of Maryland (SB 327) establishes a civil cause of action for a financially exploited "susceptible adult" or "older adult," formerly referred to as a "vulnerable adult." Proposed amendments to Rule 16-302 change the term "vulnerable adult" to "susceptible or older adult" and add a cross reference to Code, Estates and Trusts Article, § 13-601 for definitions of the terms "older adult" and "susceptible adult."

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 2. LIMITATIONS ON ACCESS

AMEND Rule 16-918 by updating a reference in subsection (b)(1), by adding new subsection (b)(2)(B)(ii) excepting papers filed in an appellate court from the requirements of subsection (b)(2) of this Rule, and by making stylistic changes, as follows:

RULE 16-918. ACCESS TO ELECTRONIC RECORDS

(a) In General

Subject to the other Rules in this Title and in Title 20 and other applicable law, a judicial record that is kept in electronic form is open to inspection to the same extent that the record would be open to inspection in paper form.

(b) Denial of Access

(1) Restricted Information

A custodian shall take reasonable steps to prevent access to restricted information, as defined in Rule 20-101 ~~(r)~~ (s), that the custodian is on notice is included in an electronic judicial record.

(2) Certain Identifying Information

(A) In General

Except as provided in subsection (b)(2)(B) of this Rule, a custodian shall prevent remote access to the name, address, telephone number, date of birth, e-mail address, and place of employment of a victim or nonparty witness in:

(i) a criminal action,

(ii) a juvenile delinquency action under Code, Courts Article, Title 3, Subtitle 8A,

(iii) an action under Code, Family Law Article, Title 4, Subtitle 5 (domestic violence), or

(iv) an action under Code, Courts Article, Title 3, Subtitle 15 (peace order),

(B) ~~Exception~~ Exceptions

(i) Unless shielded by a protective order, the name, office address, office telephone number and office e-mail address, if any, relating to law enforcement officers, other public officials or employees acting in their official capacity, and expert witnesses, may be remotely accessible.

(ii) Subsection (b)(2) of this Rule does not apply to briefs, appendices, petitions for writ of certiorari, motions, and oppositions filed in the Court of Appeals or Court of Special Appeals.

(C) Notice to Custodian

A person who places in a judicial record identifying information relating to a witness shall give the custodian

written or electronic notice that such information is included in the record, where in the record that information is contained, and whether that information is not subject to remote access under this Rule, Rule 1-322.1, Rule 20-201, or other applicable law. Except as federal law may otherwise provide, in the absence of such notice a custodian is not liable for allowing remote access to the information.

(c) Availability of Computer Terminals

Clerks shall make available at convenient places in the courthouses computer terminals or kiosks that the public may use to access judicial records and parts of judicial records that are open to inspection, including judicial records as to which remote access is otherwise prohibited. To the extent authorized by administrative order of the Chief Judge of the Court of Appeals, computer terminals or kiosks may be made available at other facilities for that purpose.

Cross reference: Rule 20-109.

Committee note: Although use of a courthouse computer terminal or kiosk is free of charge, the cost of obtaining a copy of the records is governed by Rule 16-905.

Source: This Rule is derived from former Rule 16-910 (2019).

REPORTER'S NOTE

The Court of Special Appeals has identified an issue with Rule 16-918. Section (a) of this Rule generally provides that

judicial records kept in electronic form are open to inspection to the same extent that the record would be open to inspection in paper form. Section (b) of this Rule lists exceptions to this general provision. Subsection (b)(2)(A), which requires a custodian to "prevent remote access to the name, address, telephone number, date of birth, e-mail address, and place of employment of a victim or non-party witness," creates a problem for the appellate courts in their role of custodian of briefs and appendices in criminal cases.

To address this concern, the Rules Committee proposes amending Rule 16-918 to place the existing exceptions located in subsection (b)(2)(B) in new subsection (b)(2)(B)(i). In addition, new subsection (b)(2)(B)(ii) is proposed to except papers filed in appellate courts from the provisions of subsection (b)(2) of Rule 16-918.

A conforming amendment to a reference in subsection (b)(1) is made as a result of proposed amendments to Rule 20-101, and stylistic changes are also proposed to subsection (b)(2)(B).