

COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Training Rooms 5 and 6 of the Judicial Education and Training Center, 2011 Commerce Park Drive, Annapolis, Maryland on January 9, 2015.

Members present:

Hon. Alan M. Wilner, Chair
Hon. Robert A. Zarnoch, Vice Chair

A. Gillis, Allen, II, Esq.	Bruce L. Marcus, Esq.
James E. Carbine, Esq.	Hon. Danielle M. Mosley
Mary Anne Day, Esq.	Scott G. Patterson, Esq.
Hon. Angela M. Eaves	Hon. W. Michel Pierson
Hon. JoAnn M. Ellinghaus-Jones	Hon. Paula A. Price
Alvin I. Frederick, Esq.	Steven M. Sullivan, Esq.
Ms. Pamela Q. Harris	Hon. Julia B. Weatherly
Hon. Joseph H. H. Kaplan	Robert Zarbin, Esq.
Derrick William Lowe, Esq., Clerk	Thurman W. Zollicoffer, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Sherie B. Libber, Esq., Assistant Reporter
Debra Gardner, Esq., Legal Director, Public Justice Center
Richard Montgomery, Director, Legislative Relations, Maryland State Bar Association, Inc.
Kim N. Doan, Esq., Circuit Court for Anne Arundel County
Brian L. Zavin, Esq., Office of the Public Defender
Karen Thomas, Esq., Access to Justice Commission
Pamela Cardullo Ortiz, Esq., Executive Director, Access to Justice Commission
Phillip Gregory Hilton, Esq., Clerk, Court of Special Appeals

The Chair convened the meeting. He apologized for starting the meeting late, and he explained that the delay was due to a meeting that had begun earlier that day pertaining to problems with the Maryland Electronic Courts ("MDEC") system that had been instituted in Anne Arundel County. The issues had not yet been

resolved. Mr. Carbine was still at the meeting attempting to see if there was a way to resolve the issues that are a part of Agenda Item 1. Hopefully, those at that meeting can come to some consensus, and the proposed changes can be discussed at the Rules Committee meeting today. The Chair said that Agenda Item 2 would be considered.

Agenda Item 2. Reconsideration of proposed revised Rule 16-204 (Reporting of Criminal and Motor Vehicle Information) [Two Alternatives]

The Chair presented Rule 16-204, Reporting of Criminal and Motor Vehicle Information, for the Committee's consideration.

Alternative 1

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 200 - GENERAL PROVISIONS - CIRCUIT

AND DISTRICT COURT

AMEND Rule 16-204 (a) (2) to add the words "in a circuit court" and add a list of certain convictions or findings by a court that require reporting to the Motor Vehicle Administration, as follows:

Rule 16-204. REPORTING OF CRIMINAL AND MOTOR VEHICLE INFORMATION

(a) Reporting Requirements

A clerk or the Judicial Information Systems unit of the Administrative Office of the Courts, from data retrieved from the trial courts case management systems, shall:

(1) send to the Central Repository of Criminal History Record Information of the Department of Public Safety and Correctional Services reportable events, as defined in Code, Criminal Procedure Article, §10-215, with respect to the list of offenses agreed to by the Secretary of the Department of Public Safety and Correctional Services and the Chief Judge of the Court of Appeals, or their respective designees, for purposes of completing criminal history record maintained by Central Repository of Criminal History Record Information; and

(2) report to the State Motor Vehicle Administration (A) each conviction, acquittal in a circuit court, forfeiture of bail, or dismissal of an appeal in a case involving a violation of the Maryland Vehicle Law or other traffic law or ordinance; (B) each conviction of manslaughter or assault committed by means of a motor vehicle; ~~and~~ (C) each conviction of a felony involving the use of a motor vehicle; (D) each conviction of causing a life-threatening injury under Code, Criminal Law Article, §3-211; (E) each conviction under Code, Criminal Law Article, §7-104 for failure to pay for motor fuel after dispensing it into a vehicle; (F) each finding of guilt of a violation of Code, Criminal Law Article, §10-113 that is required to be reported under Code, Criminal Law Article, §10-119; (G) each conviction of a violation under Code, Criminal Law Article, §10-110 if a person used a motor vehicle in the commission of the violation; (H) each adjudication of a child as delinquent by reason of the child's violation of a State vehicle law; and (I) each finding that a child, although not adjudicated as delinquent, has committed a delinquent act by reason of the child's violation of Code, Transportation Article, §13-401 (b), 20-102, 20-103, 21-902, or 21-904.

Cross reference: See Code, Courts Article, §3-8A-23.

(b) Inspection of Criminal History Record Information Contained in Court Records of Public Judicial Proceedings

Criminal history record information contained in court records of public judicial proceedings is subject to inspection in accordance with Rules 16-901 through 16-911.

Cross reference: See Code, Courts Article, §§2-203 and 13-101 (d) and (f), Criminal Procedure Article, §§10-201, 10-214, 10-217, and State Government Article, §§10-612 through 10-619. For the definition of "court records" for expungement purposes, see Rule 4-502 (d). For provisions governing access to court records generally, see Title 16, Chapter 900.

Committee note: This Rule does not contemplate the reporting of parking violations.

Source: This Rule is derived from former Rules 16-308 and 16-503 (2014).

Rule 16-204 was accompanied by the following Reporter's note.

This Rule is a consolidation of former Rules 16-308 and 16-503, with a sentence added to the cross reference following section (b) to call attention to the Rules on access to "court records." The words "in a circuit court" have been added because the Rule now applies to both District Court and circuit court, and only acquittals in circuit court are required to be reported since the MVA was notified previously of the earlier conviction in District Court. An acquittal in District Court would never be reported.

An attorney pointed out that, as originally proposed in Part 1 of the 178th Report, Rule 16-204 does not include some statutory provisions requiring the court to report to the Motor Vehicle Administration certain vehicle-related crimes, as well as adjudications of delinquency and findings that a child has committed a delinquent act by reason of violations of certain vehicle laws specified in Code, Courts Article, §3-

8A-23. The Rule has been revised to include the missing information.

Alternative 2

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 200 - GENERAL PROVISIONS - CIRCUIT

AND DISTRICT COURT

AMEND Rule 16-204 (a) (2) to add the words "in a circuit court" and add language referring to convictions or findings by a court that are required to be reported to the Motor Vehicle Administration, as follows:

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A clerk or the Judicial Information Systems unit of the Administrative Office of the Courts, from data retrieved from the trial courts case management systems, shall:

(1) send to the Central Repository of Criminal History Record Information of the Department of Public Safety and Correctional Services reportable events, as defined in Code, Criminal Procedure Article, §10-215, with respect to the list of offenses agreed to by the Secretary of the Department of Public Safety and Correctional Services and the Chief Judge of the Court of Appeals, or their respective designees, for purposes of completing criminal history record maintained by Central Repository of Criminal History Record Information; and

(2) report to the State Motor Vehicle Administration (A) each conviction, acquittal in a circuit court, forfeiture of bail, or dismissal of an appeal in a case involving a violation of the Maryland Vehicle Law or other traffic law or ordinance; (B) each conviction of manslaughter or assault committed by means of a motor vehicle; ~~and~~ (C) each conviction of a felony involving the use of a motor vehicle or any conviction or finding by a court that is required by law to be reported.

(b) Inspection of Criminal History Record Information Contained in Court Records of Public Judicial Proceedings

Criminal history record information contained in court records of public judicial proceedings is subject to inspection in accordance with Rules 16-901 through 16-911.

Cross reference: See Code, Courts Article, §§2-203 and 13-101 (d) and (f), Criminal Procedure Article, §§10-201, 10-214, 10-217, and State Government Article, §§10-612 through 10-619. For the definition of "court records" for expungement purposes, see Rule 4-502 (d). For provisions governing access to court records generally, see Title 16, Chapter 900.

Committee note: This Rule does not contemplate the reporting of parking violations.

Source: This Rule is derived from former Rules 16-308 and 16-503 (2014).

Rule 16-204 was accompanied by the following Reporter's note.

This Rule is a consolidation of former Rules 16-308 and 16-503, with a sentence added to the cross reference following section (b) to call attention to the Rules on access to "court records." The words "in a circuit court" have been added because the Rule now applies to both District Court and

circuit court, and only acquittals in circuit court are required to be reported since the MVA was notified previously of the earlier conviction in District Court. An acquittal in District Court would never be reported.

An attorney pointed out that, as originally proposed in Part 1 of the 178th Report, Rule 16-204 does not include some statutory provisions requiring the court to report to the Motor Vehicle Administration certain vehicle-related crimes, as well as adjudications of delinquency and findings that a child has committed a delinquent act by reason of violations of certain vehicle laws specified in Code, Courts Article, §3-8A-23. In lieu of adding a list of specific crimes and court findings, which may require frequent updates, language has been added simply referring to any convictions or findings by a court that are required by law to be reported.

The Chair said that Russell Butler, Esq., had noticed that current Rule 16-308, Court Information System, was out of date and did not take account of some recent statutes dictating what must reported to the Maryland Motor Vehicle Administration ("MVA"). Two alternatives of Rule 16-204 were being presented. The first version, Alternate 1, lays out the entire list of all of the different kinds of convictions and findings that have to be reported to the MVA. For pure style purposes, Alternate 2 attempts to consolidate all of that and tightens up the Rule.

Mr. Patterson expressed the view that simple is best. He noted that the requirements of reporting may change, and Alternate 1 of Rule 16-204 would have to be changed frequently.

Mr. Lowe commented that from a simplicity standpoint for the clerks' offices, it is easier to have a list of all the pertinent

Code sections. Alternate 2 combines everything. A spreadsheet had been included with Alternate 2. (See Appendix 1). Mr. Lowe inquired whether that spreadsheet would be incorporated into the Rule. The Chair answered that it would not be incorporated into the Rule. It is derived from the statutes. The clerks have this information available, so they will know exactly what has to be reported. Mr. Lowe noted his concern that the clerks must catch any new statute that requires reporting.

Judge Mosley reiterated that simple is better. Judge Ellinghaus-Jones agreed that the simple version is better. However, she referred to the addition of acquittal "in a circuit court," and the Reporter's note that provides that an acquittal would only be reported in a circuit court, because there had already been a conviction in the District Court. She pointed out that this applies only to appeals. The circuit court hears many traffic cases for the first time. People pray a jury trial. If this happens, there would not be a conviction in the District Court. Those acquittals in the circuit court would not need to be reported. The wording should be something similar to "acquittals in the circuit court upon appeal of a conviction in the District Court."

The Chair asked if this would be covered in the first part of subsection (a) (2) in Rule 16-204 by the language "each conviction." If there is a conviction in the circuit court, it would fall under that. The only acquittal that would be necessary to report would be the one in the circuit court.

Judge Ellinghaus-Jones added that it would be an acquittal in the circuit court after an appeal from the District Court.

Mr. Patterson remarked that he was having trouble understanding the necessity to do this, because the appeal from the District Court is a trial *de novo*. Judge Ellinghaus-Jones pointed out that the District Court would have already reported the conviction. The points against the defendant have already been set. The circuit court needs to report the acquittal so that the conviction gets removed. The Reporter thanked Judge Ellinghaus-Jones for picking this up. The Chair asked if anyone objected to making the change suggested by Judge Ellinghaus-Jones to add the language "in an appeal of a conviction in the District Court" after the language "acquittal in a circuit court." By consensus, the Committee approved this suggested change.

Judge Ellinghaus-Jones referred to the Committee note at the end of Rule 16-204. She pointed out that in addition to parking violations, red-light camera tickets, speed-camera tickets, and other tickets are not reported. The Reporter noted that the other tickets are not criminal, but parking violations are not criminal either. The Chair asked if someone gets points for a camera ticket. Judge Ellinghaus-Jones replied negatively. The statutes, including Code, Transportation Article, §§21-202.1 and 21-809, provide that these violations are not to be reported. Should the Committee note have the language "unless reporting is prohibited?" The Chair suggested adding to the Committee note after the language "parking violations" the language "or other

violations which by statute are not required to be reported."

Mr. Patterson commented that what this means is those violations that are required by law to be reported. The Committee note could state "or other violations that are required by law to be reported." Why would someone report something that is not required to be reported? Judge Ellinghaus-Jones remarked that the Committee note about parking violations is not necessary. By consensus, the Committee agreed to delete the Committee note.

The Reporter pointed out that the beginning language of subsection (a) (2) of Rule 16-204 indicates what is required to be reported. The Chair said that subsection (a) (1) pertains to the Criminal Justice Information System ("CJIS") reporting. Subsection (a) (2) pertains to reporting to the MVA. The Reporter said that the language "other than those that are not required to be reported" or something similar could be added to subsection (a) (2). The Chair suggested that the language "that is required by law to be reported" be added to subsection (a) (2) (A) of Rule 16-204 just as it appears in subsection (a) (2) (C).

Judge Ellinghaus-Jones commented that subsection (a) (1) refers to reportable events in Code, Criminal Procedure Article, §10-215. Does this provision include traffic offenses? The Chair pointed out that this refers to reporting to CJIS. Judge Ellinghaus-Jones said that she did not know if there is a comparable statute that lists traffic offenses that have to be reported. The Chair remarked that he did not know that traffic

offenses are reported to CJIS. Judge Ellinghaus-Jones explained that her point was that if subsection (a) (2) stated: "report to the State Motor Vehicle Administration" the offenses that must be reported, she was not sure if there was anything in the Transportation Article or any other article requiring reporting offenses to the MVA. The Reporter noted that there was the chart in the meeting materials that had been given to the Committee. She asked the Assistant Reporter, where she had gotten that chart, and the Assistant Reporter answered that it may have come from the District Court.

The Chair noted that Alternate 1 lists all of the offenses and findings that are required by statute to be reported. The Reporter said that Alternate 1 covers everything as of now. Alternate 2 is simple, and it does not require keeping apprised of any changes that the legislature might make. However, it does require the District Court clerks' office to keep apprised of the changes, but they have to, anyway. The Assistant Reporter pointed out that they have had to do this for years, because the Rule had not been changed in years.

Judge Ellinghaus-Jones suggested the addition of the language: "except violations that are not to be reported by law." The Chair asked if this was covered by the new language in subsection (a) (2) (C) of Rule 16-204 (Alternate 2), which read: "any conviction or finding by a court that is required by law to be reported." This is what is necessary to report. The Reporter commented that it is important to make sure that subsection

(a) (1) is not over-requiring reporting. Judge Ellinghaus-Jones noted the language in subsection (a) (2), which read: "a case involving a violation of the Maryland Vehicle Law or other traffic law or ordinance."

The Chair suggested that the same language as in subsection (a) (2) (C), "that is required by law to be reported" could be added to subsection (a) (2) (A). Judge Pierson suggested that it might be better to add the language: "except as provided by law." No one had pointed to a specific statute that supports the reporting in subsection (a) (2). The Chair responded that Alternate 1 lists the specific statutes. The Reporter added that the materials that follow the Rule in the printed meeting materials, which were procured from the District Court's clerks' office, also had the information. Judge Ellinghaus-Jones observed that this does not cover traffic offenses.

Judge Pierson expressed the view that some language should be added to Rule 16-204 that covers the exceptions, the laws that provide that the violation does not get reported. The Chair said that he was not sure whether the intent was that the clerk would report violations that are not required by law to be reported. Judge Pierson remarked that not knowing what the law provides, it would be an unintended consequence if the clerks stopped reporting the crime of Driving Under the Influence ("DUI"), speeding tickets, etc., because they were not specifically required by law to do so. Judge Ellinghaus-Jones said that there must be a reference in the Transportation Article of the Code to

this. Subsection (a) (2) of Rule 16-204 has the language that the clerk shall "report to the State Motor Vehicle Administration (A) each conviction, acquittal..., forfeiture of bail or dismissal of an appeal involving a violation of the Maryland Vehicle Law or other traffic law or ordinances...". This is overbroad.

The Chair noted that Rule 16-204 was a combination of two different rules, and the intent was not to drop anything from either of them. Judge Ellinghaus-Jones suggested that the Committee note at the end of Rule 16-204 could read: "This Rule does not contemplate the reporting of violations where specifically prohibited." The Reporter said that she liked resolving any ambiguity in the body of the Rule itself and then eliminating the Committee note.

The Chair commented that what is in subsection (a) (2) (B) of Rule 16-204 would be reportable, because it is manslaughter or assault. The issue is what appears in subsection (a) (2) (A). If the same language that is in subsection (a) (2) (C), which is "that is required by law to be reported," is added to subsection (a) (2) (A), would that cover the reporting problem? Judge Pierson observed that no one at the meeting had identified the law that requires reporting. Judge Ellinghaus-Jones remarked that she could check the Transportation Article of the Code.

The Chair reiterated that all of the reportable offenses are listed in Alternate 1 of Rule 16-204. The spreadsheet that the clerks use is in the meeting materials. Judge Ellinghaus-Jones pointed out that only criminal offenses have to be reported to

the MVA. Mr. Lowe said that the language in subsections (a) (2) (A) and (B) of both versions of Rule 16-204 came directly from an Administrative Order of the Honorable Robert M. Bell, former Chief Judge of the Court of Appeals, dated March 10, 2009 and entitled "Directing Judicial Information Systems Department to Facilitate Reporting to the State Motor Vehicle Administration."

Judge Ellinghaus-Jones expressed the opinion that the language that had been suggested by the Chair, which was "required to be reported" would be appropriate. The Chair commented that the clerks know what they need to report. The problem is that if all of the reporting statutes are put into the Rule, it will eventually become outdated. Judge Ellinghaus-Jones commented that she would look at the Transportation Article. The Chair said that Agenda Item 2 would be deferred until Judge Ellinghaus-Jones had a chance to look at the Code.

Agenda Item 3. Consideration of "Housekeeping" amendments to conform internal references to Code, General Provisions Article: Rule 1-202 (Definitions), Rule 1-203 (Time), Rule 4-212 (Issuance, Service, and Execution of Summons or Warrant), Rule 9-203 (Financial Statements), Rule 15-205 (Constructive Criminal Contempt; Commencement; Prosecution), Rule 16-307 (Electronic Filing of Pleadings, Papers and Real Property Instruments), Rule 16-308 (Court Information System), Rule 16-406 (Access to Electronic Audio and Audio-Video Recordings of Proceedings in the Circuit Court), Rule 16-503 (Court Information System), Rule 16-506 (Electronic Filing of Pleadings and Papers), Rule 16-608 (Interest on Funds in Attorney Trust Accounts), Rule 16-812.1 (Judicial Ethics Committee), Rule 16-813 (Maryland Code of Judicial Conduct), Rule 16-815 (Financial Disclosure Statement), Rule 16-816 (Financial Disclosure Statement - Judicial Appointees), Rule

16-903 (Reporting Pro Bono Legal Service), Rule 16-1005 (Case Records - Required Denial of Inspection - In General)

The Reporter presented Rules 1-202, Definitions; 1-203, Time; 4-212, Issuance, Service, and Execution of Summons or Warrant; 9-203, Financial Statements; 15-205, Constructive Criminal Contempt; Commencement; Prosecution; 16-307, Electronic Filing of Pleadings, Papers and Real Property Instruments; 16-308, Court Information System; 16-406, Access to Electronic Audio and Audio-Video Recordings of Proceedings in the Circuit Court; 16-503, Court Information System; 16-506, Electronic Filing of Pleadings and Papers; 16-608, Interest on Funds in Attorney Trust Accounts; 16-812.1, Judicial Ethics Committee; 16-813, Maryland Code of Judicial Conduct; 16-815, Financial Disclosure Statement; 16-816, Financial Disclosure Statement - Judicial Appointees; 16-903, Reporting Pro Bono Legal Service; 16-1005, Case Records - Required Denial of Inspection - in General, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 200 - CONSTRUCTION, INTERPRETATION,

AND DEFINITIONS

AMEND Rule 1-202 to conform an internal reference to revised Code provisions, as follows:

Rule 1-202. DEFINITIONS

. . .

(r) Newspaper of General Circulation

"Newspaper of general circulation"
means a newspaper as defined in Code, ~~Article~~
~~1, §28~~ General Provisions Article, §1-113.

. . .

Rule 1-202 was accompanied by the following Reporter's note.

A proposed amendment to Rule 1-202
conforms an internal reference to Code
references contained in the recently enacted
General Provisions Article.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 200 - CONSTRUCTION, INTERPRETATION,

AND DEFINITIONS

AMEND Rule 1-203 to conform an internal
reference to revised Code provisions, as
follows:

Rule 1-203. TIME

(a) Computation of Time After an Act,
Event, or Default

In computing any period of time
prescribed by these rules, by rule or order
of court, or by any applicable statute, the
day of the act, event, or default after which
the designated period of time begins to run
is not included. If the period of time
allowed is more than seven days, intermediate
Saturdays, Sundays, and holidays are counted;
but if the period of time allowed is seven
days or less, intermediate Saturdays,
Sundays, and holidays are not counted. The
last day of the period so computed is

included unless:

(1) it is a Saturday, Sunday, or holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or holiday; or

(2) the act to be done is the filing of a paper in court and the office of the clerk of that court on the last day of the period is not open, or is closed for a part of the day, in which event the period runs until the end of the next day that is not a Saturday, Sunday, holiday, or a day on which the office is not open during its regular hours.

Committee note: This section supersedes Code, ~~Article 1, §36~~ General Provisions Article, §1-302 to the extent of any inconsistency.

Cross reference: For the definition of "holiday," see Rule 1-202.

. . .

Rule 1-203 was accompanied by the following Reporter's note.

A proposed amendment to Rule 1-203 conforms an internal reference to Code references contained in the recently enacted General Provisions Article.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-212 to conform an internal reference to revised Code provisions, as follows:

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

. . .

(d) Warrant - Issuance; Inspection

. . .

(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, ~~State Government Article, §10-616 (q)~~ General Provisions Article, §4-316, which governs inspection of court records pertaining to an arrest warrant.

. . .

Rule 4-212 was accompanied by the following Reporter's note.

A proposed amendment to Rule 4-212 conforms an internal reference to Code references contained in the recently enacted General Provisions Article.

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

CHAPTER 200 - DIVORCE, ANNULMENT, ALIMONY,

CHILD SUPPORT, AND CHILD CUSTODY

AMEND Rule 9-203 to conform an internal reference to revised Code provisions, as follows:

Rule 9-203. FINANCIAL STATEMENTS

. . .

(d) Inspection of Financial Statements

Except as provided in this section, inspection of a financial statement filed pursuant to the Rules in this Chapter is governed by Code, ~~State Government Article, §10-617 (a) and (f) General Provisions Article, §4-328 and §4-336.~~ A financial statement is open to inspection if it is an exhibit (1) attached to a motion that has been ruled upon by the court or (2) marked for identification at trial, whether or not offered in evidence, and if offered, whether or not admitted. A party who does not want the financial statement open to public inspection pursuant to this section may make a motion at any time to have it sealed.

. . .

Rule 9-203 was accompanied by the following Reporter's note.

A proposed amendment to Rule 9-203 conforms an internal reference to Code references contained in the recently enacted General Provisions Article.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 200 - CONTEMPT

AMEND Rule 15-205 to conform an internal reference to revised Code provisions, as follows:

Rule 15-205. CONSTRUCTIVE CRIMINAL CONTEMPT;
COMMENCEMENT; PROSECUTION

. . .

(b) Who May Institute

(1) The court may initiate a proceeding for constructive criminal contempt by filing an order directing the issuance of a summons or warrant pursuant to Rule 4-212.

(2) The State's Attorney may initiate a proceeding for constructive criminal contempt committed against a trial court sitting within the county in which the State's Attorney holds office by filing a petition with that court.

(3) The Attorney General may initiate a proceeding for constructive criminal contempt committed (A) against the Court of Appeals or the Court of Special Appeals, or (B) against a trial court when the Attorney General is exercising the authority vested in the Attorney General by Maryland Constitution, Art. V, §3, by filing a petition with the court against which the contempt was allegedly committed.

(4) The State Prosecutor may initiate a proceeding for constructive criminal contempt committed against a court when the State Prosecutor is exercising the authority vested in the State Prosecutor by Code, ~~State Government Article, §9-1201 et seq.~~ Criminal Procedure Article, Title 14, by filing a petition with the court against which the contempt was allegedly committed.

(5) The court or any person with actual knowledge of the facts constituting a constructive criminal contempt may request the State's Attorney, the Attorney General, or the State Prosecutor, as appropriate, to file a petition.

. . .

Rule 15-205 was accompanied by the following Reporter's note.

A proposed amendment to Rule 15-205 conforms an internal reference to Code references contained in the recently enacted General Provisions Article.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 300 - CIRCUIT COURT CLERKS' OFFICES

AMEND Rule 16-307 to conform an internal reference to revised Code provisions, as follows:

Rule 16-307. ELECTRONIC FILING OF PLEADINGS, PAPERS AND REAL PROPERTY INSTRUMENTS

. . .

b. Submission of Plan

A County Administrative Judge may submit to the State Court Administrator a detailed plan for a pilot project for the electronic filing of pleadings and papers or of real property instruments. In developing the plan, the County Administrative Judge shall consult with the Clerk of the Circuit Court, appropriate vendors, the State Court Administrator, and any other judges, court clerks, members of the bar, vendors of

electronic filing systems, and interested persons that the County Administrative Judge chooses to ensure that: (1) the proposed electronic filing system is compatible with the data processing systems, operational systems, and electronic filing systems used or expected to be used by the judiciary; (2) the installation and use of the proposed system does not create an undue financial or operational burden on the court; (3) the proposed system is reasonably available for use at a reasonable cost, or an efficient and compatible system of manual filing will be maintained; (4) the proposed system is effective, secure and not likely to break down; (5) the proposed system makes appropriate provision for the protection of privacy and for public access to public records; and (6) the court can discard or replace the system during or at the conclusion of a trial period without undue financial or operational burden. The State Court Administrator shall review the plan and make a recommendation to the Court of Appeals with respect to it.

Cross reference: For the definition of "public record," see Code, ~~State Government Article, §10-611~~ General Provisions Article, §4-101 (h).

. . .

Rule 16-307 was accompanied by the following Reporter's note.

A proposed amendment to Rule 16-307 conforms an internal reference to Code references contained in the recently enacted General Provisions Article.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 300 - CIRCUIT COURT CLERKS' OFFICES

AMEND Rule 16-308 to conform an internal reference to revised Code provisions, as follows:

Rule 16-308. COURT INFORMATION SYSTEM

. . .

c. Inspection of Criminal History Record Information Contained in Court Records of Public Judicial Proceedings

Unless expunged, sealed, marked confidential or otherwise prohibited by statute, court rule or order, criminal history record information contained in court records of public judicial proceedings is subject to inspection by any person at the times and under conditions as the clerk of a court reasonably determines necessary for the protection of the records and the prevention of unnecessary interference with the regular discharge of the duties of his office.

Cross reference: See Code, Courts Article, §§2-203 and 13-101 (d) and (f), Criminal Procedure Article, §§10-201, 10-214, 10-217, and ~~State Government Article, §§10-612 through 10-619~~ General Provisions Article, Title 4.

Cross reference: For definition of court records see Rule 4-502 (d).

Committee note: This Rule does not contemplate the reporting of parking violations.

Source: This Rule is derived from former Rule 1218.

Rule 16-308 was accompanied by the following Reporter's note.

A proposed amendment to Rule 16-308 conforms an internal reference to Code references contained in the recently enacted General Provisions Article.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 400 - ATTORNEYS, OFFICERS OF COURT

AND OTHER PERSONS

AMEND Rule 16-406 to conform an internal reference to revised Code provisions, as follows:

Rule 16-406. ACCESS TO ELECTRONIC AUDIO AND AUDIO-VIDEO RECORDINGS OF PROCEEDINGS IN THE CIRCUIT COURT

a. Control - In General

Electronic audio and audio-video recordings made pursuant to Rules 16-404 and 16-405 are under the control of the court having custody of them. Access to and copying of those recordings are subject to the provisions of this Rule and Rule 16-405 d.

Cross reference: Code, ~~State Government Article, §10-615~~ General Provisions Article, §4-301.

. . .

Rule 16-406 was accompanied by the following Reporter's note.

A proposed amendment to Rule 16-406 conforms an internal reference to Code references contained in the recently enacted General Provisions Article.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 500 - COURT ADMINISTRATION - DISTRICT

COURT

AMEND Rule 16-503 to conform an internal reference to revised Code provisions, as follows:

Rule 16-503. COURT INFORMATION SYSTEM

a. Reporting and Transmittal of Criminal History Record Information

1. The District Court of Maryland shall transmit to the Central Repository of Criminal History Record Information of the Department of Public Safety and Correctional Services the data elements of criminal history record information on offenses agreed to by the Secretary of the Department of Public Safety and Correctional Services and the Chief Judge of the Court of Appeals or his designee for purposes of completing a criminal history record maintained by the Central Repository of Criminal History Record Information.

2. Transmittal of Reports of Dispositions

When a defendant has been charged by

citation and a conviction is entered by reason of his payment of a fine or forfeiture of collateral before trial, the conviction is not a reportable event under Code, Criminal Procedure Article, §10-215 (a)(10).

b. Inspection of Criminal History Record Information Contained in Court Records of Public Judicial Proceedings

Unless expunged, sealed, marked confidential or otherwise prohibited by statute, court rule or order, criminal history record information contained in court records of public judicial proceedings is subject to inspection by any person at the times and under conditions as the clerk of a court reasonably determines necessary for the protection of the records and the prevention of unnecessary interference with the regular discharge of the duties of his office.

Cross reference: See Code, Courts Article, §§2-203 and 13-101 (d) and (f), Code, Criminal Procedure Article, §§10-201, 10-214, and 10-217, and Code, ~~State Government Article, §§10-612 through 10-619~~ General Provisions Article, Title 4. For definition of court records, see Rule 4-502 (d).

Source: This Rule is former M.D.R. 1218.

Rule 16-503 was accompanied by the following Reporter's note.

A proposed amendment to Rule 16-503 conforms an internal reference to Code references contained in the recently enacted General Provisions Article.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 500 - COURT ADMINISTRATION - DISTRICT

COURT

AMEND Rule 16-506 to conform an internal reference to revised Code provisions, as follows:

Rule 16-506. ELECTRONIC FILING OF PLEADINGS AND PAPERS

. . .

(b) Submission of Plan

The Chief Judge of the District Court may submit to the Court of Appeals for approval a detailed plan for a pilot project for the electronic filing of pleadings and papers. In developing the plan, the Chief Judge shall consult with the District Administrative Judge and the District Administrative Clerk of each district included in the plan, the District Court Chief Clerk, appropriate vendors, the State Court Administrator, and any other judges, court clerks, members of the bar, vendors of electronic filing systems, and interested persons that the Chief Judge chooses to ensure that: (1) the proposed electronic filing system is compatible with the data processing systems, operational systems, and electronic filing systems used or expected to be used by the judiciary; (2) the installation and use of the proposed system does not create an undue financial or operational burden on the District Court; (3) the proposed system is reasonably available for use at a reasonable cost or an efficient and compatible system of manual filing will be maintained; (4) the proposed system is effective, secure, and not likely to break down; (5) the proposed system makes appropriate provision for the protection of privacy and for public access to public

records; and (6) the court can discard or replace the system during or at the conclusion of a trial period without undue financial or operational burden. The State Court Administrator shall review the plan and make a recommendation to the Court of Appeals with respect to it.

Cross reference: For the definition of "public record," see Code, ~~State Government Article, §10-611~~ General Provisions Article, §4-101 (h).

. . .

Rule 16-506 was accompanied by the following Reporter's note.

A proposed amendment to Rule 16-506 conforms an internal reference to Code references contained in the recently enacted General Provisions Article.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 600 - ATTORNEY TRUST ACCOUNTS

AMEND Rule 16-608 to conform an internal reference to revised Code provisions, as follows:

Rule 16-608. INTEREST ON FUNDS IN ATTORNEY TRUST ACCOUNTS

. . .

b. Duty to Report IOLTA Participation

. . .

(5) Enforcement

. . .

(I) Confidentiality

Except as provided in subsection b 5 (H) of this Rule, IOLTA Compliance Reports, whether in paper or electronic form, are confidential and are not subject to inspection or disclosure under Code, ~~State Government Article, §10-615 (2) (iii)~~ General Provisions Article, §4-301. The Administrative Office of the Courts shall not release the Reports to any person or agency, except as provided in this Rule or upon order of the Court of Appeals. Nonidentifying information and data contained in a lawyer's IOLTA Compliance Report are not confidential.

. . .

Rule 16-608 was accompanied by the following Reporter's note.

A proposed amendment to Rule 16-608 conforms an internal reference to Code references contained in the recently enacted General Provisions Article.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 800 - MISCELLANEOUS

AMEND Rule 16-812.1 to conform internal references to revised Code provisions, as follows:

Rule 16-812.1. JUDICIAL ETHICS COMMITTEE

(a) Definitions

In this Rule the following definitions apply except as expressly otherwise provided or as necessary implication requires:

(1) Committee

"Committee" means the Judicial Ethics Committee.

(2) Ethics Provision

"Ethics provision" means:

(A) a provision of Code, ~~State Government Article, Title 15, Subtitle 5 or 6 General Provisions Article, §5-501 et seq. or §5-601 et seq.;~~

(B) as to a judge, also a provision of the Maryland Code of Judicial Conduct; and

(C) as to a judicial appointee as defined in Rule 16-814, also a provision of the Maryland Code of Conduct for Judicial Appointees.

(3) State Official in Judicial Branch

"State official in the Judicial Branch" means an individual who is in the Judicial Branch and is a State official, as defined in Code, ~~State Government Article, §15-102~~ General Provisions Article, §5-101 (11).

. . .

(i) Duties

In addition to its other duties imposed by law, the Committee:

(1) shall give advice, as provided in this Rule, with respect to the application or interpretation of the Maryland Code of Judicial Conduct and the Maryland Code of Conduct for Judicial Appointees;

(2) is designated as the body to give advice with respect to the application or interpretation of any provision of Code,

~~State Government Article, Title 15, Subtitles 5 and 6 General Provisions Article, §5-501 et seq. and §5-601 et seq., to a State official in the Judicial Branch;~~

(3) shall review timely appeals from the State Court Administrator's decision not to extend, under Rule 16-815 or 16-816, the period for filing a financial disclosure statement;

(4) shall determine, under Rule 16-815 f or Rule 16-816 g, whether to allow a judge or judicial appointee to correct a deficiency as to a financial disclosure statement or to refer the matter, as to a judge, to the Commission on Judicial Disabilities or, as to a judicial appointee, to the State Ethics Commission; and

(5) shall submit to the Court of Appeals recommendations for necessary or desirable changes in any ethics provision.

. . .

Rule 16-812.1 was accompanied by the following Reporter's note.

A proposed amendment to Rule 16-812.1 conforms internal references to Code references contained in the recently enacted General Provisions Article.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 800 - MISCELLANEOUS

AMEND Rule 16-813 to conform internal references to revised Code provisions, as follows:

Rule 16-813. MARYLAND CODE OF JUDICIAL
CONDUCT

. . .

GENERAL PROVISIONS, DEFINITIONS, AND PREAMBLE

. . .

B. DEFINITIONS

. . .

B-103 - Gift

(a) Except as provided in paragraph (b), "**gift**" means the transfer of anything of economic value, regardless of form, without adequate and lawful consideration.

(b) "**Gift**" does not include the solicitation, acceptance, receipt, or regulation of a political contribution that is regulated in accordance with:

(1) the Election Law Article of the Maryland Code; or

(2) any other Maryland law regulating the conduct of elections or the receipt of political contributions. See Rule 3.13.

Source: This definition is derived from Code, ~~State Government Article, §15-102 (p)~~ General Provisions Article, §5-101 (p).

. . .

B-109 - Member of judge's or candidate's household

"**Member of [judge's] [candidate's] household**" means:

(a) if sharing the judge's or candidate's legal residence, the judge's or candidate's spouse, **domestic partner**, child, ward, financially dependent parent, or other financially dependent relative; or

(b) the judge's or candidate's spouse, child, ward, parent, or other relative, over whose financial affairs the judge or candidate has legal or actual control. See Rule 3.13.

Source: This definition is derived from Maryland Code, ~~State Government Article, §15-102 (z)~~ General Provisions Article, §5-101 (z).

. . .

Rule 16-813 was accompanied by the following Reporter's note.

A proposed amendment to Rule 16-813 conforms internal references to Code references contained in the recently enacted General Provisions Article.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 800 - MISCELLANEOUS

AMEND Rule 16-815 to conform internal references to revised Code provisions, as follows:

Rule 16-815. FINANCIAL DISCLOSURE STATEMENT

. . .

d. If a judge or other person who files a certificate of candidacy for nomination for an election to an elected judgeship has filed a statement pursuant to ~~§15-610 (b) of the State Government Article, Annotated Code of Maryland Code, General Provisions Article, §5-610~~, the person need not file for the same period of time the statement required by

paragraph c of this Rule.

e. The State Court Administrator is designated as the person to receive statements from the State Administrative Board of Election Laws pursuant to ~~§15-610 (b) of the State Government Article Code,~~ General Provisions Article, §5-610.

f. Extension of Time for Filing

1. Except when the judge or former judge is required to file a statement pursuant to ~~§15-610 (b) of the State Government Article, Annotated Code of Maryland Code, General Provisions Article, §5-610,~~ a judge or former judge may apply to the State Court Administrator for an extension of time for filing the statement. The application shall be submitted prior to the deadline for filing the statement, and shall set forth in detail the reasons an extension is requested and the date upon which a completed statement will be filed.

. . .

Rule 16-815 was accompanied by the following Reporter's note.

A proposed amendment to Rule 16-815 conforms internal references to Code references contained in the recently enacted General Provisions Article.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 800 - MISCELLANEOUS

AMEND Rule 16-816 to conform internal references to revised Code provisions, as follows:

Rule 16-816. FINANCIAL DISCLOSURE STATEMENT
- JUDICIAL APPOINTEES

. . .

d. If a judicial appointee who files a certificate of candidacy for nomination for an elected office has filed a statement pursuant to ~~§15-605 or §15-610 (b) of the State Government Article, Annotated Code of Maryland Code, General Provisions Article, §5-605 or §5-610 (b)~~, the judicial appointee need not file for the same period of time the statement required by paragraph c of this Rule.

e. The State Court Administrator is designated as the person to receive statements from the State Administrative Board of Election Laws pursuant to ~~§15-610 (b) of the State Government Article Code, General Provisions Article, §5-610 (b)~~.

f. (i) Except when the judicial appointee is required to file a statement pursuant to ~~§15-605 or §15-610 (b) of the State Government Article, Annotated Code of Maryland Code, General Provisions Article, §5-605 or §5-610 (b)~~, a judicial appointee may apply to the State Court Administrator for an extension of time for filing the judicial appointee's statement. The application shall be submitted prior to the deadline for filing the statement, and shall set forth in detail the reasons an extension is requested and the date upon which a completed statement will be filed.

. . .

Rule 16-816 was accompanied by the following Reporter's note.

A proposed amendment to Rule 16-816 conforms internal references to Code references contained in the recently enacted General Provisions Article.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 900 - PRO BONO LEGAL SERVICE

AMEND Rule 16-903 to conform an internal reference to revised Code provisions, as follows:

Rule 16-903. REPORTING PRO BONO LEGAL SERVICE

. . .

(g) Confidentiality

Pro Bono Legal Service Reports are confidential and are not subject to inspection or disclosure under Code, ~~State Government Article, §10-615 (2) (iii)~~ General Provisions Article, §4-301. The Administrative Office of the Courts shall not release the Reports to any person or agency, except upon order of the Court of Appeals. Nonidentifying information and data contained in a lawyer's Pro Bono Legal Service Report are not confidential.

. . .

Rule 16-903 was accompanied by the following Reporter's note.

A proposed amendment to Rule 16-903 conforms an internal reference to Code references contained in the recently enacted General Provisions Article.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 1000 - ACCESS TO COURT RECORDS

AMEND Rule 16-1005 to conform an internal reference to revised Code provisions, as follows:

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

. . .

(b) Unless inspection is otherwise permitted by the Rules in this Chapter, a custodian shall deny inspection of a case record or any part of a case record if inspection would be contrary to a statute enacted by the Maryland General Assembly, other than the Maryland Public Information Act (~~Code, State Government Article, §§10-611 through 10-626~~) (Code, General Provisions Article, Title 4), that expressly or by necessary implication applies to a court record.

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

Source: This Rule is new.

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

A proposed amendment to Rule 16-1005 conforms an internal reference to Code references contained in the recently enacted General Provisions Article.

The Reporter told the Committee that the Rules in Agenda

Item 3 were "housekeeping amendments," revising references to portions of the State Government Article and other parts of the Code that are no longer in existence due to the enactment of the General Provisions Article. She had asked the Vice Chair to look at the proposed changes to the Rules, because he was the chair of the Revision Committee that had drafted the changes. It was a matter of updating the internal references. The Chair added that the changes relate to the Open Meetings Law (Code, General Provisions Article, Title 3) and the Public Information Act (Code, General Provisions Article, Title 4), which had been moved from the State Government Article to the General Provisions Article. All of the statutory references in the Rules are different now.

By consensus, the Committee approved the changes to Rules 1-202, 1-203, 4-212, 9-203, 15-205, 16-307, 16-308, 16-406, 16-503, 16-506, 16-608, 16-812.1, 16-813, 16-815, 16-816, 16-903, and 16-1005 as presented.

Agenda Item 6. Reconsideration of proposed amendments to Rule 1-325 (Waiver of Costs Due to Indigence - Generally) and proposed new Rule 1-325.1 (Waiver of Prepaid Appellate Costs in Civil Actions)

The Chair presented Rules 1-325, Waiver of Costs Due to Indigence - Generally; 1-325.1, Waiver of Prepaid Appellate Costs in Civil Actions; 2-603, Costs; 7-103, Method of Securing Appellate Review; 7-505, Record; 8-201, Method of Securing Review - Court of Special Appeals; 8-303, Petition for Writ of

Certiorari - Procedure; 8-505, Briefs - Indigents; 10-107, Assessment and Waiver of Fees and Costs - Guardianship; and 20-201, Requirements for Electronic Filing, as well as new Rule 8-403, Appeals Where Public Defender Representation Denied - Payment by State, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

DELETE current Rule 1-325 and add new Rule 1-325, as follows:

Rule 1-325. ~~FILING FEES AND COSTS~~
INDIGENCY WAIVER OF COSTS DUE TO INDIGENCE -
GENERALLY

~~(a) Generally~~

~~A person unable by reason of poverty to pay any filing fee or other court costs ordinarily required to be prepaid may file a request for an order waiving the prepayment of those costs. The person shall file with the request an affidavit verifying the facts set forth in that person's pleading, notice of appeal, application for leave to appeal or request for process, and stating the grounds for entitlement to the waiver. If the person is represented by an attorney, the request and affidavit shall be accompanied by the attorney's signed certification that the claim, appeal, application, or request for process is meritorious. The court shall review the papers presented and may require the person to supplement or explain any of the matters set forth in the papers. If the court is satisfied that the person is unable by reason of poverty to pay the filing fee or other court costs ordinarily required to be prepaid and the claim, appeal, application,~~

~~or request for process is not frivolous, it shall waive by order the prepayment of such costs.~~

~~Committee note: The term "other court costs" in section (a) of this Rule includes the compensation, fees, and costs of a master or examiner. See Rules 2-541 (i), 2-542 (i), 2-603 (e), and 9-208 (j).~~

~~**(b) Appeals Where Public Defender Representation Denied -- Payment by State**~~

~~The court shall order the State to pay the court costs related to an appeal or an application for leave to appeal and the costs of preparing any transcript of testimony, brief, appendices, and record extract necessary in connection with the appeal, in any case in which (1) the Public Defender's Office is authorized by these rules or other law to represent a party, (2) the Public Defender has declined representation of the party, and (3) the party is unable by reason of poverty to pay those costs.~~

(a) Scope

~~Sections (b) through (f) of This Rule apply applies only to original civil actions in a circuit court or the District Court.~~

~~Committee note: Original civil actions in a circuit court include actions governed by the Rules in Title 7, Chapter 200, 300, and 400.~~

(b) Definition

~~In this Rule, except as provided in section (g), "prepaid costs" means costs that, unless prepayment is waived pursuant to this Rule, must be paid prior to the clerk's docketing or accepting for docketing a pleading or paper or taking other requested action.~~

~~Committee note: "Prepaid costs" may include a fee to file an initial complaint or a motion to reopen a case, a fee for entry of the~~

appearance of an attorney, and any prepaid compensation, fee, or expense of a master, examiner, or family magistrate. See Rules 1-501, 2-541, 2-542, 2-603, and 9-208.

(c) No Fee for Filing Request

No filing fee shall be charged for the filing of the request for waiver of prepaid costs pursuant to section (d) or (e) of this Rule.

(d) Waiver of Prepaid Costs by Clerk

On written request, the clerk shall waive the prepayment of prepaid costs, without the need for a court order, if:

(1) the party is an individual who is represented (A) by an attorney retained through a pro bono or legal services program on a list of programs serving low income individuals that is submitted by the Maryland Legal Services Corporation to the State Court Administrator and posted on the Judiciary website, provided that an authorized agent of the program provides the clerk with a statement that (i) names the program, attorney, and party; (ii) states that the attorney is associated with the program and the party meets the financial eligibility criteria of the Corporation; and (iii) attests that the payment of filing fees is not subject to Code, Courts Article, §5-1002 (the Prisoner Litigation Act), or (B) by an attorney provided by the Maryland Legal Aid Bureau, Inc. or the Office of the Public Defender, and

(2) the attorney certifies that, to the best of the attorney's knowledge, information, and belief, there is good ground to support the claim, application, or request for process and it is not interposed for any improper purpose or delay.

Committee note: The Public Defender represents indigent individuals in a number of civil actions. See Code, Criminal Procedure Article, §16-204 (b).

Cross reference: See Rule 1-311 (b) and Rule 3.1 of the Maryland Lawyers' Rules of Professional Conduct.

(e) Waiver of Prepaid Costs by Court

(1) Request for Waiver

An individual unable by reason of poverty to pay a prepaid cost and not subject to a waiver under section (d) of this Rule may file a request for an order waiving the prepayment of the prepaid cost. The request shall be accompanied by (A) an affidavit substantially in the form approved by the State Court Administrator, posted on the Judiciary website, and available in the Clerks' offices, and (B) if the individual is represented by an attorney, by the attorney's certification that, to the best of the attorney's knowledge, information, and belief, there is good ground to support the claim, application, or request for process and it is not interposed for any improper purpose or delay.

Cross reference: See Rule 1-311 (b) and Rule 3.1 of the Maryland Lawyers' Rules of Professional Conduct.

(2) Review by Court; Factors to be Considered

The court shall review the papers presented and may require the individual to supplement or explain any of the matters set forth in the papers. In determining whether to grant a prepayment waiver, the court shall consider:

(A) whether the individual has a family household income that qualifies under the client income guidelines for the Maryland Legal Services Corporation for the current year, which shall be posted on the Judiciary website; and

(B) any other factor that may be relevant to the individual's ability to pay the prepaid cost.

(3) Order

If the court finds that the party is unable by reason of poverty to pay the prepaid cost and that the pleading or paper sought to be filed does not appear, on its face, to be frivolous, it shall enter an order waiving prepayment of the prepaid cost. In its order, the court shall state the basis for granting or denying the request for waiver.

(f) Award of Costs at Conclusion of Action

(1) Generally

At the conclusion of an action, the court and the clerk shall allocate and award costs as required or permitted by law.

Cross reference: See Rules 2-603, 3-603, 7-116, and *Mattison v. Gelber*, 202 Md. App. 44 (2011).

(2) Waiver

(A) Request

At the conclusion of an action, a party may seek a final waiver of open costs, including any **unpaid** appearance fee, by filing a request for the waiver, together with (i) an affidavit substantially in the form prescribed by subsection (e) (1) (A) of this Rule, or (ii) if the party was granted a waiver of prepayment of prepaid costs by court order pursuant to section (e) of this Rule and remains unable to pay the costs, an affidavit that recites the existence of the prior waiver and the party's continued inability to pay by reason of poverty.

(B) Determination by Court

In an action under Title 9, Chapter 200 of these Rules or Title 10 of these Rules, the court shall grant a final waiver of open costs if the requirements of Rules 2-603 (e) or 10-107 (b), as applicable, are met. In all other civil matters, the court may grant a final waiver of open costs if the

party against whom the costs are assessed is unable to pay them by reason of poverty.

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

~~Section (a) is derived from former M.D.R. 102 and Courts Article §7-201.~~

~~Section (b) is derived from former Rules 883 and 1083 b~~ new.

**[Showing changes from the 186th Report
version of Rule 1-325 (g)]**

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

ADD new Rule 1-325.1, as follows:

**Rule 1-325.1. WAIVER OF PREPAID APPELLATE
COSTS IN CIVIL ACTIONS**

~~(g) Waiver of Prepaid Appellate Costs~~

~~(1) (a) Scope of Section~~

This **section Rule** applies **(1)** to an appeal from an order or judgment of the District Court **or an orphans' court** to a circuit court **in a civil action**, and **(2)** to **an appeal, application for leave to appeal, and petition for certiorari or other extraordinary relief as defined in subsection (b) (1) of this Rule** seeking review in the Court of Special Appeals or the Court of Appeals **from of** an order or judgment of a **circuit lower** court in a civil action.

~~(2) (b) Definitions~~

In this **section Rule**, the following definitions apply:

(1) Appeal

"Appeal" means an appeal, an application for leave to appeal to the Court of Special Appeals, and a petition for certiorari or other extraordinary relief filed in the Court of Appeals.

(2) Clerk

"Clerk" includes a Register of Wills.

(3) Prepaid Costs

"Prepaid costs" means (A) the fee charged by the clerk of the ~~trial lower~~ court for assembling the record, ~~including (B) the cost of the preparation of a transcript in the District Court, if a transcript is necessary to the appeal,~~ and (C) the filing fee charged by the clerk of the appellate court.

Cross reference: See the schedule of appellate court fees following Code, Courts Article, §7-102 and the schedule of circuit court fees following Code, Courts Article, §7-202.

~~(3)~~ (c) Waiver

~~(A)~~ (1) Generally

Waiver of prepaid costs under this ~~section~~ Rule shall be governed generally by section (d) or (e) of Rule 1-325, as applicable, except that:

~~(i)~~ (A) the request for waiver of both the ~~trial lower~~ and appellate court costs shall be filed in the ~~trial lower~~ court with the notice of appeal;

(B) a request to waive prepayment of the fee for filing a petition for certiorari or other extraordinary relief in the Court of Appeals shall be filed in, and determined by, that Court;

~~(ii)~~ (C) waiver of the fee charged for assembling the record shall be determined in the **trial lower** court;

~~(iii)~~ (D) waiver of the appellate court filing fee shall be determined by the appellate court, but the appellate court may rely on a waiver of the fee for assembling the record ordered by the **trial lower** court;

~~(iv)~~ (E) both fees shall be waived if the appellant received a waiver of prepaid costs under **section (d) of Rule 1-325**, will be represented in the appeal by an eligible attorney under that section, and the attorney certifies that **the appeal is meritorious and that (i) to the best of the attorney's knowledge, information, and belief there is good ground to support the appeal and it is not interposed for any improper purpose or delay and (ii) the appellant remains eligible for representation in accordance with **section (d) of this Rule 1-325 (d)****; and

~~(v)~~ (F) if the appellant received a waiver of prepaid costs under section (e) of **this Rule 1-325**, the **trial lower** court and appellate courts may rely upon on a supplemental affidavit of the appellant attesting that the information supplied in the affidavit provided under **section (e) of this Rule 1-325 (e)** remains accurate and that there has been no material change in the appellant's financial condition or circumstances.

~~(B)~~ (2) Procedure

~~(i)~~ (A) If an appellant requests the waiver of the prepaid costs in both the **trial lower** and appellate courts, the **trial lower** court, within five days after the filing of the request, shall act on the request for waiver of its prepaid cost and transmit to the appellate court the request for waiver of the appellate court prepaid cost **and, together with** a copy of the request and order regarding the waiver of the **trial lower** court prepaid cost.

~~(ii)~~ (B) The appellate court shall act on the request for the waiver of its prepaid cost within five business days after receipt of the request from the ~~trial lower~~ court.

~~(iii)~~ (C) If either court denies, in whole or in part, a request for the waiver of its prepaid cost, it shall permit the appellant, within 10 days, to pay the unwaived prepaid cost. If, within that time, the appellant pays the full amount of the unwaived prepaid cost, the appeal ~~or application~~ shall be deemed to have been filed on the day the request for waiver was filed in the ~~trial lower~~ court ~~or, as to a petition for certiorari or other extraordinary relief, the Court of Appeals.~~

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 600 - JUDGMENT

AMEND Rule 2-603 to conform with the revision of Rule 1-325, as follows:

Rule 2-603. COSTS

. . .

(e) Waiver of Costs in Domestic Relations Cases - Indigency

In an action under Title 9, Chapter 200 of these Rules, the court shall ~~waive~~ grant a final waiver of open costs, including any compensation, fees, and costs of a master or examiner if the court finds that the party against whom the costs are assessed is unable

to pay them by reason of poverty. The party may seek the waiver at the conclusion of the case by filing a request for a final waiver of open costs, together with (1) an affidavit substantially in the form prescribed by Rule 1-325 (e) (1) (A), or (2) if in accordance with Rule 1-325 (a). If the party was granted a waiver of prepayment of prepaid costs by court order pursuant to ~~that~~ Rule 1-325 (e) and remains unable to pay the costs, ~~the an~~ an affidavit ~~required by Rule 1-325 (a) need only that~~ recites the existence of the prior waiver and the party's continued inability to pay.

. . .

MARYLAND RULES OF PROCEDURE

TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW

IN CIRCUIT COURT

CHAPTER 100 - APPEALS FROM THE DISTRICT COURT

TO THE CIRCUIT COURT

AMEND Rule 7-103 by adding a new section (d) to incorporate the provisions of current Rule 1-325 (b), by conforming it with new Rule 1-325.1, and by making stylistic changes, as follows:

Rule 7-103. METHOD OF SECURING APPELLATE REVIEW

(a) By Notice of Appeal

The only method of securing appellate review in the circuit court is by the filing of a notice of appeal with the clerk of the District Court within the time prescribed in Rule 7-104.

(b) District Court Costs

Unless the prepayment of prepaid costs has been waived in accordance with Rule 1-325.1, before ~~Before~~ the clerk transmits the record pursuant to section (d) of this Rule, the appellant shall pay to the clerk of the District Court the cost of preparation of a transcript, if a transcript is necessary to the appeal.

Cross reference: Rule 7-113 (b).

(c) Filing Fee

Within the time for transmitting the record under Rule 7-108, the appellant shall deposit the fee prescribed by Code, Courts Article, §7-202 with the clerk of the District Court unless:

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

(2) if the appeal is in a criminal action, the fee has been waived by an order of court or unless the appellant is represented by (1) the Public Defender's Office, (2) an attorney assigned by Legal Aid Bureau, Inc., or (3) an attorney assigned by any other legal services organization that accepts as clients only those persons meeting the financial eligibility criteria established by the Federal Legal Services Corporation or other appropriate governmental agency. The filing fee shall be in the form of cash or a check or money order payable to the clerk of the circuit court.

~~Cross reference: Rule 1-325.~~

(d) Appeals Where Public Defender Representation Denied - Payment by State

The court shall order the State to pay the court costs related to an appeal or an application for leave to appeal and the costs of preparing any transcript of testimony, brief, appendices, and record extract

necessary in connection with the appeal, in any case in which (1) the Public Defender's Office is authorized by these Rules or other law to represent a party, (2) the Public Defender has declined representation of the party, and (3) the party is unable by reason of poverty to pay those costs.

~~(d)~~ (e) Transmittal of Record

After all required fees have been paid, the clerk shall transmit the record as provided in Rules 7-108 and 7-109. The filing fee shall be forwarded with the record to the clerk of the circuit court.

Committee note: When a notice of appeal is filed, the clerk should check the docket to see if it contains the entry of a judgment in compliance with Rules 3-601 and 3-602, and if not, advise the parties and the court. This note is not intended to authorize the clerk to reject a notice of appeal or to place a mandatory duty on the clerk, or to relieve counsel of their responsibility to assure that there is an appealable order or judgment properly entered on the docket before noting an appeal.

Source: This Rule is derived from former Rule 1311, except that section (d) is derived from the 2014 version of former Rule 1-325 (b).

MARYLAND RULES OF PROCEDURE

TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW

IN CIRCUIT COURT

CHAPTER 500 - APPEALS FROM THE ORPHANS' COURT

AMEND Rule 7-505 by conforming it with new Rule 1-325.1, as follows:

Rule 7-505. RECORD

. . .

(c) Cost of Preparation

Unless the prepayment of prepaid costs has been waived in accordance with Rule 1-325.1, The the appellant shall pay to the Register the cost of preparation of the record.

(d) Filing Fee

The appellant shall deposit with the Register of Wills the fee prescribed by Code, Courts Article, § 7-202 unless the fee has been waived by an order of court or unless ~~the appellant is represented by (1) an attorney assigned by Legal Aid Bureau, Inc. or (2) an attorney assigned by any other legal services organization that accepts as clients only those persons meeting the financial eligibility criteria established by the Federal Legal Services Corporation or other appropriate governmental agency~~ the prepayment of prepaid costs has been waived in accordance with Rule 1-325.1. The filing fee shall be in the form of cash or check or money order payable to the clerk of the circuit court.

. . .

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 conforming it with new Rule 1-325.1 and by making stylistic changes, 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.

(b) Filing Fees

At the time of filing a notice of appeal in a civil case, or within the time for transmitting the record under Rule 8-412 in a criminal case, an appellant shall deposit the fee prescribed pursuant to Code, Courts Article, §7-102 with the clerk of the lower court unless:

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

(2) if the appeal is in a criminal action, the fee has been waived by an order of court or unless the appellant is represented by (1) the Public Defender's Office, (2) an attorney assigned by Legal Aid Bureau, Inc., or (3) an attorney assigned by any other legal services organization that accepts as clients only those persons meeting the financial eligibility criteria established by the Federal Legal Services Corporation or other appropriate governmental agency.

~~Cross reference: Rule 1-325.~~

(c) Transmittal of Record

After all required fees have been deposited, the clerk shall transmit the record as provided in Rules 8-412 and 8-413. The fee shall be forwarded with the record to

the Clerk of the Court of Special Appeals.

Committee note: When a notice of appeal is filed, the clerk should check the docket to see if it contains the entry of a judgment in compliance with Rules 2-601 and 2-602, and if not, advise the parties and the court. This note is not intended to authorize the clerk to reject a notice of appeal, to place a mandatory duty on the clerk, or to relieve counsel of their responsibility to assure that there is an appealable order or judgment properly entered on the docket before noting an appeal.

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

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN COURT OF

APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 300 - OBTAINING APPELLATE REVIEW IN

COURT OF APPEALS

AMEND Rule 8-303 by conforming it with new Rule 1-325.1 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 shall be accompanied by the

filing fee prescribed pursuant to Code, Courts Article, §7-102 unless:

(1) if the 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 is in a criminal action, the fee has been waived by an order of court or unless the petitioner is represented by (1) the Public Defender's Office, (2) an attorney assigned by Legal Aid Bureau, Inc., or (3) an attorney assigned by any other legal services organization that accepts as clients only those persons meeting the financial eligibility criteria established by the Federal Legal Services Corporation or other appropriate governmental agency.

~~Cross reference: Rule 1-325.~~

. . .

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN COURT OF

APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 400 - PRELIMINARY PROCEDURES

ADD new Rule 8-403, as follows:

Rule 8-403. APPEALS WHERE PUBLIC DEFENDER REPRESENTATION DENIED - PAYMENT BY STATE

The court shall order the State to pay the court costs related to an appeal or an application for leave to appeal and the costs of preparing any transcript of testimony, brief, appendices, and record extract necessary in connection with the appeal, in any case in which (a) the Public Defender's

Office is authorized by these Rules or other law to represent a party, (b) the Public Defender has declined representation of the party, and (c) the party is unable by reason of poverty to pay those costs.

Source: This Rule is derived from the 2014 version of former Rule 1-325 (b).

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 8-505 to conform with the deletion of current Rule 1-325 (b) and addition of new Rule 8-403, as follows:

Rule 8-505. BRIEFS - INDIGENTS

When the lower court has ordered that costs be paid by the State of Maryland pursuant to Rule ~~1-325 (b)~~ 8-403 or in any case in which a party to the appeal is represented by the Public Defender, that party's brief, reply brief, and other documents required to be filed by that party in the appellate court shall be reproduced under the supervision of the Public Defender.

Source: This Rule is derived from Rules 831 f and 1031 e.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 10-107 to conform with the revision of Rule 1-325, as follows:

Rule 10-107. ASSESSMENT AND WAIVER OF FEES AND COSTS - GUARDIANSHIPS

(a) Assessment

Upon a determination on the merits of a petition to appoint a guardian, the court may assess the filing fee and other court costs against the assets of the fiduciary estate or against the petitioner.

(b) Waiver

The court shall ~~waive~~ grant a final waiver of open costs and fees if the court finds that the person against whom the costs are assessed is unable to pay them by reason of poverty. The person may seek the waiver at the conclusion of the case by filing a request for a final waiver of open costs, together with (1) an affidavit substantially in the form prescribed by Rule 1-325 (e) (1) (A), or (2) if in accordance with Rule 1-325 (a). If the person was granted a waiver of prepayment of prepaid costs by court order pursuant to that Rule 1-325 (e) and remains unable to pay the costs, ~~the an~~ an affidavit required by Rule 1-325 (a) need only that recites the existence of the prior waiver and the person's continued inability to pay.

Source: This Rule is in part new and in part derived from Rule 2-603 (e).

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE

MANAGEMENT

CHAPTER 200 - FILING AND SERVICE

AMEND Rule 20-201 (i) to conform with the revision of Rule 1-325 and the addition of new Rule 1-325.1, as follows:

Rule 20-201. REQUIREMENTS OR ELECTRONIC FILING

. . .

(i) Fee

(1) Generally

A submission shall be accompanied, in a manner allowed by the published policies and procedures adopted by the State Court Administrator, by any fee required to be paid in connection with the filing.

(2) Waiver

(A) A filer who (i) desires to file electronically a submission that requires a prepaid fee, (ii) has not previously obtained and had docketed a waiver of prepayment of the fee, and (iii) seeks a waiver of such prepayment, shall file a request for a waiver pursuant to Rule 1-325 or Rule 1-325.1, as applicable.

(B) The request shall be accompanied by (i) the documents required by Rule 1-325 or Rule 1-325.1, as applicable, (ii) the submission for which a waiver of the prepaid fee is requested, and (iii) a proposed order granting the request.

(C) No fee shall be charged for the filing of the waiver request.

(D) The clerk shall docket the request for waiver but not the submission requiring a prepaid fee and shall transmit the request, with the accompanying documents, to a judge.

(E) If the judge waives prepayment in full, the clerk shall docket the submission.

(F) If the judge denies the waiver in whole or in part, the clerk shall notify the filer but shall not docket the submission until the fee or non-waived part of the fee, is paid.

Source: This Rule is new.

The Chair explained that the Committee had basically approved the draft of Rule 1-325. The changes to the Rule had resulted in a very long rule that addressed two different situations. One was where the waiver of the fee is within one court, and the other is where appellate proceedings are involved, either as an appeal from the District Court to a circuit court, or an appeal from a circuit court to the Court of Special Appeals or Court of Appeals. There was a proposal to split these two types of proceedings into two different rules for clarity and for ease of access to them. Rule 1-325 had been recommitted to the General Provisions Subcommittee to do this. What is before the Committee is the result of the division of the Rule.

Ms. Ortiz said that she had considered what had been discussed and decided the last time Rule 1-325 was considered by the Committee. Her recollection of the decision to split the Rule came from the concern expressed about the appellate fee waiver process. The District Court makes the decision to waive its fee for assembling the record as well as to waive the circuit court's filing fee. She had thought that the decision had been to have a rule pertaining to District Court procedure and a rule

applying to the circuit and appellate courts.

The Chair responded that Ms. Roberta Warnken, Chief Clerk of the District Court, had told him that the District Court makes the decision for both courts, but that a circuit court judge, if he or she so chooses, can make a different decision for the circuit court fee. This is apparently the procedure now. Ms. Ortiz asked whether it had not been specified that there is a different decision-making process for the fee waivers in District Court. The Chair answered affirmatively. He added that it would cover the cost of the transcript. Ms. Ortiz said that she had been confused about that portion being pulled out of Rule 1-325. The Chair reiterated that this was what he had been told.

Ms. Ortiz noted that her primary concern was whether the Rule had been changed from what the Committee had approved at the previous meeting. The Chair asked Ms. Ortiz if she had any objection to the proposed Rules. She inquired whether any changes had been made to Rule 10-107. The Reporter replied that none had been made. Ms. Ortiz commented that it seemed like the waivers of fees and costs in guardianships are being limited to fee-only waivers, meaning only the discretionary waivers, and not the automatic waivers for guardianships. At one time, Rule 10-107 had referred to Rule 1-325 (a), which provides for both. It seems that the automatic fee waivers are foreclosed for cases involving guardianships. The Reporter said that Rule 10-107 addresses the final waiver, rather than the prepayment, because the prepayment would fall under the Title 1 rule. Rule 10-107

applies at the end of the case.

Ms. Gardner told the Committee that the issue with Rule 10-107 relates to a point she wanted to make. There were three parallel provisions, and this was one of them. They reference how to get a final waiver if someone got one under section (e) of Rule 1-325. They do not reference a waiver that someone got under section (d), which would be the one for the parties represented by the legal services providers. Subsection (f) (2) (A) (ii) of Rule 1-325 should reference section (d), also. It would read "if the party was granted a waiver of prepayment of prepaid costs by court order pursuant to sections (d) or (e)...".

The Reporter asked what kind of affidavit Ms. Gardner would contemplate if the person was represented by Legal Aid and got the automatic prepayment waiver. Should they not be filing some kind of affidavit at the end of the case? Ms. Gardner responded that she thought that the earlier versions of the Rule contemplated that in either case, the person would simply say that nothing had changed. The Chair agreed, but he pointed out that it is another affidavit that provides that the person had already gotten a waiver of the prepaid costs, and nothing had changed. Ms Gardner read from subsection (f) (2) (A) (ii): "...an affidavit that recites the existence of the prior waiver and the party's continued inability to pay by reason of poverty." This is essentially the same affidavit in either case, but the Rule as written does not apply to anyone who got that prior waiver under section (d). It only references those who got it under section

(e).

The Reporter pointed out that subsection (f) (2) (A) (ii) provides that someone asking for the final waiver files a request, together with an affidavit substantially in the form prescribed by subsection (e) (1) (A). Ms. Gardner said that if someone had not gotten a prepayment waiver, and the person files a full affidavit under subsection (f) (2) (A) (i) and got the waiver under section (d), the Rule does not cover how one gets a final waiver, unless a reference to section (d) is added to subsection (f) (2) (A) (ii).

The Reporter said that the reference to section (d) should be under subsection (f) (2) (A) (i), because the person had never filed a previous affidavit with the court. The person had filed it with Legal Aid. Now the person would like the court to determine the final waiver, so the court needs to see what the situation is. It may be necessary to clarify that this affidavit that is referenced in subsection (f) (2) (A) (i) has to be filed by anyone who has not filed an affidavit before. Ms. Gardner asked whether the requirement in (d) of the program's assertion of financial eligibility and the assertion in a subsequent affidavit would not be sufficient to get a final waiver. She did not think that it was intended that it would not be sufficient.

Ms. Ortiz commented that one advantage to having implemented Rule 1-325 for the MDEC counties is that information had been posted summarizing how the prior version worked. MDEC is implementing this. The original version of section (f) (2) (A)

read: "At the conclusion of an action, a party may seek a final waiver of open costs, including any appearance fee." The party must file a request, and an affidavit is required, providing that the person must confirm that nothing has changed (there is a short affidavit on the form that everyone agreed upon for that version). Then, if the party was granted that discretionary waiver of the prepaid costs, and the court had already reviewed the party's financial status, he or she could submit a supplemental affidavit, again noting the person's continued inability to pay. Ms. Ortiz remarked that she thought that this had not been changed.

The Reporter responded that she had not changed the language of subsection (f) (2) (A) was split into two Rules. She was not certain of the Committee's intent regarding the affidavit for a waiver under section (d) of Rule 1-325. The court has never seen the details of the case before. The court relies on the Legal Aid Bureau or other similar organizations to do the screening for the prepayment waiver. A separate question is whether a waiver is granted at the end of the case.

Ms. Ortiz observed that section (f) was not the same as it had originally been presented. It had been changed at the last meeting. The Reporter responded that she had not changed anything in section (f). If this was the same language that was in the Rule in the 186th Report, then it does not seem to be as clear as it should be as to what needs to be filed for the person, who is represented by an organization that gets the

automatic waiver, to obtain the final waiver. Ms. Ortiz commented that when section (f) was drafted, it provided that if the party had been granted a waiver previously, all that is necessary to get the final waiver is the mini-affidavit.

The Chair inquired whether what Ms. Gardner was asking for in subsection (f) (2) (A) of Rule 1-325 was to add the language "section (d) or" after the word "to" and before the words "section (e)...". Ms. Gardner answered that either that language could be added, or since those are the only two ways to get the waiver of prepayment of prepaid costs, the language referring to "section (e)" could be taken out altogether. The Rule would read as follows: "(ii) if the party was granted a waiver of prepayment of prepaid costs by court order and remains unable to pay the costs...".

The Reporter noted that the judge will never see the original affidavit of poverty that Legal Aid or the other organizations get on behalf of the party. She asked whether the judges were comfortable with that. Judge Eaves answered affirmatively. The Chair commented that the one gap is that the waiver under section (d) requires that the person had been represented by Legal Aid or the Public Defender. Ms. Gardner explained that the person is represented by an attorney retained through the list of grantees of the Maryland Legal Services Corporation. The Chair said that the assumption is that the person is still represented by one of those attorneys.

Ms. Gardner pointed out that the person might file an

affidavit at the close of the case that he or she is no longer represented by one of those attorneys but that the person's financial circumstances had not changed. He or she could request a final waiver. If the person was still represented, then the attorney would be submitting the affidavit.

Judge Mosley asked what happens if the person was no longer represented because his or her finances had changed. Ms. Gardner responded that if the person was no longer represented, then he or she would suffer the penalties of perjury if his or her finances had changed, but the person had sworn that the finances had not changed. If the person was no longer represented for some reason other than financial ability to pay, the person could legitimately file the affidavit.

Judge Weatherly commented that this is a huge "sea change" in family law cases. Many of the litigants are *pro se*, and many are also represented by Legal Aid. Judge Weatherly and her colleagues have never paid much attention to the final waiver. They lose track of the final waivers, and it has never really been a part of the practice in Prince George's County. Someone can be gainfully employed but make a minimal salary and have children to support. The Chair pointed out that what is being discussed is a waiver of open costs. It is not reimbursement for someone who paid the costs. Judge Weatherly noted that there are costs in a family case. There may be a parenting course, mediation, or a best interest attorney. There could be \$3,000 worth of costs in a custody case that had been waived because of

the initial indigency. It can be a large amount of money.

Judge Pierson expressed the view that it makes no sense to require a provider to do a lengthy affidavit in every case, because in the vast majority of cases, the circumstances are going to be the same at the end of the case as they were at the beginning. The Chair observed that this was not necessarily so in family cases, because in the meantime, a party may have gotten a substantial monetary award that the party did not have before. Judge Pierson said that his experience had been that in the majority of cases where Legal Aid is involved, there are no huge monetary awards.

The Reporter explained that the way Rule 1-325 is structured, the judge sees the information filed in the complete affidavit under section (e). The complete affidavit was intended to apply also to section (d) if the litigant is asking for the final waiver. In subsection (f) (2) (B), the court is required to grant that waiver only if it is a Rule 2-603 (e) case or a Rule 10-107 (b) case. These cases rise to a constitutional level.

The Reporter said that in all other civil matters, the court has to look at the circumstances that are involved and decide if it is equitable to grant the final waiver of open costs, because at that point, the open costs do not preclude the person from moving forward with his or her life. It may be a mark on the person's credit score but is just a debt that the person owes. Judge Pierson commented that the substantive discussion on the open costs took place months ago. The discussion was now being

revived, and the Rule was already up on the website in the 186th Report. He moved that no changes be made to Rule 1-325. The motion was seconded.

The Reporter noted that it would take a motion to change the Rule, because she had not made any changes to it. In November, 2014, when the Rule had been discussed, the Committee had directed that the Committee note pertaining to prepaid costs be added after section (d). The Committee had also directed that Rule 1-325 be split into two rules. The Committee rejected the changed affidavit from the attorney in terms of the issue of the attorney certifying that there is good ground to support the claim, appeal, application, or request for process.

The Reporter pointed out that the Committee had asked for the Rule to be split, and this is what the Chair and the Reporter had done. The idea was to keep all of the material pertaining to the trial level in Rule 1-325 and then to put all of the material pertaining to appellate procedure in Rule 1-325.1. The Chair and the Reporter split the Rule this way, maintaining the substantive decisions that had been made before. They had noticed that the Orphans' Court had not been covered previously. The certiorari procedure in the Court of Appeals needed to be considered separately, so they had split that up somewhat. Other than that, the Reporter had tried to copy what had happened before and split the Rule as directed.

The Chair called for a vote on the motion to make no changes to Rule 1-325, and it passed unanimously.

Ms. Gardner said that she had two other issues to discuss. The first issue was the result of the split of Rule 1-325 into two. Subsection (c)(2)(C) of Rule 1-325.1, which provides that the appeal shall be deemed to have been filed on the day the request for waiver was filed, also needs to be in Rule 1-325, and it is no longer there. A complaint may be filed under limitations, and the waiver may come a few days later. The Chair noted that this provision had not been intended to be dropped from Rule 1-325.

By consensus, the Committee approved putting the language of subsection (c)(2)(C) back into Rule 1-325.

The Reporter remarked that she had discussed a change to Rule 7-103 with Mr. Zavin, who is with the Office of the Public Defender. Some of the new language in section (d) did not really apply in the circuit court. Section (d) should be redrafted to read as follows: "The court shall order the State to pay the court costs related to an appeal and the costs of preparing any transcript of testimony necessary in connection with the appeal in any case in which (1) the Public Defender's Office is authorized...". This is in a circuit court case. It would be any District Court transcript in a civil case where the Public Defender should have represented the person but did not. This must have happened, because this Rule has been around for a long time. It was moved to the Title 7 Rule, and then a proposed freestanding Title 8 Rule split up the Rule that way.

The Chair said that he could understand that this may not

apply to appeals from the District Court to the circuit court, because there are no applications for leave to appeal and no briefs and record extracts there. The Reporter explained that it is appropriate to put this in new Rule 8-403, as a freestanding Title 8 Rule, so it applies in the Court of Special Appeals and the Court of Appeals. She asked Mr. Zavin if he approved of the change to the Rules. He answered affirmatively. The Reporter remarked that she wanted to track whatever the Public Defender pays in the cases where the Public Defender does represent parties in civil cases. The criminal aspect is totally separate and is covered in Title 8.

By consensus, the Committee approved the change to section (d) of Rule 7-103 and new Rule 8-403. The Reporter said that the language in subsection (c) (2) (C) of Rule 1-325.1 would be put into Rule 1-325.

Ms. Gardner noted that Rule 20-201(i) (2) (B), (i) (2) (D), (i) (2) (E), and (i) (2) (F) are all inconsistent with Rule 1-325. Rule 1-325 does not require submission of a proposed order for the waiver of prepayment as subsection (i) (2) (B) of Rule 20-201 does. Subsection (i) (2) (D) is different. It references all waiver requests going to a judge whereas Rule 1-325 has many of them processed by a clerk. Subsection (i) (2) (E) does not reference the docketing of the submission effective the day of the filing of the waiver, and subsection (i) (2) (F) does not have the time limit that Rule 1-325 has with regard to a period of time during which a person can pay if his or her waiver is

denied.

The Reporter asked if this would be covered by subsection (i)(2)(A)(ii). The filer is just filing a waiver pursuant to Rule 1-325. The organization requests the waiver as Legal Aid or the Public Justice Center and asks that the waiver be granted. The Chair asked Ms. Gardner if her point was that the organization does not need a proposed order granting the request.

Ms. Gardner responded that this is not required by Rule 1-325, but it appears to be required for electronic filing. Mr. Hilton noted that Rule 8-431, Motions, requires a proposed order in the appellate courts as well. Ms. Gardner said that her concern was conforming the Rules and making them work together. In Rule 1-325, there are court forms that have been prepared, and they include the proposed order. The Chair asked if Ms. Gardner agreed with that. He pointed out that this only applies to situations where a court order is needed. It does not apply to automatic waivers.

The Reporter suggested that subsection (i)(2)(B) of Rule 20-201 could read: "... (iii) if applicable, a proposed order granting the request." She asked about subsection (i)(2)(D). Ms. Gardner responded that this provision indicates that all waiver requests are sent to a judge, when, in fact, many of them should be handled by the clerk under Rules 1-325 or 1-325.1. It could be read to mean that if someone is in an electronic filing jurisdiction, the clerk cannot process a waiver under Rule 1-325 (b). Everything would have to go through a judge. The Reporter

suggested that subsections (i) (2) (D), (E), and (F) of Rule 20-201 would only be applicable to section (e) of Rule 1-325, and this should be reflected in those provisions. By consensus, the Committee approved of this change.

The Reporter asked Mr. Hilton what his point about Rule 8-431 had been. He reiterated that Rule 8-431 requires a proposed order in the appellate court. It raises the other question about the five-day period in which the trial court is supposed to act under subsection (c) (2) (B) of Rule 1-325, which is in conflict with the requirement for a response or request for relief under Rule 8-431 (b). The Chair pointed out that Rule 1-325 applies to a waiver of prepayment of costs. The five days was deliberate, because this appeal is on hold.

Mr. Hilton said that in the circuit court at the time of the prepayment of the waiver, there is no opposing party and no one to serve. At the point at which an appeal is being noted, there is an opposing party who is part of the case and has no opportunity to respond or to request a waiver of fees. He added that this does not happen very often. The Chair asked if it had ever happened, and Mr. Hilton replied affirmatively. The Reporter asked why the opposing party would be concerned. Mr. Hilton responded that they are concerned at times, and there is a conflict with Rule 8-431. To grant the relief, the court has to have a request, and there has to be an order, and the other side has to have an opportunity to respond.

The Chair inquired if Mr. Hilton had any suggestions for a

change to a rule. Mr. Hilton answered that he did not have any suggestions but was simply pointing out the conflict. The Chair asked if a Committee note should be added to Rule 1-325 providing that the Rule prevails over Rule 8-431. Mr. Hilton answered affirmatively. The Chair said that he would find a place for the Committee note. By consensus, the Committee approved the addition of the Committee note to Rule 1-325.

Ms. Gardner noted that there were two additional problems with subsections (i) (2) (E) and (F) of Rule 20-201. Subsection (i) (2) (E) read: "If the judge waives prepayment in full, the clerk shall docket the submission." This does not reference the fact that it is effective the date of the filing of the prepayment. There could be an issue concerning deadlines. It is not consistent with the other Rules.

The Chair suggested that in subsections (i) (2) (D), (E), and (F), language could be added that would state that the court shall proceed in accordance with Rule 1-325 (e). Ms. Gardner responded that it would depend on where that language is put in Rule 1-325 about when the filing has been deemed filed. The Chair agreed that this needs to be addressed. Assuming that this is resolved, then the language about proceeding in accordance with Rule 1-325 can be added.

Ms. Gardner commented that if it is made clear that all of the provisions in Rule 1-325 and 1-325.1 as applicable will control, then there would not be a problem. The Chair commented that this is what was intended. The Reporter asked if

subsections (i) (2) (D), (E), and (F) could be deleted. The Chair added that in their place, the language "the court shall proceed in accordance with Rules 1-325 and 1-325.1" would be added. Ms. Gardner pointed out that subsection (i) (2) (C) could also be deleted. The Reporter agreed. By consensus, the Committee agreed to make these changes.

By consensus, the Committee approved Rules 2-603, 7-505, 8-201, 8-303, 8-403, and 8-505 as presented, and Rules 1-325, 1-325.1, 7-103, and 20-201 as amended.

Agenda Item 1. Consideration of recommendations by the MDEC Implementation and Remote Access Subcommittee concerning amendments to the Rules in Title 20 (Electronic Filing and Case Management)

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

MARYLAND RULES OF PROCEDURE
TITLE 20 - ELECTRONIC FILING AND CASE
MANAGEMENT
CHAPTER 200 - FILING AND SERVICE

AMEND Rule 20-203 (d), as follows:

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

. . .

(d) Deficiency Notice

(1) Issuance of Notice

If, upon review, the clerk concludes that a submission is not subject to striking under section (c) of this Rule but materially violates a provision of the Rules in Title 20 or an applicable published policy or procedure established by the State Court Administrator, the clerk shall send to the filer with a copy to the other parties a deficiency notice describing the nature of the violation.

(2) Correction; Enforcement

If the deficiency is not corrected within two business days after the date of the notice, ~~any party may move to strike the submission~~ the court will take no further action on the submission.

(3) Judicial Review

The filer may file a request that the administrative judge, or a judge designated by the administrative judge, direct the clerk to withdraw the deficiency notice.

. . .

Mr. Carbine told the Committee that Rules 20-201 and 20-203 that were to be considered had not been recommended by the MDEC Subcommittee. It was a recommendation of a smaller subcommittee of the Subcommittee. The smaller subcommittee consisted of Ms. Harris, Mr. Carbine, and several consultants. The MDEC Subcommittee had been asked to respond to actual problems that had been experienced in Anne Arundel County, which now has electronic filing. Mr. Carbine had asked the Honorable John P. Morrissey, Chief Judge of the District Court, to explain the issues.

Judge Morrissey thanked the Committee for the opportunity to address them. He was grateful for the help of the Chair and Mr. Carbine in trying to draft a solution to three problems that had arisen with the MDEC e-filing. It is more of a circuit court issue than a District Court issue, because of the size of the pleadings that are filed in the circuit court as opposed to the larger number of the pleadings that are filed in the District Court.

Judge Morrissey said that the first problem could be handled by the MDEC Policies and Procedures Manual with accommodations to the system that will be created. However, there were two other parts that could not be accommodated by that and would need a rule change. The first is that when a filer attaches one or more exhibits to the principal document being filed. Unknowingly, this creates one PDF file that includes all of the documents. An order to docket a foreclosure, for example, contains 18 or more exhibits. If all 18 exhibits are attached to the lead document, it creates a huge PDF file on the docket. If a judge then considers this, there are no longer tabs to mark the separate documents in the PDF. Without the tabs, the judge would have to scroll hundreds of pages to get to whatever document he or she would like to see. There are no breaks in the documents, so it is unclear where the order of foreclosure stops, and where the next document starts. This is the first issue.

Judge Morrissey commented that what is happening now is that, in order to make sense of all of this, the clerks have to

pull out the individual documents, docket them separately, and then relate them back to the first document. This can all be accomplished by the technology available. Judge Morrissey noted that with a tweak to the system that was just confirmed that day could be made, the vast majority of that particular issue could be eliminated.

Judge Morrissey told the Committee that the other two issues were ones where someone, either intentionally or unintentionally, files within the same PDF file multiple documents that require separate fees. As a practicing attorney, when Judge Morrissey did a garnishment, he would garnish 10 banks near where the garnishee lived on the theory that he or she banked close to home. If Judge Morrissey had included all 10 of those garnishments in the same PDF, he would select the box for only one filing fee. This would create many problems.

Judge Morrissey said that one of the problems is that the court is not getting the appropriate filing fees, and a second problem is that the clerk may only see the first one docketed and think that it is only one garnishment. The clerk would then docket it as only one garnishment, and the judge would never know that there were nine other garnishments in that docket. When the judges look at this, since there is no longer a paper file, the word "docket" would just look like one docket entry. The judge would not see all of the other documents behind it. This is a problem that will always be ongoing whether the system is tweaked or whether the attorneys are educated.

Judge Morrissey pointed out that the third problem is when someone files something, and the clerks do not know what to do with it. There is something inherently wrong with it, so that there is no place in the electronic system to accept it. No rule exists that allows the clerk to kick that filing back out. The system either allows the clerk to accept or reject. Many intelligent people from the Rules Committee and other consultants have spent hours trying work out a way to kick out the filing before it was docketed. They could not get the system the way that they wanted it.

Judge Morrissey commented that the best way to accommodate this problem would be that the pleading would be accepted, and then the clerk would send a deficiency notice out to all parties. The notice would state that there is something wrong with the document and would tell the person filing what he or she needs to do to fix it. The person filing would then have two business days to fix the deficient pleading. The Committee is being asked to approve the changes in section (d) of Rule 20-203 to provide that it will not be subject to a motion to strike, but the clerk will take no action on it if the filer does not respond to the notice within two days.

Judge Morrissey said that a new subsection (d)(3) had been added to Rule 20-203. It provides that a filer who does not believe that the clerk's decision about the deficiency is justified can request the court to accept the pleading as is. It should take the clerk two to three minutes for a clerk to

docket and enter a filing, but it now takes 30 minutes for a clerk to fix it, because the system does not allow rejection of a filing unless the filer did not check the box on confidentiality or did not check the box on the certificate of service. Nothing can be filed in the system unless those boxes are checked.

Judge Morrissey noted that the filing can also be rejected for a lack of signature and if the filer does not pay the filing fee. The new language would provide that the filing would be accepted, and a deficiency notice would be sent to the filer telling him or her to fix the problem. If it is not fixed, then the attorney's inaction is at his or her own peril. However, if the attorney does not agree with the clerk, the attorney can ask the administrative judge to review it. This will be helpful in the cases where there are multiple fee-generating documents or it is unclear what to do with some of the documents.

Judge Morrissey expressed his appreciation for all the help he had gotten from the Rules Committee on this. This issue is not just in Anne Arundel County, but it will be faced as MDEC becomes effective on the Eastern Shore and eventually throughout the State. The change to Rule 20-203 will be very beneficial. Mr. Patterson asked about the two-day time period to correct the deficiency in subsection (d)(2). Judge Morrissey answered that if the deficiency is not corrected within two business days after the date of the notice of deficiency, then nothing would happen. The court would not take any further action on the case. If nothing is done on the case for a year, then it would be

dismissed pursuant to Rules 2-507 or 3-507, Dismissal for Lack of Jurisdiction or Prosecution.

Mr. Frederick asked Judge Morrissey if he would have any problem with adding the language "until the deficiency is corrected or withdrawn" after the word "submission" in subsection (d)(2) of Rule 20-203. The Chair inquired what the word "withdrawn" would mean. Mr. Frederick said that it would either be withdrawn per the judicial review or corrected. He expressed the concern that if a law firm is small with only one or two attorneys, and the attorney is away where no Internet is available or there is a problem receiving the Internet, there could be a significant prejudice to someone. Unless it is a problem for the court, there ought to be some way for someone to correct the deficiency five days later and not suffer a terrible result. He asked if this relates back as was discussed in *Alexander v. Evander*, 88 Md. App. 672 (1991).

Mr. Carbine said that it automatically relates back and that Mr. Frederick's comment was a good one even from an internal consistency point of view. The Rule had been drafted very quickly. To make it consistent with the judicial review provision in subsection (d)(3) of Rule 20-203, if the judge orders that it be withdrawn, then the language "unless the deficiency is corrected or withdrawn" is a perfect addition.

By consensus, the Committee agreed to add this language to subsection (d)(2) of Rule 20-203.

The Reporter asked what would happen in those two business

days. If a complaint is filed, the first action taken by the clerk within that two-day window is to issue the original process on that complaint. Is it on hold at that point in time? Mr. Carbine answered that if the deficiency is corrected within 24 hours, the case would go forward. If it was not done within 24 hours, the summons would not go out. He assumed that if a deficiency notice was sent, a summons would not be sent. Judge Morrissey noted that no further action would be taken on the case.

Judge Price inquired why the filing is not just rejected. Mr. Carbine responded that this was a very good question. The Chair explained that the problems started with foreclosure actions in Anne Arundel County, because Code, Real Property Article, §7-105.1, requires that many different exhibits have to be attached to the order to docket. The way that attorneys were doing this created one huge PDF. As Judge Morrissey had indicated, the people working on the problem will try to solve it as best as they can by making very clear in the MDEC Policies Procedures Manual precisely the procedure to be followed.

The Chair pointed out that this is not only a foreclosure question. It also arises any time a complaint has exhibits. It can also apply to a motion for summary judgment that has exhibits, some required and some discretionary. This problem affects tens of thousands of filings. The drafters had resisted the notion of the clerk rejecting anything at the clerk's own discretion. The Court of Appeals has allowed that only for

nonpayment of a prepaid fee or lack of a certificate of service where one is required. Under MDEC, they had added the lack of a certificate regarding restricted information. As Judge Morrissey had said, those things are not likely to be transmitted anyway, because if those items are not checked, it is not going to happen. The clerks do not want the responsibility of making legal decisions as to what is and is not legally appropriate. The Court of Appeals has always been reluctant to permit that. The Subcommittee did not want to get into the "rejection" world. The problem then was what else to do.

Mr. Carbine noted that the policy issue was that if the submission is rejected, the deadline is missed, and the statute of limitations runs as if the submission had never been filed. The Chair and Mr. Carbine preferred that the clerks not interpret the MDEC Policies and Procedure Manual and use that interpretation to reject a filing. The Chair said that the problem arises not just with a complaint but also with subsequent filings that may get electronically served when the filing is transmitted to the clerk. Someone will get served with this filing and file a response to it which, if the filing was rejected, will be meaningless.

The Reporter observed that at one point, the idea of adding the word "minor" before the word "errors" in subsection (b) (1) (A) of Rule 20-203 had been discussed. Mr. Carbine expressed the view that this was not needed. There is no need to modify subsection (b) (1) (A) by adding the word "minor," because it takes

care of itself. He asked the Chair if he thought that the word was necessary. The Chair replied that the idea of putting the word "minor" in was to limit the clerks' discretion. It related to where the attorney puts in the submission what he or she thinks that the document does. The clerk may dispute it, saying that it does something else. Since it is the clerk who is responsible for the docket entry, the thought was that the clerks could be given the ability to correct those kinds of issues, but it should not be taken as a broader authority to make changes in the document.

The Reporter explained that she had been concerned, because subsection (b) (1) (A) pertains to docketing. The Rule read: "The clerk shall promptly correct errors of non-compliance that apply to the form and language of the proposed docket entry for the submission." This refers to the docket entry and not the full document. Mr. Carbine noted that this only means correction of the docket entry.

The Reporter commented that the concept of two business days allowed to correct the deficiency in the submission seemed somewhat irrelevant. She suggested that subsection (d) (2) could read: "Until a deficiency is corrected or withdrawn, the court will take no further action on the submission." This is in reality what is going to happen. The concept of the two business days could be eliminated. She did not see that this concept did anything except to create an ambiguity. Judge Morrissey remarked that he would like to ask his circuit court colleagues about

this, since it applies more to the circuit court than to the District Court.

Ms. Doan told the Committee that she works with the Anne Arundel County Circuit Court. She asked what happens when a motion is filed, and a deficiency in it is not corrected. Mr. Carbine answered that the motion sits. This is the beauty of the proposed procedure. Judge Morrissey added that when a deficiency notice goes out, it is sent to the other parties, who always have the ability to move to strike the deficient filing if nothing has happened after a period of time.

Mr. Lowe remarked that the system will not allow for electronic service if a motion has not been filed. The Reporter pointed out that the document already will have been served by the "file and serve" component of the system. This component is separate from the Odyssey system into which all of the documents are going. Judge Morrissey said that the motion as well as the deficiency notice will go to the opposing party. It will be up to the opposing party to decide what he or she would like to do with it.

Ms. Harris expressed the view that it is not a good idea for the case to sit in limbo. Judge Morrissey explained that the case will proceed forward, but no action will be taken on the motion that was deficient. If it is an initial filing of a complaint, nothing will happen. The Reporter reiterated that it would be a Rule 2-507 or 3-507 case.

Ms. Doan asked whether a trial should be set if a motion for

summary judgment is sitting dormant with no action on it. Mr. Carbine replied that the case would proceed as if the motion was not there. What he liked about the Rule was the fact that it is self-enforcing. In 99.9% of the cases, the attorney will fix the problem. The Reporter added that attorneys do not want what they file to sit.

Judge Weatherly noted that family law cases frequently have motions to modify custody or modify child support. It would seem that if someone has bothered to file something, he or she would be anxious to move it forward, but 87% of the litigants are *pro se*. The Chair pointed out that what was being discussed was electronic filing. Litigants who are *pro se* would not file electronically. Judge Morrissey explained that someone has to be a registered user of the system in order to file electronically. So far only one self-represented person has filed electronically. Judge Morrissey said that he hoped that more self-represented people will figure out how to file electronically. At this point, the discussion only applied to attorneys.

Judge Weatherly commented that there is often no ongoing trial for these cases, and the time standards do apply. When a summons is filed in Prince George's County, the court does not wait for one year to go by, it waits for no service within six months. Otherwise, the case would already violate time standards by the time the court chooses to apply Rule 2-507 to the case. The Reporter suggested the following language for subsection (d) (2) of Rule 20-203: "Until a deficiency is corrected or

withdrawn, or the court orders otherwise, the court will take no further action on the submission.”

The Chair pointed out that there were two considerations that would ameliorate the problem. Those in the smaller group who had been working on this issue almost daily concurred that the real solution to the problem is to make clear in the MDEC Policies and Procedures Manual exactly what the person filing needs to do and how to do it. Apart from this, outreach should be done. This morning the Chair learned that Judicial Information Systems (JIS) had created some templates for foreclosure cases. This will be part of an outreach program to educate filers. If there is a violation that is not correctable by the clerk, the filer will get a deficiency notice that will tell him or her what the problem is and how it needs to be corrected. The person will also be told that if the deficiency is not corrected, the foreclosure case will not proceed. The combination of those two items should solve the problem. The need for Rule 20-203 should be minimal. If there is a violation, the filer needs to know what will happen.

The Chair said that a motion to approve the Rule would be required, because a Subcommittee had not recommended it. Judge Ellinghaus-Jones moved to approve Rule 20-203, and the motion was seconded. Judge Ellinghaus-Jones asked whether a time limit should be added to subsection (d)(3) of Rule 20-203. Mr. Carbine responded that he preferred that no time limit be added. It would create another deadline. He added that he did not want a

two-day time limit. Some amendments had been proposed that were four to five pages long. The beauty of the suggested procedure is that it is self-enforcing. An attorney's penalty for not acting promptly is that nothing happens on the filing until the attorney fixes the deficiency. Mr. Carbine remarked that he was uneasy about the two-day requirements, because as a solo practitioner, if he is away on vacation at some location where he does not have access to MDEC, he would not be able to do anything in two days.

Judge Pierson commented that he agreed with Judge Ellinghaus-Jones. A reasonable period of time such as 30 days would be useful in subsection (d)(3) of Rule 20-203. Why should an attorney not be required to clean up his or her mess? Why should an attorney be allowed to file something that sits around for a year? Mr. Carbine expressed the view that a time limit does not solve the problem. This is like an appeal. The matter is not filed with the judge; it just sits there.

The Chair said that there is a possible glitch. A circuit court judge has issued a scheduling order setting a deadline for certain filings or events. A motion is filed within that time, but because of an uncorrected deficiency, nothing happens with it. If the filer corrects the deficiency after the deadline set in the scheduling order, could it be denied for that reason? Or the judge may decide that the clerk was wrong and should have accepted the filing, but it is now beyond the deadline, and the trial is tomorrow. Judge Morrissey responded that these are the kind of decisions that judges make on a daily basis. The

Reporter noted that the whole case does not stop, only the action on this particular submission. This is a side issue.

Judge Ellinghaus-Jones said that she had no problem going forward with a dismissal under Rule 2-507 if that is appropriate, or whatever is required by the scheduling order. The Chair commented that it would be a reason for the judge not to grant the request. It is like a laches matter. Mr. Carbine remarked that if the attorney who filed waits for six months to do anything with the deficiency, the judge can deny the motion.

Mr. Zarbin noted that Rule 2-507 works two ways. One is inactivity for a year. The other is if a complaint is filed, but the attorney does not get service within 60 days, the complaint will be thrown out. Judge Morrissey said that this is the procedure in the District of Columbia. Mr. Zarbin remarked that the second part is when there is no activity, Bar Counsel may look into the matter. If attorneys let matters sit, the cases will be dismissed, and they may get into trouble. The Chair pointed out that if an attorney files something that is not correct, the attorney will get a notice of that and a warning of what will happen if the attorney does not correct the filing.

Mr. Sullivan noted that the defect is in a filing that the party is requesting. If it were in opposition to a dispositive motion, such as one requesting a hearing, and Rule 20-203 provides that the judge will take no action, what does that mean? Mr. Carbine responded that it was filed, but if a 10-page memorandum violated the MDEC Policies and Procedures Manual, the

filer would get a deficiency notice.

Mr. Sullivan inquired whether, if the court proceeds to grant the dispositive motion, without a hearing, an appellate court could reverse for not holding the requested hearing. The Reporter commented that this is why the language "or the court orders otherwise" should be included. If the court sees something that is time sensitive or has some other problem, it can come up with a remedy for the problem. Mr. Carbine noted that at this point, the clerk gets involved and decides on a case-by-case basis.

The Reporter remarked that most attorneys would fix the deficiency as soon as they find out about it. The Chair said that if an attorney gets a deficiency notice that states what will happen, and the attorney does not take any action, this could amount to malpractice. Judge Morrissey pointed out that this is no different in the electronic world than it is in the "paper" world. If a clerk sends an attorney a notice of deficiency, the attorney has to take some action.

The Chair said that a motion to approve Rule 20-203 as amended was on the floor, and it had been seconded. He called for a vote on the motion, and it passed with a majority vote. The MDEC Rules will be sent in a Supplement to the 186th Report. The Court of Appeals will hold an open meeting on this Report on its conference day in February. Anne Arundel County needs these Rules soon.

Mr. Carbine presented Rule 20-201 (h), Requirements for

Electronic Filing, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE
TITLE 20 - ELECTRONIC FILING AND CASE
MANAGEMENT
CHAPTER 200 - FILING AND SERVICE

AMEND Rule 20-201 (h), as follows:

Rule 20-201. REQUIREMENTS FOR ELECTRONIC
FILING

. . .

(h) Proposed Orders

A proposed order to be signed by a judge or judicial appointee shall be ~~in an editable text form specified by the State Court Administrator~~ (1) in an electronic text format specified by the State Court Administrator and (2) filed as a separate document identified as relating to the motion or other request for court action to which the order pertains.

Committee note: As originally adopted, section (h) of this Rule required that a proposed order be submitted in "an editable text form." Because at the time of initial implementation, the MDEC system could only accept pdf documents, amendments to section (h) were made in 2015 to give the State Court Administrator the flexibility to specify the electronic format of the proposed order. The filer should consult the MDEC policies and procedures posted on the Judiciary website for any changes to the required format.

. . .

Judge Morrissey explained that when people file certain documents, such as an order, they usually use the generic tab for

filing an order. It is important to make clear to everyone through the MDEC Policies and Procedures Manual that each document should be filed separately. It should have enough identifying information so that someone looking at it can determine which file it fits in. This is the purpose of the Rule.

Mr. Carbine added that the system is set up within the limits that the company providing the software for the electronic filing system in Maryland has set. The Rules have to be written to accommodate the software system that is in place. By executive action, the group working on the MDEC Rules persuaded JIS to convince the software company to disable the attachment button. The system has different buttons. If the attachment button is pushed, then all of the attachments get lumped into a single PDF. Mr. Carbine said that the second problem is putting the filing into a word processing document. Title 20 requires a proposed order to be in an editable text. The editable text becomes a PDF document. If the document is filed as an attachment, the proposed order is appended, without a break, to the motion to which it pertains. As a technical matter, as of today, hopefully, the attachment button had been disabled. If another filing is added, the clerk gets these individual filings, goes into the system, and enters them as attachments.

Judge Morrissey remarked that the system does not now have the capability to take a Word document. This is not to say that the system will not have this capability later on. The judge can

still act on the PDF by writing on the PDF and by attaching a signature. The capability is not there to keep the filing as a Word document in the system when it comes in as a Word document. The system will eventually be able to do this. The Chair pointed out that this retains the procedure that has already been in place for paper filings. When a motion comes in with a proposed order, often something needs to be changed. If the judge does not want to sign the order, either the attorney asks for another judge, or the judge changes the order as he or she sees fit.

The Chair asked if anyone had a motion to approve Rule 20-201 (h). Judge Price moved to approve the Rule, the motion was seconded, and it passed unanimously. The Chair commented that the discussion showed how frustrating the MDEC procedures can be. Most of the problems are not a Rules Committee issue. The Committee has tried as much as it can to make the system work. It is a case of technology ruling policy rather than the other way around.

Mr. Zarbin said the electronic filing system in Anne Arundel County is working very well for practitioners. The clerk's office has been very helpful, and Mr. Zarbin's staff has had no problem using the system. The Chair noted that Mr. Duckworth, the Clerk of the Court in Anne Arundel County, and his staff had been involved in all of the discussions about MDEC. They have been very helpful in educating everyone as to the issues that Anne Arundel County is facing.

Judge Morrissey thanked the Committee, especially the Chair,

the Reporter, and Cathy Cox, the Rules Committee Administrative Assistant, for their assistance.

Reconsideration of Agenda Item 2.

Judge Ellinghaus-Jones told the Committee that Code, Transportation Article, §26-407 directs the MVA, in consultation with the Chief Judge of the District Court, to specify the records and the reports required to be made of the disposition of charges. This may be in the Code of Maryland Regulations ("COMAR"). Judge Ellinghaus-Jones added that she was satisfied that these traffic citations need to be reported, and Rule 16-204 is appropriate as had been suggested. The Reporter inquired if the Committee note at the end of the Alternate 2 version of Rule 16-204 could be eliminated. Judge Ellinghaus-Jones expressed the view that the Committee note is not necessary.

Judge Pierson said that he was opposed to the language at the end of subsection (a) (2) that read: "any conviction or finding by a court that is required by law to be reported." He explained that it is not clear what is required by law. The Chair pointed out that this had been done in a reverse situation. Some rules require an action "subject to any applicable law," and the rules do not specify what the applicable laws are.

By consensus, the Committee approved the Alternate 2 version of Rule 16-204 as presented, except for the deletion of the Committee note at the end of the Rule.

Agenda Item 4. Consideration of proposed Rules changes recommended by the General Court Administration Subcommittee Amendments to: Rule 16-1002 (General Policy), Rule 16-1004 (Access to Notice, Administrative, and Business License Records), Rule 16-1006 (Required Denial of Inspection - Certain Categories of Case Records), Rule 16-1007 (Required Denial of Inspection - Specific Information in Case Record), and Rule 16-404 (Administration of Court Reporters)

The Chair presented Rules 16-1002, General Policy; 16-1004, Access to Notice, Administrative, and Business License Records; 16-1006, Required Denial of Inspection - Certain Categories of Case Records; 16-1007, Required Denial of Inspection - Specific Information in Case Record, and 16-404, Administration of Court Reporters, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 1000 - ACCESS TO COURT RECORDS

AMEND Rule 16-1002 (c) to add language to the tagline of section (c) and language to subsection (c)(1) referring to a response to a motion, as follows:

Rule 16-1002. GENERAL POLICY

(a) Presumption of Openness

Court records maintained by a court or by another judicial agency are presumed to be open to the public for inspection. Except as otherwise provided by or pursuant to the Rules in this Chapter, the custodian of a court record shall permit a person, upon personal appearance in the office of the custodian during normal business hours, to inspect the record.

(b) Protection of Records

To protect court records and prevent unnecessary interference with the official business and duties of the custodian and other court personnel,

(1) a clerk is not required to permit in-person inspection of a case record filed with the clerk for docketing in a judicial action or a notice record filed for recording and indexing until the document has been docketed or recorded and indexed; and

(2) the Chief Judge of the Court of Appeals, by administrative order, a copy of which shall be filed with and maintained by the clerk of each court, may adopt procedures and conditions, not inconsistent with the Rules in this Chapter, governing the timely production, inspection, and copying of court records.

Committee note: It is anticipated that, by Administrative Order, entered pursuant to section (b) of this Rule, the Chief Judge of the Court of Appeals will direct that, if the clerk does not permit inspection of a notice record prior to recording and indexing of the record, (1) persons filing a notice record for recording and indexing include a separate legible copy of those pages of the document necessary to identify the parties to the transaction and the property that is the subject of the transaction and (2) the clerk date stamp that copy and maintain it in a separate book that is subject to inspection by the public.

(c) Exhibit Attached to Motion or Response or Marked for Identification

Unless a judicial action is not open to the public or the court expressly orders otherwise, a court record that consists of an exhibit (1) attached to a motion or a response to a motion that has been ruled upon by the court or (2) marked for identification at trial, whether or not offered in evidence, and if offered, whether or not admitted, is subject to inspection, notwithstanding that

the record otherwise would not have been subject to inspection under the Rules in this Chapter.

Cross reference: Rule 2-516.

(d) Fees

(1) In this Rule, "reasonable fee" means a fee that bears a reasonable relationship to the actual or estimated costs incurred or likely to be incurred in providing the requested access.

(2) Unless otherwise expressly permitted by the Rules in this Chapter, a custodian may not charge a fee for providing access to a court record that can be made available for inspection, in paper form or by electronic access, with the expenditure of less than two hours of effort by the custodian or other judicial employee.

(3) A custodian may charge a reasonable fee if two hours or more of effort is required to provide the requested access.

(4) The custodian may charge a reasonable fee for making or supervising the making of a copy or printout of a court record.

(5) The custodian may waive a fee if, after consideration of the ability of the person requesting access to pay the fee and other relevant factors, the custodian determines that the waiver is in the public interest.

(e) New Court Records

(1) Except as expressly required by other law and subject to Rule 16-1008, neither a custodian nor a court or other judicial agency is required by the Rules in this Chapter to index, compile, re-format, program, or reorganize existing court records or other documents or information to create a new court record not necessary to be maintained in the ordinary course of business. The removal, deletion, or redaction from a court record of information

not subject to inspection under the Rules in this Chapter in order to make the court record subject to inspection does not create a new record within the meaning of this Rule.

(2) If a custodian, court, or other judicial agency (A) indexes, compiles, re-formats, programs, or reorganizes existing court records or other documents or information to create a new court record, or (B) comes into possession of a new court record created by another from the indexing, compilation, re-formatting, programming, or reorganization of other court records, documents, or information, and there is no basis under the Rules in this Chapter to deny inspection of that new court record or some part of that court record, the new court record or a part for which there is no basis to deny inspection shall be subject to inspection.

(f) Access by Judicial Employees, Parties, and Counsel of Record

The Rules in this Chapter address access to court records by the public at large. The Rules do not limit access to court records by judicial officials or employees in the performance of their official duties, or to a case record by a party or counsel of record in the action.

Source: This Rule is new.

Rule 16-1002 was accompanied by the following Reporter's note.

The General Court Administration Subcommittee recommends adding the language "or a response to a motion" to address a gap that currently exists in Rule 16-1002. Rule 2-311 (c) requires a party to attach to a written motion or a response any exhibit that the party wishes the court to consider in ruling on the motion or response. Rule 16-1002 does not currently refer to a court record that consists of an exhibit attached to a response to a motion. The Subcommittee proposes to add this to Rule 16-1002.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 1000 - ACCESS TO COURT RECORDS

AMEND Rule 16-1004 to conform an internal reference in subsection (b) (1) to revised Code provisions, to add a cross reference after subsection (b) (2) (D), to change the language of section (c), and to add a Committee note after section (c), as follows:

Rule 16-1004. ACCESS TO NOTICE,
ADMINISTRATIVE, AND BUSINESS LICENSE RECORDS

(a) Notice Records

A custodian may not deny inspection of a notice record that has been recorded and indexed by the clerk.

(b) Administrative and Business License
Records

(1) Except as otherwise provided by the Rules in this Chapter, the right to inspect administrative and business license records is governed by the applicable provisions of Code, State Government Article, §§10-611 through 10-626 General Provisions Article, Title 4.

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

(B) Upon request, a custodian shall

disclose the names and zip codes of the sworn jurors contained on a jury list after the jury has been impaneled and sworn, unless otherwise ordered by the trial judge.

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

(C) After a source pool of qualified jurors has been emptied and re-created in accordance with Code, Courts Article, §8-207, and after every person selected to serve as a juror from that pool has completed the person's service, a trial judge shall, upon request, disclose the name, zip code, age, sex, education, occupation, 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 remain confidential in whole or in part.

(D) 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 that Office adopting regulations to ensure against improper dissemination of juror data.

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

(E) At intervals acceptable to the jury commissioner, a jury commissioner shall provide the State Board of Elections and State Motor Vehicle Administration with 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.

(c) Personnel Records - Generally

Except as otherwise permitted by the Maryland Public Information Act or by this Rule, a custodian shall deny to a person other than the person who is the subject of the record inspection of the personnel records of an employee of the court or other judicial agency or of an individual who has

applied for employment with the court or other judicial agency. ~~Except as otherwise required by law, the~~ The following records or information are not subject to this exclusion and, unless sealed or otherwise shielded pursuant to the Maryland Rules or other law, shall be open to inspection:

(1) The full name of the individual;

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

(3) The date employment commenced;

(4) The name, location, and telephone number of the court or judicial agency to which the individual has been assigned;

(5) The current and previous job titles and salaries of the individual during employment by the court or judicial agency;

(6) The name of the individual's current supervisor;

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

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

(9) A record that has become a case record.

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

(d) Personnel Records - Retirement

Unless inspection is permitted under the Maryland Public Information Act or the

record has become a case record, a custodian shall deny inspection of a retirement record of an employee of the court or other judicial agency.

(e) Certain Administrative Records

A custodian shall deny inspection of the following administrative records:

(1) Judicial work product, including drafts of documents, notes, and memoranda prepared by a judge or other court personnel at the direction of a judge and intended for use in the preparation of a decision, order, or opinion;

(2) An administrative record that is:

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

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

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

Source: This Rule is new.

Rule 16-1004 was accompanied by the following Reporter's note.

The General Court Administration Subcommittee proposes several changes to Rule 16-1004. The first, in subsection (b)(1), conforms an internal reference to Code references contained in the recently enacted General Provisions Article. Another change is the addition of a cross reference to Rule 4-312 (d) after subsection (b)(2)(D). Rule 4-312 (d) allows a judge to modify a court order restricting or allowing disclosure of juror information at any time, which could impact jury lists provided by the jury

commissioner to the Health Care Alternative Dispute Resolution Office pursuant to subsection (b)(2)(D) of Rule 16-1004.

A third change to Rule 16-1004 is a rewriting of the stem language before the list of personnel records and information open to inspection in section (c). The current wording of this language is somewhat unclear as to whether the phrase "except as otherwise provided by law" applies to both the phrase "the following records or information are not subject to this exclusion" as well as to the phrase "and shall be open to inspection." To eliminate any ambiguity, the Subcommittee recommends redrafting the language by eliminating the "except" clause and adding language before the last phrase to indicate personnel records or information are open to inspection unless sealed or otherwise shielded pursuant to the Maryland Rules or other law.

The Subcommittee also recommends adding a Committee note after section (c) that clarifies that case records may be subject to sealing or shielding under other Maryland Rules or law.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 1000 - ACCESS TO COURT RECORDS

AMEND Rule 16-1006 to add a new section (d) pertaining to case records required to be shielded pursuant to a certain statute, to add a new section (f) pertaining to certain papers filed by a guardian of the property of a disabled adult, to conform an internal reference in subsection (h)(3)(B) to revised Code provisions, and to make stylistic changes, as follows:

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

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

(a) All case records filed in the following actions involving children:

(1) Actions filed under Title 9, Chapter 100 of the Maryland Rules for:

(A) Adoption;

(B) Guardianship; or

(C) To revoke a consent to adoption or guardianship for which there is no pending adoption or guardianship proceeding in that county.

(2) Delinquency, child in need of assistance, and child in need of supervision actions in Juvenile Court, except that, if a hearing is open to the public pursuant to Code, Courts Article, §3-8A-13 (f), the name of the respondent and the date, time, and location of the hearing are open to inspection.

(b) The following case records pertaining to a marriage license:

(1) A certificate of a physician or certified nurse practitioner filed pursuant to Code, Family Law Article, §2-301, attesting to the pregnancy of a child under 18 years of age who has applied for a marriage license.

(2) Until a license becomes effective, the fact that an application for a license has been made, except to the parent or guardian of a party to be married.

Cross reference: See Code, Family Law Article, §2-402 (f).

(c) Case records pertaining to petitions

for relief from abuse filed pursuant to Code, Family Law Article, §4-504, which shall be sealed until the earlier of 48 hours after the petition is filed or the court acts on the petition.

(d) Case records required to be shielded pursuant to Code, Family Law Article, §4-512.

~~(d)~~ (e) In any action or proceeding, a record created or maintained by an agency concerning child abuse or neglect that is required by statute to be kept confidential.

Committee note: Statutes that require child abuse or neglect records to be kept confidential include Code, Human Services Article, §§1-202 and 1-203 and Code, Family Law Article, §5-707.

(f) The following papers filed by a guardian of the property of a disabled adult:

(1) the annual fiduciary account filed pursuant to Rule 10-706, and

(2) the inventory and information report filed pursuant to Rule 10-707.

~~(e)~~ (g) The following case records in actions or proceedings involving attorneys or judges:

(1) Records and proceedings in attorney grievance matters declared confidential by Rule 16-723 (b).

(2) Case records with respect to an investigative subpoena issued by Bar Counsel pursuant to Rule 16-732;

(3) Subject to the provisions of Rule 19 (b), (c), and (d) of the Rules Governing Admission to the Bar, case records relating to bar admission proceedings before the Accommodations Review Committee and its panels, a Character Committee, the State Board of Law Examiners, and the Court of Appeals.

(4) Case records consisting of IOLTA

Compliance Reports filed by an attorney pursuant to Rule 16-608 and Pro Bono Legal Service Reports filed by an attorney pursuant to Rule 16-903.

(5) Case records relating to a motion filed with respect to a subpoena issued by Investigative Counsel for the Commission on Judicial Disabilities pursuant to Rule 16-806.

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

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

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

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

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

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

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

(B) Except as otherwise provided in Code, ~~State Government Article, §10-616 (q)~~ General Provisions Article, §4-316, a case record pertaining to an arrest warrant issued pursuant to a grand jury indictment or conspiracy investigation and the charging document upon which the arrest warrant was issued.

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

(5) A presentence investigation report prepared pursuant to Code, Correctional Services Article, §6-112.

(6) A case record pertaining to a criminal investigation by (A) a grand jury, (B) a State's Attorney pursuant to Code, Criminal Procedure Article, §15-108, or (C) the State Prosecutor pursuant to Code, Criminal Procedure Article, §14-110.

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

~~(g)~~ (i) A transcript, tape recording, audio, video, or digital recording of any court proceeding that was closed to the public pursuant to rule or order of court.

~~(h)~~ (j) Backup audio recordings made by any means, computer disks, and notes of a court reporter that are in the possession of the court reporter and have not been filed with the clerk.

~~(i)~~ (k) The following case records containing medical information:

(1) A case record, other than an autopsy report of a medical examiner, that (A) consists of a medical or psychological report or record from a hospital, physician, psychologist, or other professional health care provider, and (B) contains medical or psychological information about an individual.

(2) A case record pertaining to the testing of an individual for HIV that is declared confidential under Code, Health-General Article, §18-338.1 or §18-338.2.

(3) A case record that consists of information, documents, or records of a child fatality review team, to the extent they are

declared confidential by Code, Health-General Article, §5-709.

(4) A case record that contains a report by a physician or institution concerning whether an individual has an infectious disease, declared confidential under Code, Health-General Article, §18-201 or §18-202.

(5) A case record that contains information concerning the consultation, examination, or treatment of a developmentally disabled person, declared confidential by Code, Health-General Article, §7-1003.

(6) A case record relating to a petition for an emergency evaluation made under Code, Health-General Article, §10-622 and declared confidential under Code, Health-General Article, §10-630.

~~(j)~~ (l) A case record that consists of the federal or Maryland income tax return of an individual.

~~(k)~~ (m) A case record that:

(1) a court has ordered sealed or not subject to inspection, except in conformance with the order; or

(2) in accordance with Rule 16-1009 (b), is the subject of a motion to preclude or limit inspection.

~~(l)~~ (n) As provided in Rule 9-203 (d), a case record that consists of a financial statement filed pursuant to Rule 9-202.

Source: This Rule is new.

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

The General Court Administration Subcommittee proposes the addition of a new section (d) to Rule 16-1006 adding a new category of case records required to be shielded by Code, Family Law Article, §4-512.

This statute was amended in 2014 (Chapter 227, Acts of 2014, (HB397)), and it expanded the rights of both petitioners and respondents to file a written request to shield all court records relating to a peace order or protective order proceeding filed under Title 4 (Spouses), Subtitle 5 (Domestic Violence) of the Family Law Article.

Another proposed addition to Rule 16-1006 is a new section (f), which adds papers that must be filed by a guardian of the property of a disabled adult as another category of documents required to be shielded. The papers include the annual fiduciary account filed pursuant to Rule 10-706 as well as the inventory and information report filed pursuant to Rule 10-707. A circuit court judge had pointed out that these documents may contain personal financial information that could be used for identity theft, so they need to be shielded from public access.

The proposed change in subsection (h) (3) (B) conforms an internal reference to Code references contained in the recently enacted General Provisions Article.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 1000 - ACCESS TO COURT RECORDS

AMEND Rule 16-1007 to conform an internal reference in section (b) to revised Code provisions, to add a new section (c) pertaining to certain personal information of a victim or victims' representative, to delete from section (d) a certain exclusion, and to make stylistic changes, as follows:

Rule 16-1007. REQUIRED DENIAL OF INSPECTION
- SPECIFIC INFORMATION IN CASE RECORDS

Except as otherwise provided by law, the Rules in this Chapter, or court order, a custodian shall deny inspection of a case record or a part of a case record that would reveal:

(a) The name, address, telephone number, e-mail address, or place of employment of a person who reports the abuse of a vulnerable adult pursuant to Code, Family Law Article, §14-302.

(b) Except as provided in Code, ~~State Government Article, §10-617~~ (e) General Provisions Article, §4-331, the home address or telephone number of an employee of the State or a political subdivision of the State.

(c) The address, telephone number, and e-mail address of a victim or victim's representative in a criminal action, juvenile delinquency action, or an action under Code, Family Law Article, Title 4, Subtitle 5, who has requested that such information be shielded. Such a request may be made at any time, including in a victim notification request form filed with the clerk or a request or motion filed under Rule 16-1009.

~~(c)~~ (d) Any part of the social security or Federal Identification Number of an individual, ~~other than the last four digits.~~

~~(d)~~ (e) Information about a person who has received a copy of a sex offender's or sexual predator's registration statement.

Cross reference: See Rule 16-1009 (b) (2) concerning information shielded upon a request authorized by Code, Courts Article, Title 3, Subtitle 15 (peace orders) or Code, Family Law Article, Title 4, Subtitle 5 (domestic violence) and in criminal actions.

Source: This Rule is new.

Rule 16-1007 was accompanied by the following Reporter's note.

The General Court Administration Subcommittee proposes a change in section (b) to conform an internal reference to Code references contained in the recently enacted General Provisions Article.

The Subcommittee recommends adding a new section (c) to Rule 16-1007 that would shield personal information of victims or victims' representatives who have requested that this information be shielded pursuant to various statutes including Code, Criminal Procedure Article, §11-104 and Code, Family Law Article, §4-519 et seq.

The Subcommittee also proposes deleting the language "other than the last four digits" from section (d) of the Rule. Because of the ease of electronically accessing the first five digits of Social Security numbers, allowing access to the last four digits provides easy access to someone's full social security number, which could lead to identity theft.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 400 - ATTORNEYS, OFFICERS OF COURT

AND OTHER PERSONS

AMEND Rule 16-404 to update an internal reference, as follows:

Rule 16-404. ADMINISTRATION OF COURT REPORTERS

a. Applicability

Section b of this Rule applies to court reporters in the circuit courts and the District Court. Sections c, d, and e apply in the circuit courts only.

b. Establishment of regulations and standards

The Chief Judge of the Court of Appeals shall prescribe regulations and standards regarding court reporters and the system of reporting in the courts of the State. The regulations and standards may include:

(1) the selection, qualifications, and responsibilities of court reporters;

(2) procedures and regulations;

(3) preparation, typing, and format of transcripts;

(4) charges for transcripts and copies;

(5) preservation and maintenance of reporting notes and records, however recorded;

(6) equipment and supplies utilized in reporting; and

(7) procedures for filing and maintaining administrative records and reports.

Cross reference: Rule 16-504.

c. Number of Court Reporters - Supervisory Court Reporter

Each circuit court shall have the number of court reporters recommended by the County Administrative Judge and approved by the Chief Judge of the Court of Appeals. In a county with more than one court reporter, the County Administrative Judge shall designate one as supervisory court reporter, who shall serve at the pleasure of the County Administrative Judge. The Chief Judge of the Court of Appeals shall prescribe the duties of the supervisory court reporter.

d. Supervision of Court Reporters

Subject to the general supervision of the Chief Judge of the Court of Appeals, the County Administrative Judge shall have the supervisory responsibility for the court reporters in that county. The County Administrative Judge may delegate supervisory responsibility to the supervisory court reporter, including the assignment of court reporters.

e. Methods of Reporting - Proceedings to be Recorded

Each court reporter assigned to record a proceeding shall record verbatim by shorthand, stenotype, mechanical, or electronic audio recording methods, electronic word or text processing methods, or any combination of these methods, and shall maintain that record subject to regulations and standards prescribed by the Chief Judge of the Court of Appeals, except that a court reporter need not record an audio or audiovisual recording offered or used at a hearing or trial. All proceedings held in open court, including opening statements, closing arguments, and hearings on motions, shall be recorded in their entirety, unless the court and the parties agree otherwise.

Cross reference: See Rules 2-516 and 4-322. See also Rule 16-1006 ~~(g)~~ (j), which provides that backup audio recordings made by any means, computer disks, and notes of a court reporter that have not been filed with the clerk or are not part of the official court record are not ordinarily subject to public inspection.

Source: This Rule is derived from former Rule 1224.

The Chair said that section (c) of Rule 16-1002 closes a gap. It provides that unless the court orders otherwise, a court

record that consists of an exhibit attached to a motion is subject to inspection. This provision has been in Rule 16-1002 since 2004 when the Rule went into effect. The proposed change is the addition of the language "or a response to a motion." It is the same principle.

Judge Pierson commented that he did not want to revive the discussion of reply memoranda, but it was left in a state of creative ambiguity. People do file replies, rebuttals, and sur-rebuttals. He suggested the following language: "(1) submitted in support of or in opposition to a motion." This would cover any papers that might be filed. The Chair pointed out that the language following is "that has been ruled upon by the court." Judge Pierson moved that the revised language would be "...an exhibit (1) submitted in support of or in opposition to a motion that has been ruled upon by the court...". The motion was seconded, and it passed with a majority vote. By consensus, the Committee approved Rule 16-1002 as amended.

The Chair noted that the change to Rule 16-1004 was a matter of style. The first change in subsection (b)(1) corrects a cross reference that had been to the State Government Article but was changed to the General Provisions Article of the Code. However, more than just one section of the General Provisions Article apply. This is why the new language is "the applicable provisions" of that article rather than a reference to a particular section. At the end of subsection (b)(2)(D), a cross reference to Rule 4-312 (d) has been added.

The Chair commented that the change in section (c) of Rule 16-1004 is more than stylistic. It closes a small gap. Section (c) begins with the language: "[e]xcept as otherwise provided by the Maryland Public Information Act...". It provides that custodians shall deny to a person, other than the person who is the subject of the record, inspection of the personnel records of a court employee or someone who has applied to be a court employee. The current Rule then states: "[e]xcept as otherwise required by law, the following records are not subject to this exclusion." However, there may be other exclusions that would shield the records. The revised language makes this clear. The mere fact that it would not be exempted from this exclusion does not mean that there are not others that would shield the records. The Committee note at the end of section (c) explains this.

By consensus, the Committee approved Rule 16-1004 as presented.

The Chair drew the Committee's attention to Rule 16-1006. The changes to the Rule are explained in the Reporter's note. Subsection (h) (3) (B) contains a change to the cross reference, which had been to the State Government Article of the Code, but is now to the General Provisions Article, which supersedes it. The addition of section (d) is because the legislature had provided for the shielding of records of domestic violence cases where the court has not granted the relief. It is now the respondent who wants that record shielded. It is shielded by statute.

Judge Ellinghaus-Jones commented that peace orders are shielded pursuant to Code, Courts Article, §3-1510. Rule 16-1006 refers to the shielding of protective orders, but peace orders are under a different statute. The Chair asked whether that statute shields only where the relief is not granted or whether it is only the domestic violence cases that do that. The Chair said that the Courts Article section should be looked at. He thought that the statute that provided for the shielding is Code, Family Law Article, §4-512 and that this was the only one that shielded. Judge Ellinghaus-Jones noted that the Courts Article provision does basically the same thing for peace order cases. The Chair suggested that a reference to Code, Courts Article, §3-1510 needed to be added to Rule 16-1006. Section (d) would read as follows: "Case records required to be shielded pursuant to Code, Courts Article, §3-1510 and Code, Family Law Article, §4-512." By consensus, the Committee agreed.

By consensus, the Committee approved Rule 16-1006 as amended.

The Chair said that section (b) of Rule 16-1007 has a reference to the General Provisions Article instead of to the State Government Article of the Code, which has been superseded. Section (c) is intended to implement Code, Criminal Procedure Article, §11-104, a statute enacted in 2014 that addresses victims, and in particular the request for notification of victims. A form has been created to take care of this notification pursuant to the statute, and the form has the victim

or the victim's representative signing it and providing his or her name, address, e-mail address, telephone number, etc. The statute has a provision stating that this information can be shielded if it is requested to be shielded. One problem was that the form did not allow for this request, and this will have to be addressed. Language added to the Rule provides that if the information is requested to be shielded, it will be.

The Assistant Reporter commented that language was deleted from section (d) of Rule 16-1007 referring to the last four digits of an individual's social security number. The Chair explained that when the Access to Court Records Rules were drafted and put in place in 2004, they provided that if a social security number is in a court record, it is shielded, except for the last four digits. There had been a huge policy debate about this. The thought at the time was that if the first five digits of the social security number were shielded, this would prevent someone from obtaining the social security number of someone else. However, it had been reported first to a Court of Appeals judge, who had mentioned it to the Chair, that an attorney had said that he could get from the Internet the first five digits of someone's social security number.

The Chair said that as he and this attorney were talking, the attorney told the Chair what the first five digits of the Chair's social security number were. If the last four are available from a court record, the entire number can be obtained. There are actually several ways to get the first five digits.

The attorney had gotten the information from Lexis. The Committee had previously talked about having a rule that would preclude any part of a social security number from even being put in a court record, but the rule never materialized. The change to Rule 16-1007 does not provide for this. It provides that if the social security number is in the record, all of it has to be shielded.

Mr. Zarbin asked if he could apprise the Maryland Workers' Compensation Commission of this, because when the workers' compensation claims come in, they have the first five digits shielded, but the last four are on the form. The Chair responded that others really need to know about this, because the last four digits are open throughout the federal system. The National Center for State Courts had been consulted on this, and it appears that this is the situation all over the country. Judge Weatherly remarked that this is done for wage liens and for pension orders.

The Chair said that he had spoken to the head of the Child Support Enforcement Administration about this issue. He had told the Chair that his agency would not have a problem with shielding the first five digits. They have the full social security numbers, and they can inform the employers about it. In cases in which the Child Support Enforcement Agency is not involved, if there is an earnings lien, or there is any other reason that the number is needed, the employer may need to be notified in order to implement the lien, but the number should not be publicly

available.

By consensus, the Committee approved Rule 16-1007 as presented.

The Chair noted that Rule 16-404 corrected a cross reference to Rule 16-1006 (g) which had been changed to section (j) in the cross reference at the end of the Rule.

By consensus, the Committee approved Rule 16-404 as presented.

Agenda Item 5. Reconsideration of proposed new Rule 1-333 (Court Interpreters)

The Chair presented Rule 1-333, Court Interpreters, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

ADD new Rule 1-333, as follows:

Rule 1-333. COURT INTERPRETERS

(a) Definitions

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

(1) Certified Interpreter

"Certified Interpreter" means an interpreter who is certified by:

(A) the Maryland Administrative Office

of the Courts;

(B) any member of the Council for Language Access Coordinators, provided that, if the interpreter was not approved by the Maryland member of the Council, the interpreter has successfully completed the orientation program required by the Maryland member of the Council; ~~or~~
Committee note: The Council for Language Access Coordinators is a unit of the National Center for State Courts.

(C) the Administrative Office of the United States Courts; or

(D) if the interpreter is a sign language interpreter, the Registry of Interpreters for the Deaf or the National Association of the Deaf.

. . .

Rule 1-333 was accompanied by the following Reporter's note.

References to the Registry of Interpreters for the Deaf and the National Association of the Deaf are proposed to be added to new Rule 1-333, which is currently pending before the Court of Appeals as part of the 186th Report of the Rules Committee. The proposed addition acknowledges the practice of the Administrative Office of the Courts of accepting certifications by these organizations concerning the qualifications of sign language interpreters.

The Chair explained that this change to Rule 1-333 had been requested by Ms. Deborah Unitus, Manager of Program Services for the Administrative Office of the Courts. It adds another entity that can certify sign language reporters.

By consensus, the Committee approved Rule 1-333 as presented.

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