

THE SUPREME COURT STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Rooms
132-133 of the Maryland Judicial Center, 187 Harry S. Truman
Parkway, Annapolis, Maryland on Friday, November 17, 2023.

Members present:

Hon. Alan M. Wilner, Chair
Hon. Douglas R.M. Nazarian, Vice
Chair

Hon. Tiffany Anderson
Hon. Vicki Ballou-Watts
Julia Doyle Bernhardt, Esq.
James M. Brault, Esq.
Hon. Pamela J. Brown
Hon. Catherine Chen
Monica Garcia Harms, Esq.
Arthur J. Horne, Jr., Esq.
Brian A. Kane, Esq.

Victor H. Laws, III, Esq.
Dawne D. Lindsey, Clerk
Bruce L. Marcus, Esq.
Stephen S. McCloskey, Esq.
Judy Rupp, State Court
Administrator
Gregory K. Wells, Esq.
Hon. Dorothy J. Wilson
Brian L. Zavin, Esq.
Thurman W. Zollicoffer, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Colby L. Schmidt, Esq., Deputy Reporter
Heather Cobun, Esq., Assistant Reporter

Shaoli Katana, Esq.
Hon. John Morrissey, Chief Judge, District Court of Maryland
Carly Roche, Special Assistant to State Court Administrator
Stacy Smith, Civil and Criminal Case Administrator, Circuit
Court for Anne Arundel County
Gillian Tonkin, Esq., Staff Attorney to Chief Judge, District
Court of Maryland

The Chair convened the meeting. He informed the Committee that the Supreme Court held its Open Meeting on the Two Hundred and Eighteenth and Two Hundred and Nineteenth Reports. One item from the 219th Report - Rule 2-422 - was remanded to the Committee for further study by the Discovery Subcommittee. The remaining Rules in the two Reports were adopted with some amendments.

The Reporter reminded Committee members to RSVP to the meeting invitations to assist staff in determining that there will be a quorum. She advised that the meeting was being recorded and speaking will be treated as consent to being recorded. The Reporter also announced that Assistant Reporter Drummond recently had a baby, a boy, and both mom and baby are doing well.

The Chair said that the minutes from the September 7, 2023 meeting were circulated for review. He called for any amendments or discussion on the minutes. Hearing none, he called for a motion to approve the minutes. Mr. Zollicoffer moved to approve the September meeting minutes. Judge Nazarian seconded the motion. By consensus, the Committee approved the minutes.

Agenda Item 1. Consideration of proposed Rules changes recommended by the Evidence Subcommittee.

Mr. Zollicoffer presented Rule 5-702, Testimony by Experts, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 700 - OPINIONS AND EXPERT TESTIMONY

Amend Rule 5-702 by adding a provision establishing a preponderance of the evidence standard, by adding a provision to section (3) listing the two sub-factors of the "sufficient factual basis prong" referenced by the Supreme Court, and by making stylistic changes, as follows:

RULE 5-702. TESTIMONY BY EXPERTS

Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making that determination, the court shall determine by a preponderance of the evidence:

(1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education,

(2) the appropriateness of the expert testimony on the particular subject, and

(3) whether a sufficient factual basis exists to support the expert testimony-
based on whether the expert's opinion:

(A) has an adequate supply of facts or data; and

(B) reflects a reliable application of reliable principles and methods to the facts of the case.

Cross reference: See *Rochkind v. Stevenson*, 471 Md. 1 (2020), and *Katz, Abosch, Windersheim, Gershman & Freedman, P.A., et al. v. Parkway Neuroscience and Spine Institute, LLC, _____, Md. _____* (2023).

Source: This Rule is new.

Rule 5-702 was accompanied by the following Reporter's note:

Rule 5-702 is proposed to be amended to bring the Rule into closer alignment with the recent amendments to Federal Rule 702 and with the standard set forth in the majority opinion of *Katz, Abosch, Windersheim, Gershman & Freedman, P.A., et al. v. Parkway Neuroscience and Spine Institute, LLC, _____, Md. _____* (No. 30, September Term, filed August 30, 2023), at p. 26.

Mr. Zollicoffer informed the Committee that the proposed amendments to Rule 5-702 bring the Rule more in line with its federal counterpart (Federal Rule of Evidence 702). The amendments would require a determination under the Rule to be made by a preponderance of the evidence and adds two prongs to the third factor, which deals with the factual basis for the expert's testimony. The cross reference is updated to include the Maryland Supreme Court's recent decision in *Katz, Abosh,*

Windersheim, Gershman & Freeman, P.A., et al. v. Parkway Neuroscience and Spine Institute, LLC (No. 30, Sept. Term 2022).

The Chair said that he wished to provide background on the Rules of Evidence as context for the discussion. He explained that the question of whether to adopt the Federal Rules of Evidence - as opposed to developing unique Maryland Rules or leaving the matter to case law - has been an issue for 50 years. He noted that when the Federal Rules of Evidence were first adopted, Maryland's standards were set forth in statutes and case law. The Rules Committee began looking at other states and considered adopting Maryland Rules of Evidence in the 1970s. During that time, he explained, the application of the Federal Rules of Evidence in the high-profile federal trial of former Gov. Marvin Mandel made headlines and the Supreme Court (then the Court of Appeals) expressed concern about adopting the Federal Rules in Maryland. At that time, the Chair said, the Committee was instructed to take no further action on the issue of adopting Maryland Rules of Evidence. During the period that the Committee had ceased work on the project, a majority of states adopted their own versions of the Federal Rules of Evidence in whole or in part.

The Chair said that after more than a decade of inaction, he and then-Chief Judge Robert C. Murphy had discussions about reviving the project and the Chair sent a formal letter to the

Court requesting permission to do so. A majority of the Court approved the request but instructed the Committee not to recommend a wholesale adoption of the Federal Rules in Maryland. He said that the Committee drafted Maryland Rules of Evidence with help from experts in the field and submitted them to the Court where a majority approved their adoption, with some amendments. Since their adoption, the Maryland Rules of Evidence have largely been consistent with their federal counterparts, with some differences in language.

Mr. Brault commented that he believes that Maryland should adopt the Federal Rule on expert testimony. He noted that when Rule 5-702 was adopted, Maryland was using the *Frye-Reed* standard. Since the Maryland Supreme Court adopted the *Daubert* standard, it has begun looking to federal case law for interpretation of that standard. He suggested that the Court should consider adopting the language of the Federal Rule as well. He pointed out some of the differences in wording between the two Rules. For example, the amended Federal Rule, which is scheduled to go into effect on December 1 unless Congress acts, started with "preponderance of the evidence" but changed to "more likely than not." He suggested providing the Supreme Court with a choice: Rule 5-702 as presented today or adoption of Federal Rule 702. The Chair acknowledged that the Committee has provided options to the Court in the past.

Judge Chen pointed out that the Maryland Supreme Court previously rejected a wholesale adoption of the Federal Rule after it adopted the *Daubert* standard. She added that Justice Watts identified a possible disparate impact on marginalized individuals under *Daubert* and the Federal Rules of Evidence. Judge Chen said that the Rules Review Subcommittee of the Committee on Equal Justice ("the EJC") reviewed the matter and concluded that it could not determine whether the Federal Rule and standard were discriminatory.

Mr. Wells said that the Supreme Court and the Appellate Court are struggling with how to consider and weigh factors under the *Daubert* standard. He said that the Evidence Subcommittee appears to have done a good job of drafting something to address the issues facing the appellate courts without being controversial.

There being no motion to amend or reject the proposed amendments to Rule 5-702, they were approved as presented.

Mr. Zollicoffer presented Rule 21-301, Permissible Remote Electronic Participation in Criminal and Delinquency Proceedings, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 21 - REMOTE ELECTRONIC PARTICIPATION
IN JUDICIAL PROCEEDINGS

CHAPTER 300 - CRIMINAL AND DELINQUENCY
PROCEEDINGS

AMEND Rule 21-301 by adding new subsection (a)(9) pertaining to remote pretrial hearings involving Rule 5-702, by renumbering subsequent subsections, and by updating an internal reference, as follows:

Rule 21-301. PERMISSIBLE REMOTE ELECTRONIC PARTICIPATION IN CRIMINAL AND DELINQUENCY PROCEEDINGS

(a) Proceedings Presumptively Appropriate for Remote Electronic Participation

Subject to the conditions in this Title, any other reasonable conditions the court may impose in a particular proceeding, and resolution of any objection made pursuant to section (b) of this Rule, the court, on motion or on its own initiative, may permit or require one, some, or all participants to participate by means of remote electronic participation in all or any part of the following types of criminal and delinquency proceedings:

(1) appearances pursuant to bench warrants;

(2) bail reviews;

(3) expungement hearings;

(4) hearings concerning non-incarcerable traffic citations for which the law permits, but does not require, that the defendant appear;

Cross reference: See Code, Transportation Article, § 16-303(h).

(5) hearings concerning parking citations;

(6) initial appearances for detained defendants;

(7) juvenile detention hearings where the respondent already is detained;

(8) motions hearings not involving the presentation of evidence;

(9) pretrial hearings involving Rule 5-702 where the proposed expert witness is the sole participant to appear remotely;

~~(9)~~(10) proceedings in which remote electronic participation is authorized by specific law;

Cross reference: See Code, Criminal Procedure Article, § 11-303.

~~(10)~~(11) proceedings involving Rule 4-271 (a) (1) or the application of *State v. Hicks*, 285 Md. 310 (1979) or its progeny, other than a motion to dismiss that involves the presentation of evidence; and

~~(11)~~(12) with the knowing and voluntary consent of the defendant pursuant to subsection (c) (2) of this Rule:

(A) discharge-of-counsel hearings;

(B) plea agreements not likely to result in incarceration or where the defendant already is incarcerated;

(C) sentencings; and

(D) three-judge panel sentencing reviews.

(b) Objection by a Party

Upon objection by a party in writing or on the record, the court, before requiring remote electronic participation in any proceeding, shall make findings in writing or on the record that (1) remote electronic participation is not likely to cause substantial prejudice to a party or adversely affect the fairness of the proceeding and (2) no party lacks the

ability to participate by remote electronic participation in the proceeding.

(c) Other Criminal and Delinquency Proceedings by Consent

(1) Generally

Subject to the conditions in this Title and any other reasonable conditions the court may impose in a particular case, one, some, or all participants may participate by remote electronic participation in all or any part of any other proceeding in which the presiding judicial officer and all parties consent to remote electronic participation.

(2) Consent by Defendant or Respondent

The court may not accept the consent of a defendant or respondent to waive an in-person proceeding pursuant to subsections ~~(a)(11)~~ (a)(12) or (c)(1) of this Rule unless, after an examination of the defendant or respondent in person or by remote electronic participation on the record in open court conducted by the court, the State's Attorney, the attorney for the defendant or respondent, or any combination thereof, the court determines and announces on the record that the consent is made knowingly and voluntarily. The consent of a defendant or respondent pursuant to this subsection is effective only for the specified proceeding and not for any subsequent proceedings.

(d) Conditions of Remote Electronic Participation by Witness

Unless otherwise ordered by the court, conditions of remote electronic participation in criminal and delinquency proceedings shall include ensuring that a witness:

(1) is alone in a secure room when testifying, and, upon request, shares the surroundings to demonstrate compliance;

Committee note: Subsection (d)(1) of this Rule aims to mirror the separation between a witness and an attorney for the witness while the witness is providing testimony. This subsection does not prohibit remote electronic participation in a proceeding by an attorney for a witness. Nothing in this Rule shall preclude accommodations for a child witness or a witness who otherwise needs assistance when testifying.

(2) is not being coached in any way;

(3) is not referring to any documents, notes, or other materials while testifying, unless permitted by the court;

(4) is not exchanging text messages, e-mail, or in any way communicating with any third parties while testifying;

(5) is not recording the proceeding; and

(6) is not using any electronic devices other than a device necessary to facilitate the remote electronic participation.

Committee note: Section (d) of this Rule is not intended to limit any other reasonable conditions that the court may impose for remote electronic participation or to preclude the court from authorizing an accommodation under the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq. and Rule 1-332.

The Rules Committee endorses two caveats stated in the March 9, 2022 Report of the Judicial Council's Joint Subcommittee on Post-COVID Judicial Operations:

(1) Remote proceedings generally are not recommended when the finder of fact needs to assess the credibility of evidence but may be appropriate when the parties consent or the case needs to be heard on an expedited basis and remote proceedings will facilitate the participation of individuals who would have difficulty attending in person; and

(2) Where a judicial officer has discretion to hold or decline to hold a remote proceeding, the judicial officer should consider (i) the preference of the parties, (ii) whether the proceeding will involve contested evidence, (iii) whether the finder of fact will need to assess witness credibility, (iv) the availability of participants who will be affected by the decision, (v) possible coaching or intimidation of witnesses appearing remotely, (vi) access by witnesses to technology and connectivity that would allow participation, (vii) the length and complexity of the proceeding, (viii) the burden on the parties and the court, (ix) whether remote participation will cause substantial prejudice to a party or affect the fairness of the proceeding, (x) a defendant's or juvenile respondent's right of confrontation, and (xi) any other factors the judicial officer considers relevant.

Source: This Rule is derived in part from recommendations made in the March 9, 2022 Report of the Judicial Council's Joint Subcommittee on Post-COVID Judicial Operations and from former Rules 2-802 and 2-803 (2023), and is in part new.

Rule 21-301 was accompanied by the following Reporter's note:

In March 2023, the Judicial Council approved for dissemination the Report and Recommendations of the Committee on Equal Justice Rules Review Subcommittee (hereinafter "the EJC Report"). As explained in the *Letter from the Chair* in the EJC Report, the Subcommittee was tasked with identifying instances in the Rules which "reflect, perpetuate, or fail to correct systemic biases."

The EJC Report noted that Maryland has adopted the standard set forth in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and the EJC Report included a recommendation about permitting remote *Daubert* hearings: “[I]t should be noted that the courts’ experience during the COVID pandemic has shown that it is entirely possible to conduct a pretrial evidentiary hearing remotely. A *Daubert* hearing that does not require the experts to physically travel to a Maryland courthouse prior to trial is a *Daubert* hearing that is less expensive for the parties.” The EJC Report asked the Rules Committee to “consider an amendment to [former] Maryland Rule 2-803, concerning remote hearings, to make it easier for a remote *Daubert* hearing to take place over the objection of a party.”

By Rules Order entered April 21, 2023, the Supreme Court of Maryland rescinded Title 2, Chapter 800 of the Rules. In the same Rules Order, the Supreme Court adopted new Title 21, Remote Electronic Participation in Judicial Proceedings. A large portion of new Title 21 incorporates the former provisions of Title 2, Chapter 800, with additional changes. New Rules 21-201 and 21-301 were derived, in part, from former Rule 2-803. The recommendation of the EJC Report was therefore referred to the Evidence Subcommittee to consider whether amendments are needed to Title 21 to further address remote *Daubert* hearings.

Section (a) of both Rules 21-201 and 21-301 addresses proceedings appropriate for remote electronic participation in civil and criminal proceedings, respectively. Rule 21-201 already covers *Daubert* hearings in subsection (a)(1), permitting the trial court to order one, some, or all participants of a non-jury uncontested or contested evidentiary or non-evidentiary civil proceeding to participate remotely. However, Rule 21-301, pertaining to criminal proceedings, does not contain a similar

provision. Instead, Rule 21-301 permits a court to order a remote proceeding for motions hearings not involving the presentation of evidence. Because *Daubert* hearings may require presentation of evidence, the Evidence Subcommittee determined that amendments were needed to Rule 21-301 to permit remote *Daubert* proceedings over the objection of a party.

The Subcommittee also determined that the benefits of a remote *Daubert* proceeding, such as decreased expenses for a litigant, are related to the remote appearance of the expert witness. New subsection (a)(9) is tailored to address hearings pursuant to Rule 5-702 when the expert witness is the sole participant to appear remotely. Rule 21-301 permits the remote appearance of other participants if appropriate consent is obtained.

To accommodate the new subsection, current subsections (a)(9) through (11) are renumbered as (a)(10) through (12), respectively. An internal reference is updated in subsection (c)(2).

Mr. Zollicoffer explained that the Evidence Subcommittee also discussed the issue of whether an expert could appear by remote electronic means at a Rule 5-702 hearing in a criminal proceeding. He said that civil proceedings allow for remote participation at a *Daubert* hearing and the Subcommittee recommends extending that provision to criminal proceedings, which can save money for the parties.

There being no motion to amend or reject the proposed amendments to Rule 21-301, they were approved as presented.

Agenda Item 2. Consideration of amendments to Rule 5-609
(Impeachment by Evidence of Conviction of Crime).

Mr. Zollicoffer presented Rule 5-609, Impeachment by
Evidence of Conviction of Crime, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 5 - EVIDENCE
CHAPTER 600 - WITNESSES

AMEND Rule 5-609 by adding language
excluding certain convictions from section
(a) and by changing the time limit in
section (b) from 15 to 10 years, as follows:

Rule 5-609. IMPEACHMENT BY EVIDENCE OF
CONVICTION OF CRIME

(a) Generally

For the purpose of attacking the
credibility of a witness, evidence that the
witness has been convicted of a crime shall
be admitted if elicited from the witness or
established by public record during
examination of the witness, but only if (1)
the crime was an infamous crime or other
crime relevant to the witness's credibility,
and (2) the court determines that the
probative value of admitting this evidence
outweighs the danger of unfair prejudice to
the witness or the objecting party, and (3)
the conviction was for a crime other than
possession or distribution of a controlled
dangerous substance.

Cross reference: Code, Courts Article, § 10-905.

Committee note: The requirement that the conviction, when offered for purposes of impeachment, be brought out during examination of the witness is for the protection of the witness. It does not apply to impeachment by evidence of prior conviction of a hearsay declarant who does not testify.

(b) Time Limit

Evidence of a conviction is not admissible under this Rule if a period of more than ~~15~~ 10 years has elapsed since the date of the conviction, except as to a conviction for perjury for which no time limit applies.

(c) Other Limitations

Evidence of a conviction otherwise admissible under section (a) of this Rule shall be excluded if:

(1) the conviction has been reversed or vacated;

(2) the conviction has been the subject of a pardon; or

(3) an appeal or application for leave to appeal from the judgment of conviction is pending, or the time for noting an appeal or filing an application for leave to appeal has not expired.

(d) Effect of Plea of Nolo Contendere

For purposes of this Rule, "conviction" includes a plea of nolo contendere followed by a sentence, whether or not the sentence is suspended.

Committee note: See Code, Courts Article, § 3-8A-23 for the effect of juvenile adjudications and for restrictions on their admissibility as evidence generally. Evidence of these adjudications may be admissible under the Confrontation Clause to

show bias; see *Davis v. Alaska*, 415 U.S. 308 (1974).

Source: This Rule is derived from F.R.Ev. 609 and Rule 1-502.

Rule 5-609 was accompanied by the following Reporter's note:

In March 2023, the Judicial Council approved for dissemination the Report and Recommendations of the Committee on Equal Justice Rules Review Subcommittee (hereinafter "the EJC Report"). As explained in the Letter from the Chair in the EJC Report, the Subcommittee was tasked with identifying instances in the Rules which "reflect, perpetuate, or fail to correct systemic biases."

One recommendation from the EJC Report concerns the use of a prior conviction as impeachment evidence pursuant to Rule 5-609. The EJC Report suggests that "members of historically underrepresented or mistreated communities are disproportionately likely to have prior criminal convictions" and that "Rule 5-609 magnifies the effect of this disparity by authorizing the use of prior convictions to impeach the credibility of witnesses." The EJC Report notes that concerns have been raised about using such evidence for impeachment, including the reliability of conclusions based on one conviction without understanding the underlying circumstances surrounding the conviction. The EJC Report recommends that the Rules Committee consider whether to amend Rule 5-609.

At the Criminal Rules Subcommittee meeting addressing this recommendation, a motion carried to send to the Rules Committee two proposed amendments to Rule 5-609 for consideration.

Proposed new language in section (a) excludes the use of certain convictions for the purpose of attacking credibility. Specifically, convictions for possession or distribution of controlled dangerous substances would not be admissible for purposes of attacking credibility, making it clear that these drug felonies are not considered infamous crimes for impeachment purposes.

A proposed amendment to section (b) shortens the time during which convictions may be used pursuant to the Rule from 15 years to 10 years. This proposed change mirrors the language of current Federal Rule of Evidence 609.

Mr. Zollicoffer informed the Committee that the proposed amendments to Rule 5-609 mark a significant departure and were the subject of lengthy debate by the Evidence Subcommittee. He explained that the Report of the Rules Review Subcommittee of the Committee on Equal Justice ("the EJC") identified issues with the Rule as it pertains to use of a criminal conviction to attack the credibility of a witness. The Report contends that because people of color are more likely to be targeted for and charged with drug-related offenses, they are disproportionately impacted by the Rule. He said that the Subcommittee ultimately recommended the addition of subsection (a)(3), which excludes possession or distribution of a controlled dangerous substance as a category of conviction that can be used to attack credibility. He added that section (b) is amended to reduce

from 15 years to 10 years the length of time after a conviction that it can be used under the Rule. He reiterated that new subsection (a) (3) was heavily debated.

Judge Brown asked if there was any discussion in the Subcommittee about distinguishing between possession and distribution of a controlled dangerous substance. She said that the law has changed so dramatically when it comes to possession, but distribution is considered a more serious offense. Mr. Zollicoffer responded that the Subcommittee discussed multiple options, but the conversation centered around whether the act of committing these offenses alone made an individual less likely to be honest. He said that Mr. Shellenberger strongly argued that individuals convicted of these crimes were committing acts of concealment. Mr. Zollicoffer said that ultimately, the Subcommittee was not convinced that this category of offenses materially impacts credibility.

Mr. Laws asked to clarify that this amendment solely impacts whether the conviction can be used for impeachment. Mr. Zollicoffer confirmed that the conviction can be used for other purposes, but not for impeachment of a witness. Judge Nazarian echoed Mr. Zollicoffer's explanation of the Subcommittee's discussion and ultimate determination that the mere fact of a conviction for a drug crime does not render a witness not credible. He noted that the use of these convictions to

undermine credibility leads to broad disqualification of witnesses and disproportionately impacts people of color. He explained that the goal was to find a way to address the problem in a way that would be easy for trial judges to apply.

Mr. Marcus asked if individuals convicted under kingpin statutes should be treated differently based on the scale of their controlled dangerous substance operations. Mr. Zollicoffer responded that the discussion by the Subcommittee was rooted in practical experience. He noted that he is a former prosecutor and added his experience to Mr. Shellenberger's in the discussion. He said that "kingpin" is a felony status based on volume but noted that a lot of convictions are the result of plea agreements where the defendant may not be aware of the implications of the conviction. Mr. Zavin commented that the more serious distribution charges are usually due to the volume of drugs involved. He reiterated Mr. Zollicoffer's point that the Rule as it is dissuades individuals with controlled dangerous substance convictions from testifying and the Subcommittee did not believe that this class of convictions was sufficiently tied to credibility.

Mr. Wells remarked that this amendment will be helpful in civil cases. He said that it is not infrequent to have a personal injury case where there are legitimate and strong

claims, but the plaintiff is afraid to bring the case or go to trial because the plaintiff's credibility can be attacked with a past drug conviction. He said that he had a case settle recently because the defendant made repeated references to the plaintiff's 10-year-old marijuana conviction, signaling that the defense would bring this conviction up at trial. Judge Wilson added that she believes the proposed change is clear and will be easy for trial judges to apply.

The Chair called for further comments from the Committee. There being no motion to amend or reject the proposed amendments to Rule 5-609, they were approved as presented.

Agenda Item 3. Consideration of proposed amendments to Rule 4-242 (Pleas).

Mr. Marcus presented Rule 4-242, Pleas, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-242 by adding new section (f) regarding not guilty pleas pursuant to Code, Criminal Procedure Article, § 6-220(c), by re-lettering subsequent sections, and by correcting a reference in re-lettered section (g), as follows:

Rule 4-242. PLEAS

(a) Permitted Pleas

A defendant may plead not guilty, guilty, or, with the consent of the court, nolo contendere. In addition to any of these pleas, the defendant may enter a plea of not criminally responsible by reason of insanity.

Committee note: It has become common in some courts for defendants to enter a plea of not guilty but, in lieu of a normal trial, to proceed either on an agreed statement of ultimate fact to be read into the record or on a statement of proffered evidence to which the defendant stipulates, the purpose being to avoid the need for the formal presentation of evidence but to allow the defendant to argue the sufficiency of the agreed facts or evidence and to appeal from a judgment of conviction. That kind of procedure is permissible only if there is no material dispute in the statement of facts or evidence. See *Bishop v. State*, 417 Md. 1 (2010); *Harrison v. State*, 382 Md. 477 (2004); *Morris v. State*, 418 Md. 194 (2011). Parties to a criminal action in a circuit court who seek to avoid a formal trial but to allow the defendant to appeal from specific adverse rulings are encouraged to proceed by way of a conditional plea of guilty pursuant to section (d) of this Rule, to the extent that section is applicable.

(b) Method of Pleading

(1) Manner

A defendant may plead not guilty personally or by counsel on the record in open court or in writing. A defendant may plead guilty or nolo contendere personally on the record in open court, except that a corporate defendant may plead guilty or nolo contendere by counsel or a corporate officer. A defendant may enter a plea of

not criminally responsible by reason of insanity personally or by counsel and the plea shall be in writing.

(2) Time in the District Court

In District Court the defendant shall initially plead at or before the time the action is called for trial.

(3) Time in Circuit Court

In circuit court the defendant shall initially plead within 15 days after the earlier of the appearance of counsel or the first appearance of the defendant before the circuit court pursuant to Rule 4-213 (c). If a motion, demand for particulars, or other paper is filed that requires a ruling by the court or compliance by a party before the defendant pleads, the time for pleading shall be extended, without special order, to 15 days after the ruling by the court or the compliance by a party. A plea of not criminally responsible by reason of insanity shall be entered at the time the defendant initially pleads, unless good cause is shown.

(4) Failure or Refusal to Plead

If the defendant fails or refuses to plead as required by this section, the clerk or the court shall enter a plea of not guilty.

Cross reference: See *Treece v. State*, 313 Md. 665 (1988), concerning the right of a defendant to decide whether to interpose the defense of insanity.

(c) Plea of Guilty

The court may not accept a plea of guilty, including a conditional plea of guilty, until after an examination of the defendant on the record in open court conducted by the court, the State's Attorney, the attorney for the defendant, or any combination thereof the court determines and announces on the record that (1) the

defendant is pleading voluntarily, with understanding of the nature of the charge and the consequences of the plea; and (2) there is a factual basis for the plea. In addition, before accepting the plea, the court shall comply with section ~~(f)~~(g) of this Rule. The court may accept the plea of guilty even though the defendant does not admit guilt. Upon refusal to accept a plea of guilty, the court shall enter a plea of not guilty.

(d) Conditional Plea of Guilty

(1) Scope of Section

This section applies only to an offense charged by indictment or criminal information and set for trial in a circuit court or that is scheduled for trial in a circuit court pursuant to a prayer for jury trial entered in the District Court.

Committee note: Section (d) of this Rule does not apply to appeals from the District Court.

(2) Entry of Plea; Requirements

With the consent of the court and the State, a defendant may enter a conditional plea of guilty. The plea shall be in writing and, as part of it, the defendant may reserve the right to appeal one or more issues specified in the plea that (A) were raised by and determined adversely to the defendant, and, (B) if determined in the defendant's favor would have been dispositive of the case. The right to appeal under this subsection is limited to those pretrial issues litigated in the circuit court and set forth in writing in the plea.

Committee note: This Rule does not affect any right to file an application for leave to appeal under Code, Courts Article, § 12-302 (e) (2).

(3) Withdrawal of Plea

A defendant who prevails on appeal with respect to an issue reserved in the plea may withdraw the plea.

Cross reference: Code, Courts Article, § 12-302.

(e) Plea of Nolo Contendere

A defendant may plead nolo contendere only with the consent of court. The court may require the defendant or counsel to provide information it deems necessary to enable it to determine whether or not it will consent. The court may not accept the plea until after an examination of the defendant on the record in open court conducted by the court, the State's Attorney, the attorney for the defendant, or any combination thereof, the court determines and announces on the record that the defendant is pleading voluntarily with understanding of the nature of the charge and the consequences of the plea. In addition, before accepting the plea, the court shall comply with section ~~(f)~~ (g) of this Rule. Following the acceptance of a plea of nolo contendere, the court shall proceed to disposition as on a plea of guilty, but without finding a verdict of guilty. If the court refuses to accept a plea of nolo contendere, it shall call upon the defendant to plead anew.

(f) Plea of Not Guilty with Agreement Entered under Code, Criminal Procedure Article, § 6-220(c)

(1) Entry of Plea; Requirements for Agreement

With the consent of the State, a defendant may enter a plea of not guilty coupled with an agreement entered into under Code, Criminal Procedure Article, § 6-220(c). The agreement shall (A) comply with the requirements of Code, Criminal Procedure Article, § 6-220(c)(3), (B) be consented to in writing by the defendant, and (C) be

placed on the record at the time the plea is entered.

(2) Required Findings on the Record

The court may not accept the plea until, after an examination of the defendant on the record in open court conducted by the court, the State's Attorney, the attorney for the defendant, or any combination thereof, the court determines and announces on the record that (A) the defendant is pleading voluntarily with understanding of the nature of the charge and the consequences of the plea and (B) that the best interest of the defendant and the public welfare would be served by entry of the plea and agreement.

~~(f)~~ (g) Collateral Consequences of Certain Pleas

Before the court accepts a plea of not guilty on an agreed statement of facts or on stipulated evidence, a plea of guilty, a conditional plea of guilty, or a plea of nolo contendere, the court, the State's Attorney, the attorney for the defendant, or any combination thereof shall advise the defendant (1) that by entering the plea, if the defendant is not a United States citizen, the defendant may face additional consequences of deportation, detention, or ineligibility for citizenship, (2) that by entering a plea to the offenses set out in Code, Criminal Procedure Article, § 11-701, the defendant will have to register with the defendant's supervising authority as defined in Code, Criminal Procedure Article, § 11-701 ~~(p)~~ (n), and (3) that the defendant should consult with defense counsel if the defendant is represented and needs additional information concerning the potential consequences of the plea. The omission of advice concerning the collateral consequences of a plea does not itself mandate that the plea be declared invalid.

Committee note: In determining whether to accept the plea, the court should not question defendants about their citizenship or immigration status. Rather, the court should ensure that all defendants are advised in accordance with this section.

Cross reference: For the obligation of the defendant's attorney to correctly advise the defendant about the potential immigration consequences of a plea, see *Padilla v. Kentucky*, 559 U.S.356 (2010) and *State v. Prado*, 448 Md. 664 (2016).

~~(g)~~ (h) Plea to a Degree

A defendant may plead not guilty to one degree and plead guilty to another degree of an offense which, by law, may be divided into degrees.

~~(h)~~ (i) Withdrawal of Plea

At any time before sentencing, the court may permit a defendant to withdraw a plea of guilty, a conditional plea of guilty, or a plea of nolo contendere when the withdrawal serves the interest of justice. After the imposition of sentence, on motion of a defendant filed within ten days, the court may set aside the judgment and permit the defendant to withdraw a plea of guilty, a conditional plea of guilty, or a plea of nolo contendere if the defendant establishes that the provisions of section (c), (d), or (e) of this Rule were not complied with or there was a violation of a plea agreement entered into pursuant to Rule 4-243. The court shall hold a hearing on any timely motion to withdraw a plea of guilty, a conditional plea of guilty, or a plea of nolo contendere.

Committee note: The entry of a plea waives objections to venue and may waive technical defects in the charging document. See, e.g., Rule 4-202 (b) and *Kisner v. State*, 209 Md. 524 (1956).

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 731 a and M.D.R. 731 a.

Section (b)

Subsection (1) is derived from former Rule 731 b 1 and M.D.R. 731 b 1.

Subsection (2) is new.

Subsection (3) is derived from former Rule 731 b 2.

Subsection (4) is derived from former Rule 731 b 3 and M.D.R. 731 b 2.

Section (c) is derived from former Rule 731 c and M.D.R. 731 c.

Section (d) is new.

Section (d) is new.

Section (e) is derived from former Rule 731 d and M.D.R. 731 d.

Section (f) is new.

Section (g) is new.

Section ~~(g)~~(h) is derived from former Rule 731 e.

Section ~~(h)~~(i) is derived from former Rule 731 f and M.D.R. 731 e.

Rule 4-242 was accompanied by the following Reporter's

note:

The Criminal Rules Subcommittee recently considered Chapters 710/711, 2023 Laws of Maryland (HB 193/SB 211). The new legislation added new section (c) to Code, Criminal Procedure Article, § 6-220 providing that, if a defendant pleads not guilty, the court may place a defendant on probation before judgment if the defendant enters into an agreement with the State's consent and the court finds facts justifying a finding of guilt beyond a reasonable

doubt. New subsection (c)(1) clarifies, "The consent of a defendant to and the receipt by the defendant of a disposition under this paragraph shall be considered a probation before judgment for all other purposes under State law."

§ 6-220 creates a new type of not guilty plea that is coupled with an appropriate agreement with the State, requires certain findings, and must be placed on the record. Accordingly, proposed new section (f) sets forth the requirements for the entry of a not guilty plea coupled with an agreement pursuant to § 6-220.

Subsequent sections are re-lettered accordingly and internal references are updated. A reference to Code, Criminal Procedure Article, § 11-701 is corrected in re-lettered section (g).

Mr. Marcus explained that the amendments to Rule 4-242 implement a statute (Chapters 710/711, 2023 Laws of Maryland (HB 193/SB 211)) which amended Code, Criminal Procedure Article, § 6-220 to create a new type of probation before judgment plea. He said that probation before judgment is a disposition in Maryland that is not a conviction but is not always recognized that way in other courts. He said that when an individual has a charge resulting in a probation before judgment, there are complications when that individual is asked about being charged with or pleading guilty to a crime. He informed the Committee that the legislature recognized that the federal government, particularly in immigration cases, did not distinguish between a

probation before judgement and a conviction. The new type of agreement created by the statute allows the court to place an individual on probation without a guilty plea or finding of guilt. The court merely determines that sufficient facts exist to justify a finding of guilt. Mr. Marcus said that the proposed amendments to Rule 4-242 incorporate the statute by adding a new section governing a plea of not guilty with agreement under the statute.

Mr. Zollicoffer asked if at some point the judge still finds the individual guilty. Mr. Marcus responded that the defendant pleads not guilty and the court imposes probation, but there is never an admission of guilt or an entry of a guilty verdict. Judge Chen said that the new statute allows the court to enter the conviction later if the individual violates the terms of probation, but at the time of the probation order, there is no conviction to trigger collateral consequences. Judge Wilson added that the disposition is not docketed as a conviction. Chief Judge Morrissey informed the Committee that the Judiciary developed a bench card for judges before the statute went into effect on October 1. He noted that the Judiciary worked with the legislature to make sure that the bill created a procedure that the Judiciary could implement. He also informed the Committee that judges already have used the statute and entered these types of pleas.

Judge Ballou-Watts asked if the Rule is clear that the court must agree to enter this type of plea. Judge Chen responded that the court must be party to the agreement. Mr. Marcus said that if a judge does not approve of this type of agreement, the judge cannot be forced to approve one. Judge Ballou-Watts responded that she is aware of some judges who do not want to hear requests for this plea type, and those cases are assigned to another judge for consideration.

Mr. Marcus said that the statute creates a new tool which could be useful in situations other than those with collateral immigration consequences, although that was the example used by the legislature. Chief Judge Morrissey agreed that the statute provides a tool for the court to provide justice. Mr. Zavin said that the statute was modeled after similar legislation in New York and Virginia. He added that the consequences of violating the conditions of probation are the same as a normal probation before judgment.

There being no motion to amend or reject the proposed amendments to Rule 4-242, they were approved as presented.

Agenda Item 4. Consideration of proposed Rules changes recommended by the Probate/Fiduciary Subcommittee.

Mr. Laws presented Rule 6-108, Register of Wills -
Acceptance of Papers, for consideration.

HANDOUT

MARYLAND RULES OF PROCEDURE
TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES
CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 6-108 by adding new section (c) pertaining to the criteria to register and terminate a domestic partnership with a register of wills, and by making stylistic changes, as follows:

Rule 6-108. REGISTER OF WILLS--ACCEPTANCE OF PAPERS

(a) Generally

Except as otherwise provided in section (b) of this Rule, a register of wills shall not refuse to accept for filing any paper on the ground that it is not in the form mandated by a Rule in this Title.

(b) Papers Requiring Proof of Service

The register shall not accept for filing any petition or paper requiring service unless it is accompanied by (1) a signed certificate showing the date and manner of service as prescribed in Rule 6-125 or (2) a signed statement that, for reasons set forth in the statement, there is no person entitled to service. A certificate of service is prima facie proof of service.

(c) Papers Regarding Domestic Partnerships

(1) Declaration of Domestic Partnership

The register shall accept for filing any declaration of domestic partnership that complies with the requirements set forth in Code, Estates and Trust Article § 2-214(a)(2).

(2) Declaration of Termination

The register shall accept for filing any declaration of termination that complies with the requirements set forth in Estates and Trust Article § 2-214(e).

~~(e)~~ (d) Photocopies; Facsimile Copies

A photocopy or facsimile copy of a pleading or paper except a will or codicil, once filed with the court, shall be treated as an original for court purposes. The attorney or party filing the copy shall retain the original from which the filed copy was made for production to the court or register upon the request of the court, register, or any party. No filing of a pleading or paper may be made by transmitting it directly to the court or register by electronic transmission, except pursuant to an electronic system approved under Rule 16-203.

Rule 6-108 was accompanied by the following Reporter's note:

Chapter 647, 2023 Laws of Maryland (SB 792) modified certain provisions of the Estates and Trust Article so that registered domestic partnerships, in certain circumstances, have the same legal effect as marriage.

The definition of "domestic partnership" is tied to the definition contained in Code, Health-General Article, § 6-101(a), which states that a domestic partnership means "a relationship between

two individuals who: (1) are at least 18 years old; (2) are not related to each other by blood or marriage within four degrees of sanguinity under civil law rule; (3) are not married or in a civil union or domestic partnership with another individual; and (4) agree to be in a relationship of mutual interdependence in which each individual contributes to the maintenance and support of the other individual and the relationship, even if both individuals are not required to contribute equally to the relationship.

Chapter 647 establishes the requirements necessary for a domestic partnership to be registered with a register of wills and establishes the criteria necessary for a registered domestic partnership to be terminated.

To bring the Rules into harmony with the statutory revisions mentioned above, the Probate and Fiduciary Subcommittee proposes adding new section (c) to this Rule. Subsection (c)(1) covers the registration of eligible domestic partnerships. Subsection (c)(2) covers the termination of registered domestic partnerships. Stylistic changes are also proposed to this Rule.

Conforming amendments are proposed to Rules 6-122, 6-202, 6-316, 10-112, and 16-912.

Mr. Laws informed the Committee that this "handout" version of Rule 6-108 was circulated prior to the meeting. He explained that the proposed amendments to Rule 6-108 implement a statute that establishes that the Register of Wills is the repository for registered domestic partnership filings (Ch. 647, 2023 Laws of Maryland (SB 792)). He said that a registered domestic

partnership has most of the attributes of a marriage except that a domestic partner cannot opt to take the elective share of an estate. He informed the Committee that Rule 6-108 (c) requires the Register to accept those papers. He also pointed out that the reference to the Estates and Trusts Article has typos in section (c) and the Reporter's note.

Mr. Laws said that Rule 6-108 requires a motion to adopt the handout version. A motion to approve the handout version of Rule 6-108, subject to correction of the typos pointed out by Mr. Laws, was made and seconded. By consensus, the Committee approved the Rule as amended.

Mr. Laws presented Rule 6-109, Other Jurisdictions - Laws of Domestic Partnership, for consideration.

HANDOUT

MARYLAND RULES OF PROCEDURE
TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES
CHAPTER 100 - GENERAL PROVISIONS

ADD new Rule 6-109, as follows:

Rule 6-109. OTHER JURISDICTIONS - LAWS OF
DOMESTIC PARTNERSHIP

(a) Generally

A relationship established under the laws of domestic partnership of another

jurisdiction shall be recognized as a registered domestic partnership in the State if the laws establishing the relationship are substantially similar to the requirements of Code, Estates and Trust Article, § 2-214.

(b) Certified List

With the advice and assistance of the Attorney General, the registers of wills shall establish, update, and maintain a statewide certified list of jurisdictions with laws of domestic partnership that are substantially similar to the requirements of Code, Estates and Trust Article, § 2-214.

Cross reference: See Code, Estates and Trusts Article, § 2-214(h) for the requirements for recognition in Maryland of a relationship other than marriage established under the laws of another jurisdiction.

Rule 6-109 was accompanied by the following Reporter's note:

Chapter 647, 2023 Laws of Maryland (SB 792) modified certain provisions of the Estates and Trust Article so that registered domestic partnerships, in certain circumstances, have the same legal effect as marriage.

The statute requires, in part, that "the Register" establish, update, and maintain a certified list of jurisdictions with laws of domestic partnership that are substantially similar to Maryland's so that those partnerships may be registered and recognized here. The Probate/Fiduciary Subcommittee was concerned that this could result in 24 different lists of "substantially similar" laws from other states, as established by each Register. The Subcommittee was informed that the

Registers intend to maintain a uniform list through the Register of Wills Association in consultation with the Maryland Office of the Attorney General. To accomplish this, the Subcommittee proposes adding new Rule 6-109 to require the majority of Registers to collaborate to maintain the single list, with the advice and assistance of the Attorney General.

Mr. Laws explained that proposed new Rule 6-109 also was distributed to the Committee as a "handout." It addresses a provision in the registered domestic partnership statute that requires the Register of Wills to maintain a list of jurisdictions with similar laws governing domestic partnerships so that those relationships can be recognized in Maryland. Mr. Laws informed the Committee that while the statute refers to "the Register," the Probate/Fiduciary Subcommittee proposes requiring all of the independently elected registers to act as a group to maintain a statewide central list of other state laws with the advice of the Attorney General's Office. He noted that this comports with the existing practice of the Register of Wills Association to ensure consistency across the state.

Mr. Laws moved to adopt the handout of new Rule 6-109. The motion was seconded and approved by consensus.

Mr. Zollicoffer asked what happens if a registered domestic partnership statute from another state is deemed not substantially similar to Maryland's law. Mr. Laws responded

that a party to a domestic partnership domiciled in Maryland would have to register here to have the partnership recognized in those circumstances. He said that a problem could arise only if a member of a partnership dies here and the partnership was formed under the laws of another state that are not recognized by the Maryland registers. Assistant Reporter Cobun pointed out that the statute instructs the registers to construe the idea of "substantially similar" laws broadly.

Mr. Laws presented Rule 6-122, Petitions; Rule 6-202, List of Interested Persons; Rule 6-316, List of Interested Persons; Rule 10-112, Petition for Guardianship of Alleged Disabled Person; Rule 16-912, Access to Notice, Special Judicial Unit, and License Records; and Rule 20-101, Definitions.

MARYLAND RULES OF PROCEDURE
TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES
CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 6-122 by adding the language "or registered domestic partner" following each instance of the word "spouse" in section a, as follows:

Rule 6-122. PETITIONS

(a) Initial Petition

The Initial Petition shall be substantially in the following form:

IN THE ORPHANS' COURT FOR

(OR)

BEFORE THE REGISTER
OF WILLS FOR

_____, MARYLAND

IN THE ESTATE OF:

ESTATE NO:

FOR:

REGULAR
ESTATE
PETITION FOR
ADMINISTRATION

Estate value
in excess of
\$50,000. (If
spouse or
registered
domestic
partner is
sole heir or
legatee,
\$100,000.)
Complete and
attach
Schedule A.

SMALL ESTATE
PETITION FOR
ADMINISTRATION

Estate value
of \$50,000 or
less. (If
spouse or
registered
domestic
partner is
sole heir or
legatee,
\$100,000.)
Complete and
attach
Schedule B.

WILL OF NO
ESTATE

Complete items
2 and 9

LIMITED
ORDERS

Complete item
2 and attach
Schedule C

NOTE: For the purpose of computing whether an estate qualifies as a small estate, value is determined by the fair market value of property less debts of record secured by the property as of the date of death, to the extent that insurance benefits are not payable to the lien holder or secured party for the secured debt. See Code, Estates and Trusts Article, § 5-601 (d).

The petition of:

Name

Address

Name

Address

Committee note: Code, Estates and Trusts Article, § 5-105 provides that letters of administration may not be granted to someone who has been convicted of certain serious crimes, unless the person shows good cause for the granting of letters.

8. I am not excluded otherwise by law from serving as a personal representative.

9. I have made a diligent search for the decedent's will and to the best of my knowledge:

none exists; or

the will dated _____ (including codicils, if any, dated _____) accompanying this petition is the last will and it came into my hands in the following manner: _____

_____ and the names and last known addresses of the witnesses are: _____

10. Other proceedings, known to petitioner, regarding the decedent or the estate are as follows:

11. If appointed, I accept the duties of the office of personal representative and consent to personal jurisdiction in any action brought in this State against me as personal representative or arising out of the duties of the office of personal representative.

WHEREFORE, I request appointment as personal representative of the decedent's estate and the following relief as indicated:

that the will and codicils, if any, be admitted to administrative probate;

that the will and codicils, if any, be admitted to judicial probate;

that the will and codicils, if any, be filed only;

that only a limited order be issued;

that the following additional relief be granted: _____

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

_____ Address	_____ Petitioner	_____ Date
_____ Telephone Number	_____ Petitioner	_____ Date
_____ Facsimile Number	_____ Telephone Number (optional)	
_____ Email Address		

IN THE ORPHANS' COURT FOR

(OR)

BEFORE THE REGISTER
OF WILLS FOR

_____, MARYLAND

IN THE ESTATE OF:

ESTATE NO:

SCHEDULE--A
Regular Estate

Estimated Value of Estate and Unsecured Debts

Personal property (approximate value).....	\$	_____
Real property (approximate value)	\$	_____
Value of property subject to:		
(a) Direct Inheritance Tax of _____ %	\$	_____
(b) Collateral Inheritance Tax of _____ %	\$	_____
Unsecured Debts (approximate amount)	\$	_____

_____	_____	_____
Attorney	Petitioner	Date
_____	_____	_____
_____	Petitioner	Date
Address		
_____	_____	_____
Telephone Number	Petitioner	Date
_____	_____	_____
Facsimile Number	Telephone Number (optional)	

Email Address		

(FOR REGISTER'S USE)

Safekeeping Wills _____	Custody Wills _____
Bond Set \$ _____	Deputy _____

IN THE ORPHANS' COURT FOR

(OR)

BEFORE THE REGISTER
OF WILLS FOR

_____, MARYLAND

IN THE ESTATE OF:

ESTATE NO:

SCHEDULE--B

Small Estate--Assets and Debts of the Decedent

1. I have made a diligent search to discover all property and debts of the decedent and set forth below are:

(a) A listing of all real and personal property owned by the decedent, individually or as tenant in common, and of any other property to which the decedent or estate would be entitled, including descriptions, values, and how the values were determined:

(b) A listing of all creditors and claimants and the amounts claimed, including secured, contingent and disputed claims:

2. Allowable funeral expenses are \$ _____; statutory family allowances are \$ _____; and expenses of administration claimed are \$ _____.

3. Attached is a List of Interested Persons.

4. After the time for filing claims has expired, subject to the statutory order of priorities, and subject to the resolution of disputed claims by the parties or the court, I shall (a) pay all proper claims made pursuant to Code, Estates and Trusts Article, § 8-104 in the order of priority set forth in Code, Estates and Trusts Article, § 8-105, expenses, and allowances not previously paid; (b) if necessary, sell property of the estate in order to do so; and (c) distribute the remaining assets of the estate in accordance with the will or, if none, with the intestacy laws of this State.

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

_____ Attorney	_____ Petitioner	_____ Date
_____ Address	_____ Petitioner	_____ Date
_____ Telephone Number	_____ Petitioner	_____ Date
_____ Facsimile Number	_____ Telephone Number (optional)	
_____ Email Address		

IN THE ORPHANS' COURT FOR

(OR)

BEFORE THE REGISTER
OF WILLS FOR

_____, MARYLAND

IN THE ESTATE OF:

ESTATE NO:

SCHEDULE--C
Request for Limited Order

- To Locate Assets
- To Locate Will

1. I am entitled to the issuance of a limited order because
I am:

- a nominated personal representative or
- a person interested in the proceedings by reason of

2. The reasons(s) a limited order should be granted are:

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

information, and belief. I further acknowledge that this order may not be used to transfer assets.

_____ Attorney	_____ Petitioner	_____ Date
_____ Address	_____ Petitioner	_____ Date
_____ Telephone Number	_____ Petitioner	_____ Date
_____ Facsimile Number	_____ Telephone Number (optional)	
_____ Email Address		

(b) Other Petitions

(1) Generally

Except as otherwise provided by the rules in this Title or permitted by the court, and unless made during a hearing or trial, a petition shall be in writing, shall set forth the relief or order sought, shall state the legal or factual basis for the relief requested, and shall be filed with the Register of Wills. The petitioner may serve on any interested person and shall serve on the personal representative and such persons as the court may direct a copy of the petition, together with a notice informing the person served of the right to file a response and the time for filing it.

(2) Response

Any response to the petition shall be filed within 20 days after service or within such shorter time as may be fixed by the court for good cause shown. A copy of the response shall be served on the petitioner and the personal representative.

(3) Order of Court

The court shall rule on the petition and enter an appropriate order.

Cross reference: Code, Estates and Trusts Article, §§ 2-102 (c), 2-105, 5-201 through 5-206, and 7-402.

(c) Limited Order to Locate Assets

Upon the filing of a verified petition pursuant to Rule 6-122 (a), the Orphans' Court may issue a limited order to search for assets titled in the sole name of a decedent. The petition shall contain the name, address, and date of death of the decedent and a statement as to why the limited order is necessary. The limited order to locate assets shall be in the following form:

IN THE ORPHANS' COURT FOR

(OR)

BEFORE THE REGISTER
OF WILLS FOR

_____, MARYLAND

IN THE ESTATE OF:

LIMITED ORDER NO.:

LIMITED ORDER TO LOCATE ASSETS

Upon the foregoing petition by a person interested in the proceedings and pursuant to Rule 6-122 (c), it is this _____ day of _____, _____ by the Orphans' Court for _____ (county), Maryland, ORDERED that:

- 1. The following institutions shall disclose to _____ the assets, and the values thereof, (Name of petitioner)

titled in the sole name of the above decedent:

(Name of financial institution)

(Name of financial institution)

(Name of financial institution)

(Name of financial institution)

(Name of financial institution)

(Name of financial institution)

2. THIS ORDER MAY NOT BE USED TO TRANSFER ASSETS.
See Maryland Rule 6-122 (c).

(d) Limited Order to Locate Will

Upon the filing of a verified petition pursuant to Rule 6-122 (a), the Orphans' Court may issue a limited order to a financial institution to enter the safe deposit box of a decedent in the presence of the Register of Wills or the Register's authorized deputy for the sole purpose of locating the decedent's will and, if it is located, to deliver it to the Register of Wills or the authorized deputy. The limited order to locate a will shall be in the following form:

IN THE ORPHANS' COURT FOR

(OR)

BEFORE THE REGISTER
OF WILLS FOR

_____, MARYLAND

IN THE ESTATE OF:

LIMITED ORDER NO.:

LIMITED ORDER TO LOCATE WILL

Upon the foregoing Petition and pursuant to Rule 6-122 (d), it is this _____ day of _____ (month), _____ (year) by the Orphans' Court for _____ (County), Maryland, ORDERED that:

_____, located at
(Name of financial institution)

(Address)

enter the safe deposit box titled in the sole name of _____, in the presence of the Register

(Name of decedent)
of Wills _____ OR the Register's authorized
deputy _____ for the sole
purpose of locating the decedent's will and, if the will is
located, deliver it to the Register of Wills OR the Register's
authorized deputy.

JUDGE

JUDGE

JUDGE

See Maryland Rule 6-122 (d).

Committee note: This procedure is not exclusive. Banks may also
rely on the procedure set forth in Code, Financial Institutions
Article, 12-603.

Rule 6-122 was accompanied by the following Reporter's
note:

See the Reporter's note for Rule 6-108.

MARYLAND RULES OF PROCEDURE
TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES
CHAPTER 200 - SMALL ESTATE

AMEND Rule 6-202 by adding a reference
to registered domestic partnerships to the
list of interested persons in paragraph 1 of
the instructions, as follows:

Rule 6-202. LIST OF INTERESTED PERSONS

A list of interested persons shall be
filed in the following form:

[CAPTION]

LIST OF INTERESTED PERSONS

Name (and age if under 18 years)	Last Known Address including Zip code	Specify: Heir/Legatee/ Personal Representative	Relationship to Decedent
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

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

Petitioner/Personal Representative

Attorney

Address

Telephone Number

Facsimile Number

E-mail Address

- Instructions:
- Interested persons include decedent's heirs (surviving spouse, registered domestic partner, children, and other persons who would inherit if there were no will) and, if decedent died with a will, the personal representative named in the will and all legatees (persons who inherit under the will). All heirs must be listed even if decedent dies with a will.
 - This list must be filed (a) within 20 days after appointment of a personal representative under administrative probate or (b) at the time of filing a Petition for Judicial Probate or a Petition for Administration of a Small Estate.

Cross reference: Code, Estates and Trusts Article, §§ 5-403(a), 5-607, and 7-104.

Rule 6-202 was accompanied by the following Reporter's note:

See Reporter's note for Rule 6-108.

MARYLAND RULES OF PROCEDURE
TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES
CHAPTER 300 - OPENING ESTATES

AMEND Rule 6-316 by adding a reference to registered domestic partnerships to the list of interested persons in paragraph 1 of the instructions, as follows:

Rule 6-316. LIST OF INTERESTED PERSONS

A list of interested persons shall be filed in the following form:

[CAPTION]

LIST OF INTERESTED PERSONS

Name (and age if under 18 years)	Last Known Address including Zip code	Specify: Heir/Legatee/ Personal Representative	Relationship to Decedent
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

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

Petitioner/Personal Representative

Attorney

Address

Telephone Number

Facsimile Number

E-mail Address

Instructions:

1. Interested persons include decedent's heirs (surviving spouse, registered domestic partner, children, and other persons who would inherit if there were no will) and, if decedent dies with a will, the personal representative named in the will and all legatees (persons who inherit under the will). All heirs must be listed even if decedent died with a will.

2. This list must be filed (a) within 20 days after appointment of a personal representative under administrative probate or (b) at the time of filing a Petition for Judicial Probate or a Petition for Administration of a Small Estate.

Cross reference: Code, Estates and Trusts Article, §§ 5-403(a), 5-607, and 7-104.

Rule 6-316 was accompanied by the following Reporter's note:

See Reporter's note for Rule 6-108.

MARYLAND RULES OF PROCEDURE
TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES
CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 10-112 by adding a reference to registered domestic partnerships in paragraphs 8 and 8 B of the petition, as follows:

Rule 10-112. PETITION FOR GUARDIANSHIP OF ALLEGED DISABLED PERSON

A petition for guardianship of an alleged disabled person shall be substantially in the following form:

[CAPTION]

In the Matter of

In the Circuit Court for

(Name of Alleged
Disabled Individual)

(County)

(docket reference)

PETITION FOR GUARDIANSHIP OF ALLEGED DISABLED PERSON

INSTRUCTIONS

(1) Use this form of petition when a guardianship of an alleged disabled person, as defined in Code, Estates & Trusts Article, § 13-101(f) and Rule 10-103 (b) is sought.

(2) If the subject of the petition is a minor including a disabled minor, use the form petition set forth in Rule 10-111.

(3) If guardianship of more than one alleged disabled person is sought, a separate petition must be filed for each alleged disabled person.

(4) If the petition is to be filed in the Circuit Court for Baltimore City, use "Baltimore City" as the name of the county.

Guardianship of
Person

Guardianship of
Property

Guardianship of
Person and
Property

The petitioner, _____ (name), ____ (age), whose address is _____, and whose telephone number is _____, represents to the court that:

1. The alleged disabled person _____, age ____, born on the ____ day of _____ (month), _____ (year), a [] male or [] female resides at _____.

2. If the alleged disabled person does not reside in the county in which this petition is filed, state the place in this county where the alleged disabled person is currently located .

NOTE: For purposes of this Form, "county" includes Baltimore City.

3. The relationship of petitioner to the alleged disabled person is _____.

4. The alleged disabled person [] is a beneficiary of the Department of Veterans Affairs and the guardian may expect to receive benefits from that Department.

[] is not a beneficiary of the Department of veterans Affairs.

5. Complete Section 5 if the petitioner is asking the court to appoint the petitioner as the guardian.

(Check only one of the following boxes)

[] I have not been convicted of a crime listed in Code, Estates and Trusts Article, § 11-114.

[] I was convicted of such a crime, namely _____. The conviction occurred in ____ (year) in the _____ (name of court), but the following good cause exists for me to be appointed as guardian: _____.

6. Complete Section 6 if the petitioner is asking the court to appoint an individual other than the petitioner as the guardian.

6 a. Prospective Guardian of the Person (Complete Section 6 a if seeking guardianship of the person.)

The name of the prospective guardian of the person is _____ and that individual's age is _____. The relationship of that individual to the alleged disabled person is _____.

(Check only one of the following boxes)

[] _____ (Name of prospective guardian) has not been convicted of a crime listed in Code, Estates and Trusts Article, § 11-114.

[] _____ was convicted of such a crime, namely _____. The conviction occurred in ____ (year) in the _____ (Name of court), but the following good cause exists for the individual to be appointed as guardian: _____.

6 b. Prospective Guardian of the Property (Complete Section 6 b if the prospective guardian of the property is different

from the prospective guardian of the person or if guardianship of the person is not sought.)

The name of the prospective guardian of the property is _____ and that individual's age is _____. The relationship of that individual to the alleged disabled person is _____. (Check only one of the following boxes)

[] _____ (Name of prospective guardian) has not been convicted of a crime listed in Code, Estates and Trusts Article, § 11-114.

[] _____ was convicted of such a crime, namely _____. The conviction occurred in _____ (year) in the _____ (Name of court), but the following good cause exists for the individual to be appointed as guardian: _____.

7. If the alleged disabled person resides with petitioner, then state the name and address of any additional person on whom initial service shall be made: _____.

8. The following is a list of the names, addresses, telephone numbers, and e-mail addresses, if known of all interested persons (see Code, Estates and Trusts Article, § 13-101(k)):

	<u>Name</u>	<u>Address</u>	<u>Telephone Number</u>	<u>E-mail Address</u> (if known)
Person or Health Care Agent Designated in Writing by Alleged Disabled Person:	_____			
Spouse <u>or</u> Registered Domestic Partner:	_____			
Parents:	_____			
Adult Children:	_____			
Adult Grandchildren*:	_____			
Siblings*:	_____			

Any Other Heirs at
Law:

Guardian (If
appointed):

Any Person Holding
a Power of
Attorney of the
Alleged Disabled
Person:

Alleged Disabled
Person's Attorney:

A Supporter
Pursuant to a
Supported
Decision-Making
Agreement:

Any Other Person
Who Has Assumed
Responsibility for
the Alleged
Disabled Person:

Any Government
Agency Paying
Benefits to or for
the Alleged
Disabled Person:

Any Person Having
an Interest in the
Property of the
Alleged Disabled
Person:

All Other Persons
Exercising Control
over the Alleged
Disabled Person or
the Person's
Property:

A Person or Agency
Eligible to Serve
as Guardian of the
Person of the
Alleged Disabled
Person (Choose A
or B below):

A. Director of the
Local Area Agency
on Aging (if
Alleged Disabled
Person is Age 65
or over):

B. Local
Department of
Social Services
(if Alleged
Disabled Person is
Under Age 65):

* Note: Adult grandchildren and siblings need not be listed unless there is no spouse or registered domestic partner and there are no parents or adult children.

9. The names and addresses of the persons with whom the alleged disabled person resides or has resided over the past five years and the approximate dates of the alleged disabled person's residence with each person are as follows:

<u>Name</u>	<u>Address</u>	<u>Approximate Dates</u>
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10. A brief description of the alleged disability and how it affects the alleged disabled person's ability to function is as follows: _____.

11. (a) Guardianship of the Person is sought because _____ (Name of Alleged Disabled Person) cannot make or communicate responsible decisions concerning health care, food, clothing, or shelter, because of mental disability, disease, habitual drunkenness, addiction to drugs, or other addictions. State the relevant facts: _____.

(b) Describe less restrictive alternatives that have been attempted and have failed (see Code, Estates and Trusts Article, § 13-705 (b)): _____.

12. (a) Guardianship of the Property is sought because _____ (Name of Alleged Disabled Person) cannot manage

property and affairs effectively because of physical or mental disability, disease, habitual drunkenness, addiction to drugs or other addictions, imprisonment, compulsory hospitalization, detention by a foreign power, or disappearance. State the relevant facts:

(b) Describe less restrictive alternatives that have been attempted and have failed (see Code, Estates and Trusts Article, § 13-201):

13. If this Petition is for Guardianship of the Property, the following is the list of all the property in which the alleged disabled person has any interest including an absolute interest, a joint interest, or an interest less than absolute (e.g. trust, life estate):

<u>Property</u>	<u>Location</u>	<u>Value</u>	<u>Sole Owner,</u> <u>Joint</u> <u>Owner</u> <u>(specific</u> <u>type),</u> <u>Life Tenant,</u> <u>Trustee,</u> <u>Custodian,</u> <u>Agent, etc.</u>
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14. The petitioner's interest in the property of the alleged disabled person listed in 13. is .

15. If a guardian or conservator has been appointed for the alleged disabled person in another proceeding, the name and address of the guardian or conservator and the court that appointed the guardian or conservator are as follows:

<u>Name</u>	<u>Address</u>
<u>Court</u>	

16. All other proceedings regarding the alleged disabled person (including criminal) are as follows: .

17. All exhibits required by the Instructions below are attached.

WHEREFORE, Petitioner requests that this court issue an Order to direct all interested persons to show cause why a guardian of the [] person [] property [] person and property of the alleged disabled person should not be appointed, and (if applicable) _____ (Name of prospective guardian) should not be appointed as the guardian.

Attorney's Signature

Petitioner

Attorney's Name

If There is No Attorney:

Attorney's Address

Petitioner's Address

Attorney's Telephone Number

Petitioner's
Telephone Number

Attorney's E-mail Address

Petitioner's
E-mail Address

Petitioner solemnly affirms under the penalties of perjury that the contents of this document are true to the best of Petitioner's knowledge, information, and belief.

Petitioner's Name

Petitioner's Signature

ADDITIONAL INSTRUCTIONS

1. The required exhibits are as follows:
 - (a) A copy of any instrument nominating a guardian;
 - (b) A copy of any power of attorney (including a durable power of attorney for health care) which the alleged disabled person has given to someone;
 - (c) A copy of any written supported decision-making agreement (see Code, Estates and Trusts Article, § 18-107);
 - (d) Signed and verified certificates of two health care professionals who have examined or evaluated the alleged disabled person. The health care professionals shall be either two physicians licensed to practice medicine in the United States or one such licensed physician and one licensed psychologist, licensed certified social worker-clinical, or nurse practitioner . An examination or evaluation by at least

one of the health care professionals must have occurred within 21 days before the filing of the petition (see Code, Estates and Trusts Article, § 13-303 and § 1-102 (a) and (b)).

2. Attach additional sheets to answer all the information requested in this petition, if necessary.

Source: This Rule is new.

Rule 10-112 was accompanied by the following Reporter's note:

See Reporter's note for Rule 6-108.

MARYLAND RULES OF PROCEDURE
TITLE 16 - COURT ADMINISTRATION
CHAPTER 800 - ACCESS TO JUDICIAL RECORDS
DIVISION 2 - LIMITATIONS ON ACCESS

AMEND Rule 16-912 by adding new section (d) pertaining to domestic partnership records, and by making stylistic changes, as follows:

Rule 16-912. ACCESS TO NOTICE, SPECIAL JUDICIAL UNIT, ~~AND~~ LICENSE RECORDS, AND DOMESTIC PARTNERSHIP RECORDS

. . .

(c) License Records

(1) Business License Records

Except as otherwise provided by the Rules in this Chapter, the right to inspect business license records is governed by the

applicable provisions of Parts II, III, and IV of the PIA.

(2) Marriage License Records

A custodian shall deny inspection of the following records pertaining to a marriage license:

(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; and

(B) until the license becomes effective, the fact that an application for a license has been made, except to the parent or guardian of a minor party to be married who is 15 years old or older.

Cross reference: See Code, Family Law Article, § 2-301, which lists the conditions necessary to permit a minor between 15 and 17 years old to legally marry and Code, Family Law Article, § 2-402 (e), which permits disclosure to a parent or guardian of such a minor prior to the license becoming effective.

(d) Domestic Partnership Records

A custodian shall deny inspection of the portion of a declaration of domestic partnership or declaration of termination that contains the home address of either domestic partner.

Cross reference: See Code, Estates and Trust Article, § 2-214(d)(3).

Source: This Rule is derived from former Rule 16-905 (2019).

Rule 16-912 was accompanied by the following Reporter's note:

Chapter 647, 2023 Laws of Maryland (SB 792) modified certain provisions of the Estates and Trust Article so that registered domestic partnerships, in certain circumstances, have the same legal effect as marriage.

The definition of "domestic partnership" is tied to the definition contained in Code, Health-General Article, § 6-101(a), which states that a domestic partnership means "a relationship between two individuals who: (1) are at least 18 years old; (2) are not related to each other by blood or marriage within four degrees of sanguinity under civil law rule; (3) are not married or in a civil union or domestic partnership with another individual; and (4) agree to be in a relationship of mutual interdependence in which each individual contributes to the maintenance and support of the other individual and the relationship, even if both individuals are not required to contribute equally to the relationship.

Chapter 647 establishes the requirements necessary for a domestic partnership to be registered with a register of wills and establishes the criteria necessary for a registered domestic partnership to be terminated.

To bring the Rules into harmony with the statutory revisions mentioned above, the Probate and Fiduciary Subcommittee proposes adding new section (d) to this Rule. This section provides that the portions of registrations and terminations of registered domestic partnerships that contain the home address of either domestic partner are not open to public inspection. A cross reference to the relevant controlling statute is also proposed following this section.

MARYLAND RULES OF PROCEDURE
TITLE 20 - ELECTRONIC FILING AND CASE
MANAGEMENT
CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 20-101 by adding a reference to Howard County to the Committee note following section (x), as follows:

Rule 20-101. DEFINITIONS

. . .

(x) Trial Court

"Trial court" means the District Court of Maryland and a circuit court, even when the circuit court is acting in an appellate capacity.

Committee note: "Trial court" does not include an orphans' court, even when, as in Harford, Howard, and Montgomery Counties, a judge of the circuit court is sitting as a judge of the orphans' court.

Source: This Rule is new.

Rule 20-101 was accompanied by the following Reporter's note:

In Chapter 539, 2022 Laws of Maryland (HB 868), the General Assembly recently added Howard County to the list of counties in which the circuit court also sits as the orphan's court. As a result, the Committee note following section (x) is amended to reflect this change.

Mr. Laws informed the Committee that the remaining amendments in Item 4 are conforming ones. Rule 6-122, which contains the forms for petitions, and Rules 6-202 and 6-316, which contain the forms for the list of interested persons, are amended to add "or registered domestic partner" after "spouse." Rule 10-112, the guardianship petition form, is amended to add references to registered domestic partnerships. Rule 16-912 is amended to add a statement about public access to records of registered domestic partnerships in line with the requirements of the statute. Rule 20-101 is amended to conform to a statutory change that added Howard County to the list of counties in which the circuit court also sits as the orphan's court.

There being no motion to amend or reject the proposed conforming amendments to Rules 6-122, 6-202, 6-316, 10-112, 16-912, and 20-101, they were approved as presented.

Agenda Item 5. Consideration of proposed Rules changes recommended by the Family/Domestic Subcommittee.

The Chair informed the Subcommittee that Judge Bryant was not available and asked Assistant Reporter Cobun to present the Rules in Agenda Item 5.

Ms. Cobun presented Rule 9-103, Petition, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 9 - FAMILY LAW ACTIONS
CHAPTER 100 - ADOPTION; PRIVATE AGENCY
GUARDIANSHIP

AMEND Rule 9-103 by deleting from subsection (b) (1) (F) the requirement to attach a copy of advertisements used to locate the person to be adopted; by deleting the Committee note following subsection (b) (1) (F); by deleting subsection (b) (2) (C) (ii) and relocating it to new subsection (b) (1) (Q); by adding new subsection (b) (1) (R) pertaining to the Indian Child Welfare Act; by adding clarifying language pertaining to proof of live birth in subsection (b) (2) (A) (i); by adding new subsection (b) (2) (A) (iii) pertaining to certification of domestic partnership; by renumbering current subsection (b) (2) (A) (iii) as (b) (2) (A) (iv); by adding new subsection (b) (2) (A) (v) pertaining to a declaration of termination of domestic partnership; by adding new subsection (b) (2) (A) (vi) pertaining to a court order adjudicating parentage, establishing parental rights, or finding de facto parenthood; by renumbering current subsections (b) (2) (A) (iv) through (b) (2) (A) (xiv) as (b) (2) (A) (vii) through (b) (2) (A) (xvii), respectively; by adding a cross reference to Rule 20-106 (c) (3) following renumbered subsection (b) (2) (A) (viii); by adding a provision to renumbered subsection (b) (2) (A) (xii) pertaining to parental rights terminated by statute; by clarifying provisions pertaining

to the Interstate Compact on the Placement of Children in renumbered subsection (b) (2) (A) (xv); by updating the cross reference following subsection (b) (2) (A) (xv); by renumbering subsections (b) (2) (C) (iii) through (b) (2) (C) (viii) as (b) (2) (C) (ii) through (b) (2) (C) (vii), respectively; and by making stylistic changes, as follows:

Rule 9-103. PETITION

(a) Titling of Case

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

(b) Petition for Adoption

(1) Contents

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

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

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

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

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

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

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

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

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

(H) If the person to be adopted is a minor who has been transported from another state to this State for purposes of placement for adoption, a statement of whether there has been compliance with the Interstate Compact on the Placement of Children (ICPC);

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

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

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

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

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

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

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

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

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

(R) A statement as to whether the Federal Indian Child Welfare Act (25 U.S.C. § 1901) applies.

(2) Exhibits

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

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

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

(iii) A certified copy of the certification of domestic partnership of

each petitioner who is party to a registered domestic partnership;

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

(v) A certified copy of a declaration of termination of domestic partnership of each petitioner who had been a party to a registered domestic partnership;

(vi) A certified copy of any court order adjudicating parentage, establishing parental rights, or establishing an individual as a *de facto* parent;

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

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

Cross reference: See Rule 20-106 (c) (3) regarding electronic filing of certain original documents.

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

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

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

Cross reference: See Code, Family Law Article, §§ 5-331, 5-338, and 5-339 as to a Public Agency Adoption without Prior TPR; 5-

345, 5-350, and 5-351 as to a Public Agency Adoption after TPR; 5-3A-13, 5-3A-18, and 5-3A-19 as to a Private Agency Guardianship; 5-3A-35 as to a Private Agency Adoption; and 5-3B-20 and 5-3B-21 as to an Independent Adoption.

~~(ix)~~ (xii) If applicable, proof of (1) termination of parental rights by statute, or (2) guardianship or relinquishment of parental rights granted by an administrative, executive, or judicial body of a state or other jurisdiction; a certification that the guardianship or relinquishment was granted in compliance with the jurisdiction's laws; and any appropriate translation of documents required to allow the child to enter the United States;

Cross reference: See 7 Code, Family Law Article, §§ 5-305, 5-331, and 5-338 as to a Public Agency Adoption without Prior TPR; 5-305 and 5-345 as to a Public Agency Adoption after TPR; 5-3A-05, 5-3A-13, and 5-3A-18 as to a Private Agency Guardianship; 5-3A-05 as to a Private Agency Adoption; and 5-3B-04 and 5-3B-20 as to an Independent Adoption.

~~(x)~~ (xiii) If a parent of the person to be adopted cannot be identified or located, an affidavit of each petitioner and the other parent describing the attempts to identify and locate the unknown or missing parent;

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

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

Cross reference: See Code, Family Law Article, §§ 5-308 and 5-331 as to a Public Agency Adoption without Prior TPR; 5-308 and 5-345 as to a Public Agency Adoption after

TPR; 5-3A-08 as to a Private Agency Adoption; and 5-3B-07 as to an Independent Adoption.

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

Cross reference: See Code, Family Law Article, ~~§ 5-601~~ § 5-604 for ICPC procedures for sending a child into the state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(vii)~~(vi) A proposed judgment of adoption; and

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

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

. . .

Rule 9-103 was accompanied by the following Reporter's note:

Proposed amendments to Rule 9-103 are recommended by the Family/Domestic Subcommittee to clarify certain provisions and implement a recent statute.

Chapter 647, 2023 Laws of Maryland (SB 792), modified certain provisions of the Estates and Trusts Article so that registered domestic partnerships, in certain circumstances, have the same legal effect as marriage. The Probate/Fiduciary Subcommittee considered a series of amendments to the Rules in Title 6 to implement the statute as well as conforming amendments in other Titles. Several Rules in Title 9, Chapter 100 were identified as possible locations where an individual's involvement in a registered domestic partnership may be relevant.

Rule 9-103 (b) (1) (I) is amended to add a requirement that a petitioner state why, if applicable, a registered domestic partner of the petitioner is not joining the petition. Subsection (b) (2) is also amended to require that a petitioner attach copies of any certification of domestic partnership or declaration of termination of domestic partnership to the petition.

In addition, a group adoption practitioners consulted by staff provided suggestions for ways to update and clarify provisions in section (b).

Reference to copies of advertisements used to locate a prospective adoptee and the Committee note in subsection (b) (1) (F) are proposed for deletion. The Subcommittee was informed that adoptees are often located through online forums and other methods, not traditional advertisements, and the methods used can be described in the statement required by the subsection.

The statement as to the health of the child currently located in subsection (b) (2) (C) (ii) is proposed for deletion and relocation as new subsection (b) (1) (Q).

New subsection (b) (1) (R) adds a requires statement as to whether the Federal Indian Child Welfare Act applies to the case. The Title 9, Chapter 100 forms for adoption proceedings instruct the filer to notify the court if ICWA is applicable. Practitioners suggested a statement in the

petition would aid in compliance with the law.

Subsection (b) (2) (A) (i) is amended to clarify acceptable documentation for proof of birth.

Proposed new subsection (b) (2) (A) (vi) requires a copy of any court order adjudicating parentage, establishing parental rights, or establishing an individual as a *de facto* parent. There are several statutory and common law ways that parental rights may be established by court order. Practitioners suggested requiring documentation of that order in an adoption proceeding.

A cross reference following renumbered subsection (b) (2) (A) (viii) clarifies the electronic filing of certain original documents, such as certified copies. Practitioners informed the Subcommittee that there is confusion in some clerk's offices about when an original document must be provided to the court. Rule 20-106 (c) (3) permits "original public records, such as birth certificates, that contain an official seal" to be filed electronically.

An amendment to subsection (b) (2) (A) (xii) adds a new provision pertaining to termination of parental rights by statute. Practitioners informed the Subcommittee that other states sometimes have statutes that terminate parental rights without administrative or court order.

Subsection (b) (2) (A) (xv) is amended to clarify the Interstate Compact on the Placement of Children form that is required to be attached to the petition. Practitioners reported that there are inconsistent policies between clerk's offices which conflict with the law and what documents are available. The cross reference following the subsection is updated to cite more specifically to the

statutory provision governing sending a child into the state.

Ms. Cobun informed the Committee that the Rules in Item 5 contain a series of clarifications to the Rules in Title 9, Chapter 100 governing adoptions. Some are necessitated by the registered domestic partnership statute that Mr. Laws presented, some were prompted by a question from a clerk, and some were recommended by a group of practitioners consulted by staff.

Ms. Cobun said that Rule 9-103, which governs petitions, contains a series of amendments that shift or clarify what information and exhibits should be included. The Rule is amended in several places to add a reference to a registered domestic partner of a petitioner where there is a reference to a spouse of a petitioner, in light of the statute. The practitioners recommended this change to inform the court of individuals who are in the petitioner's household.

Ms. Cobun next explained that Rule 9-103 (b) (1) (F) and the Committee note following are amended to remove references to copies of advertisements used to locate the prospective adoptee. She informed the Committee that the adoption attorneys recommended this change because print advertisements are no longer a prominent tool to locate adoptees. Rather, she said, petitioners use agencies and online forums. The recommendation

was to add a requirement that the petitioner name any agencies used to locate the adoptee but delete the references to advertisements. She noted that the subsection currently requires the petition to state how the person to be adopted was located, and that requirement will continue to be in place. If an advertisement was used, it will be referenced in that statement.

Ms. Cobun drew the Committee's attention to page 5 of the Rule, which adds "a brief statement of the health of the child," a requirement relocated from later in the Rule. She said that the Committee received a comment from a clerk that because this item is an exhibit and not a piece of information the petitioner provides, it should not be in the petition subsection of the Rule. Ms. Cobun said that staff suggests amending the Rule to move this requirement to subsection (b) (2) (A), which lists exhibits that accompany a petition. She said that the goal of the amendment is to require the statement of the health of the adoptee to accompany the petition.

Ms. Cobun informed the Committee that additional amendments add a statement as to whether the Federal Indian Child Welfare Act applies to a proceeding, update terminology pertaining to birth certificates, add a reference to an individual adjudicated a *de facto* parent by a court, add a reference to parental rights

terminated by operation of law, and clarify certain requirements of the Interstate Compact on the Placement of Children.

The Chair called for a motion to approve the recommended amendment relocating the provision pertaining to a statement of the health of the child. A motion was made, seconded, and approved by consensus.

The Chair drew the Committee's attention to subsection (b) (1) (B), which refers to the sex of the child. He said that the Committee wants to be conscious of changes in terminology and noted that "sex" may be an outdated term. He said that he is not recommending any changes right now, but wanted to bring it to the Committee's attention. He informed the Committee that Ms. Cobun did a quick search prior to the start of the meeting and found other states which have expanded the terminology to use phrases like "sex or gender marker" when talking about birth certificates and identifying documents. He noted that the word "sex" is in other places in the Rules as well. Judge Brown asked how "gender marker" would be used. Ms. Cobun responded that the Health-General Article of the Maryland Code still uses "sex designation" when discussing birth certificates but "gender marker" is a common term when referring to identifying documents.

The Chair called for further discussion of Rule 9-103. There being no motion to further amend or reject the proposed amendments, the Rule was approved as amended.

Ms. Cobun presented Rule 9-109, Hearing on Merits, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 9 - FAMILY LAW ACTIONS
CHAPTER 100 - ADOPTION; PRIVATE AGENCY
GUARDIANSHIP

AMEND Rule 9-109 by clarifying the persons permitted to attend a hearing in subsection (b) (1), as follows:

Rule 9-109. HEARING ON MERITS

(a) Requirement

(1) Generally

The court shall hold a hearing and make findings on the record on the merits of a guardianship petition as provided by Code, Family Law Article:

(A) § 5-335 in a Public Agency Adoption without Prior TPR;

(B) § 5-347 in a Public Agency Adoption after TPR;

(C) § 5-3A-32 in a Private Agency Adoption; or

(D) § 5-3B-17 in an Independent Adoption.

(2) Guardianship

The court may hold a hearing on the merits of a consensual Private Agency Guardianship petition.

(b) Adoption

(1) Persons Present at Hearing

Unless excused for good cause shown, each petitioner and the person to be adopted shall be present at the hearing on the merits in an adoption action. The hearing shall be conducted out of the presence of all persons other than the petitioners, the person to be adopted, those persons whose presence is consented to by all petitioners, and those persons whose presence the court deems necessary or desirable. Notice of a hearing sent to an individual who consented to the adoption pursuant to Rule 9-102 does not entitle that individual to attend the hearing.

Committee note: Social policy against public disclosure of adoption proceedings compels all hearings to be as private as possible. This Rule leaves to the discretion of the trial court the extent to which this consideration must be relaxed in the interest of fair trial.

. . .

Rule 9-109 was accompanied by the following Reporter's

note:

Proposed amendments to Rule 9-109 (b)(1) clarify who is required or permitted to attend a final adoption hearing. A clerk's office contacted the Committee regarding the interplay between this provision and the language in various adoption forms permitting an individual consenting to an adoption to receive notice of hearings involving the child. The

clerk's office reported an incident where a parent who consented to an adoption appeared at a final adoption hearing and became upset when the court declined to let the parent attend.

Practitioners agreed that the notices sent to consenting individuals are confusing because they do not appear any different than notices sent to parties who are required to appear. In some cases, the petitioners do not object to the consenting parent attending the hearing and will informally arrange for the parent's presence.

Proposed amendments to subsection (b) (1) add "those persons whose presence is consented to by all petitioners" to the list of hearing attendees to allow for current practices. A sentence is also added to state that notice of a hearing sent to an individual who consented to the adoption does not entitle that individual to attend.

Conforming amendments are proposed to Forms 9-102.1 through 9-102.4 to alert the consenting individual of this provision.

Ms. Cobun informed the Committee that the proposed amendments to 9-109 address a question Ms. Lindsey received from a fellow clerk about the right of a parent to attend a final adoption hearing after receiving notice from the court. She said that a parent who consents to the adoption of a child can elect to continue to receive notice of certain events in the case, including hearings. The adoption practitioners informed the Subcommittee that in some instances, the adopting parents consent to the presence of the natural parent at the final

hearing because it can provide closure for those involved in the adoption. In other cases, the petitioners do not want the natural parent to be included. The proposed amendments would allow for instances where the petitioners consent to the presence of a birth parent and clarify that notice of a hearing does not confer a right to attend the hearing. She noted that additional amendments to the consent forms will clarify to the consenting parent that notice of a hearing does not entitle the parent to attend.

There being no motion to amend or reject the proposed amendments to Rule 9-109, they were approved as presented.

Ms. Cobun presented Rule 9-111, Judgment of Adoption or Guardianship, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 9 - FAMILY LAW ACTIONS
CHAPTER 100 - ADOPTION; PRIVATE AGENCY
GUARDIANSHIP

AMEND Rule 9-111 by incorporating a registered domestic partner to the provision in section (e), as follows:

Rule 9-111. JUDGMENT OF ADOPTION OR
GUARDIANSHIP

(a) Time

The court may not enter a judgment of adoption or guardianship before the time set forth in Code, Family Law Article:

(1) § 5-336 in a Public Agency Adoption without Prior TPR;

(2) § 5-348 in a Public Agency Adoption after TPR;

(3) § 5-3A-17 in a Private Agency Guardianship;

(4) § 5-3A-33 in a Private Agency Adoption; or

(5) § 5-3B-18 in an Independent Adoption.

(b) Information from Other Court

If a required consent indicates that any revocation of the consent must be filed in a court other than the trial court, the trial court may not enter a judgment of adoption or guardianship until it has obtained from the other court a copy of all papers filed in connection with the consent or an affidavit of the clerk of the other court that no papers were filed in connection with the consent.

(c) Supplemental Report

Before entering a judgment of adoption or guardianship, the court may require a supplemental written report from the investigating officer or agency.

(d) Change of Name

If the name of the person adopted is changed, the judgment of adoption shall state the new name of the person adopted and the names of the adopting parents.

(e) Spouse or Registered Domestic Partner of Parent

If the adopting parent is the spouse or registered domestic partner of a parent of the person to be adopted, the judgment shall specifically state whether and to what

extent the parental rights of the parent are affected.

(f) Judgments of Adoption—Recording

The clerk shall record each judgment of adoption entered by the juvenile court pursuant to Code, Family Law Article, § 5-352 in the adoption records of the circuit court for the county where the judgment was awarded.

Committee note: Any attempt to set aside a judgment of adoption by reason of a procedural defect shall be filed with the court within one year following entry of the judgment. See Code, Family Law Article, §§ 5-342 as to a Public Agency Adoption without Prior TPR; 5-353 as to a Public Agency Adoption after TPR; 5-3A-37 as to a Private Agency Adoption; and 5-3B-26 as to an Independent Adoption.

An adoptive relationship created by a judgment of adoption in another jurisdiction shall be given full faith and credit by the courts of this State. See Code, Family Law Article, §§ 5-305 as to a Public Agency Adoption without Prior TPR; 5-305 as to a Public Agency Adoption after TPR; 5-3A-05 as to a Private Agency Adoption; and 5-3B-04 as to an Independent Adoption.

For the legal effect of adoption of an adult, see Code, Family Law Article, §§ 5-341 as to a Public Agency Adoption without Prior TPR; 5-352 as to a Public Agency Adoption after TPR; 5-3A-36 as to a Private Agency Adoption; and 5-3B-25 as to an Independent Adoption.

Source: This Rule is derived in part from former Rule D79 and former Rule 11-501 (g) (2021) and is in part new.

Rule 9-111 was accompanied by the following Reporter's note:

Proposed amendments to Rule 9-111 (e) implement Chapter 647, 2023 Laws of Maryland (SB 792). The bill modified certain provisions of the Estates and Trusts Article so that registered domestic partnerships, in certain circumstances, have the same legal effect as marriage. The Family/Domestic Subcommittee recommends that if an adopting parent has a registered domestic partner, the court's judgment of adoption should state how the parent's rights are affected.

Ms. Cobun said that the proposed amendment to Rule 9-111 adds reference to a registered domestic partner where the Rule discusses the contents of a judgment for adoption.

There being no motion to amend or reject the proposed amendments to Rule 9-111, they were approved as presented.

Ms. Cobun presented Form 9-102.1, Consent of Parent to a Private Agency Guardianship; Form 9-102.2, Consent of Parent to a Public Agency Adoption without Prior Termination of Parental Rights; Form 9-102.3, Consent of Parent to an Independent Adoption with Termination of Parental Rights; Form 9-102.4, Consent of Parent to an Independent Adoption without Prior Termination of Parental Rights; Form 9-102.5, Consent of Child to a Public Agency Adoption or Private Agency Adoption; Form 9-102.6, Consent of Child to an Independent Adoption; Form 9-102.7, Attorney Affidavit as to Consent of a Parent to a Private Agency Guardianship; Form 9-102.8, Attorney Affidavit as to Consent of a Parent to Adoption; Form 9-102.9, Attorney

Affidavit as to Consent of a Child to Adoption; and Form 11-309, Consent by Parent to Guardianship, for consideration.

Ms. Cobun said that the remaining amendments to the Title 9 forms and one Title 11 form (Appendix 1) are conforming amendments related to the amendments to Rules 9-103, 9-109, and 9-111. There being no motion to amend or reject the proposed amendments to the forms, they were approved as presented.

Ms. Cobun expressed the Committee's gratitude to the adoption practitioners who assisted the Family/Domestic Subcommittee in its review of these Rules and forms.

Agenda Item 6. Consideration of proposed Rules changes recommended by the Process, Parties & Pleadings Subcommittee.

Ms. Cobun presented Rule 20-109, Access to Electronic Records in MDEC Actions, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 20 - ELECTRONIC FILING AND CASE
MANAGEMENT
CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 20-109 by adding a provision to section (b) pertaining to a designee of a corporation or business entity, as follows:

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

(a) Generally

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

(b) Parties and Attorneys of Record

Subject to any protective order issued by the court or other law, parties to and attorneys of record for a party in an MDEC action shall have full access, including remote access, to all case records in that action. In an action where a corporation or business entity established under the law of any state or federal law is a party, the corporation or business entity may designate in writing a registered user who shall have remote access to all case records in the action but not be permitted to file in the action. An attorney for a victim or victim's representative shall have access, including remote access, to case records as provided in Rule 1-326 (d).

(c) Judges and Judicial Appointees

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

(d) Clerks and Judicial Personnel

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

further define the scope of such access by clerks and judicial personnel.

(e) Judiciary Contractors

The State Court Administrator, by written directive, may allow appropriate access for Judiciary contractors from their respective work stations to judicial records to the extent that such access is necessary to the performance of their official duties. Before access under this section is granted to a contractor, the contractor shall sign a non-disclosure agreement on a form approved by the Chief Justice of the Supreme Court.

(f) Court-Designated ADR Practitioners

(1) Definition

In this section, "ADR practitioner" means an individual who conducts ADR under the Rules in Title 17, and includes a mediator designated pursuant to Rule 9-205.

(2) Access to Case Records

During the period of designation of a court-designated ADR practitioner in an MDEC action, and subject to any protective order issued by the court or other law, the ADR practitioner shall have full access, including remote access, to all case records in that action. In an action in the circuit court, the ADR practitioner shall file a notice of the designation with the clerk and, promptly upon completion of all services rendered pursuant to the designation, a notice that the designation is terminated. If not terminated earlier, the designation shall end when the case is closed.

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

(g) Public Access

(1) Access Through CaseSearch

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

(2) Unshielded Documents

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

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

(h) Department of Juvenile Services

Subject to any protective order issued by the court, a registered user authorized by the Department of Juvenile Services to act on its behalf shall have full access, including remote access, to all case records in an MDEC action to the extent the access is (1) authorized by Code, Courts Article, § 3-8A-27 and (2) necessary to the performance of the individual's official duties on behalf of the Department.

(i) Government Agencies and Officials

Nothing in this Rule precludes the Administrative Office of the Courts from providing remote electronic access to additional information contained in case records to government agencies and officials

(1) who are approved for such access by the Chief Justice of the Supreme Court, upon a recommendation by the State Court Administrator, and (2) when those agencies or officials seek such access solely in their official capacity, subject to such conditions regarding the dissemination of such information imposed by the Chief Justice.

(j) CASA Program

(1) Definition

In this section, "CASA program" means a Court-Appointed Special Advocate Program created pursuant to Code, Courts Article, § 3-830.

Committee note: CASA programs provide trained volunteers (1) to provide background information to the Juvenile Courts to aid them in making decisions in the child's best interest, and (2) to ensure that children who are the subject of proceedings within the jurisdiction of the court are provided appropriate case planning and services. See Code, Courts Article, §§ 3-830 and 3-8A-32. CASA programs are county-based. They are created in a county with the support of the Juvenile Court for that county. The overall CASA program is administered by the Administrative Office of the Courts, which may adopt rules governing the operation of the program, including supervision of the volunteers.

More than a dozen CASA programs have been created throughout the State, some of which serve the Juvenile Courts in more than one county. Upon an appointment to assist a child in a particular case, the director of the program assigns a volunteer attached to that program to provide that assistance. The confidentiality that applies to court records in juvenile cases does not prohibit review of a court record by a "Court-Appointed Special Advocate for the child" in a proceeding involving that child. See

Code, Courts Article, §§ 3-827(a)(2) and 3-8A-27(b)(2). The purpose of this section is to clarify how that access and ability to file reports may be accomplished through MDEC.

(2) Registered Users; Reports

Each CASA program shall inform the clerk of the circuit court for each county within its authorized service area in writing of the name of and contact information for not more than two staff persons who are registered users authorized by the program to have remote access and to file reports through MDEC on behalf of the program. Except as otherwise ordered by the court, only those registered users may file reports and have remote access to court records on behalf of the program. CASA program registered users must file reports through MDEC if the program's service area is located in an MDEC jurisdiction.

(3) Limitations; Access

The ability to file reports and have remote access to court records shall be limited to cases in which the CASA program or a volunteer on behalf of the program has been appointed by the court to provide service and is allowed only for the period during which service is being provided in that case pursuant to the order of appointment. Unless otherwise ordered by the court, access shall include notices of hearings and all other records not under seal.

(4) Control of Records

The registered user with remote access (A) shall keep exclusive control over the records obtained and (B) may not permit such records to be shared with or copied for anyone other than (i) an authorized volunteer designated by the CASA program to provide service to the child pursuant to the order of appointment and (ii) CASA program staff authorized to supervise the volunteer.

Any order expunging the court records in a case in which the CASA program participated shall include the expungement of records in that case obtained and maintained by the program.

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

Proposed amendments to Rule 20-109 (b) are recommended to provide remote MDEC access for general counsel for a business entity to monitor litigation where the business has engaged outside counsel to handle the case.

The Major Projects Committee referred this issue to the Rules Committee after being contacted by in-house counsel for Goodwill Industries Inc. The attorney explained that she needs to stay informed about the litigation in order to advise the corporation and wished to monitor filings in MDEC via remote access.

Rule 20-109 (b) provides remote access to parties and attorneys of record but there is no clear provision for providing access to a business entity party through an authorized person.

Proposed amendments to section (b) permit a corporation or business entity to designate a registered user who may access case records. The business entity can be one established under state or federal law, and the designee can only view, not file, records in the proceeding.

Ms. Cobun informed the Committee that the proposed amendment to Rule 20-109 was prompted by a request from an attorney for Goodwill Industries International Inc. (Appendix

2). The attorney reported that Goodwill retained outside counsel for litigation, but that counsel was not timely communicating with her about developments in the case. She requested that Rule 20-109 allow for someone like her, a representative of a party who has not entered an appearance, to have remote access to the MDEC records. Ms. Cobun said that the proposed amendment permits a representative for a corporation or other business entity to designate, in writing, a representative who may remotely access the MDEC case but cannot file in the case.

Mr. Laws asked if the language of the proposed amendment covers entities such as nonprofits other than corporations or business entities. The Deputy Reporter responded that nonprofits often style themselves as corporate entities.

There being no motion to amend or reject the proposed amendment to Rule 20-109, it was approved as presented.

Ms. Cobun presented Rule 2-341, Amendment of Pleadings, for consideration.

MARYLAND RULES

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 2-341 by adding a provision restricting in section (a) the right to file

an amended pleading less than 15 days before a motions hearing, as follows:

Rule 2-341. AMENDMENT OF PLEADINGS

(a) Without Leave of Court

A party may file an amendment to a pleading without leave of court by the date set forth in a scheduling order or, if there is no scheduling order, no later than 30 days before a scheduled trial date, except that a party may not file an amendment to a pleading less than 15 days before a scheduled motions hearing. Within 15 days after service of an amendment, any other party to the action may file a motion to strike setting forth reasons why the court should not allow the amendment. If an amendment introduces new facts or varies the case in a material respect, an adverse party who wishes to contest new facts or allegations shall file a new or additional answer to the amendment within the time remaining to answer the original pleading or within 15 days after service of the amendment, whichever is later. If no new or additional answer is filed within the time allowed, the answer previously filed shall be treated as the answer to the amendment.

(b) With Leave of Court

A party may file an amendment to a pleading after the dates set forth in section (a) of this Rule only with leave of court. If the amendment introduces new facts or varies the case in a material respect, the new facts or allegations shall be treated as having been denied by the adverse party. The court shall not grant a continuance or mistrial unless the ends of justice so require.

Committee note: The court may grant leave to amend the amount sought in a demand for a

money judgment after a jury verdict is returned. See *Falcinelli v. Cardascia*, 339 Md. 414 (1995).

. . .

Rule 2-341 was accompanied by the following Reporter's note:

The proposed amendment to Rule 2-341 was suggested by a former Rules Committee member who raised the issue of parties who file an amendment to a pleading on the eve of a motions hearing after opposing counsel and the court have reviewed the initial pleading and prepared for the hearing. The amended pleading, according to the attorney, often serves to negate the need for the hearing.

Section (a) generally permits a party to file an amendment to a pleading without leave of court by the date set in a scheduling order or, if no scheduling order, 30 days before trial. The proposed amendment prohibits such amendment less than 15 days before a motions hearing. After the hearing is over, the general timing provisions of the Rule govern further amendment of pleadings.

Section (b), which permits a party to file an amended pleading even if it is not permitted by section (a) with leave of court, would allow for courts to make exceptions for good cause shown

Ms. Cobun informed the Committee that the amendment to Rule 2-341 was suggested by former Rules Committee member Al Frederick (Appendix 3). Mr. Frederick described a common

scenario where motions are filed and a hearing is scheduled in a civil matter, but the pleading that was subject to the motion is then amended at the last minute and the hearing is rendered unnecessary. He requested that the Rule be amended to prevent such amendments to pleadings within 15 days prior to a scheduling hearing.

The Chair informed the Committee that a comment submitted on this Rule suggested that the proposed language is too broad because it applies to any pleading (Appendix 4). To address the concern raised by Mr. Frederick, the comment suggested that the prohibition should apply only to the amendment of a pleading that is the subject of the scheduled motions hearing. The comment suggested adding "concerning that pleading" to the end of the new language. By consensus, the Committee approved that amendment.

Mr. Marcus informed the Committee that he spoke with Mr. Frederick about this proposal prior to the meeting and wanted to be sure that a pleading can be amended within 15 days of a motions hearing for good cause shown. Ms. Cobun informed the Committee that section (b) governs amendments with leave of court. Mr. Marcus moved to add "for good cause shown" to the end of the first sentence of section (b). The motion was seconded and approved by consensus.

There being no further motion to amend or reject the proposed amendments to Rule 2-341, the Rule was approved as amended.

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