STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

NOTICE OF PROPOSED RULES CHANGES

The Rules Committee has submitted its One Hundred Eighty-Sixth Report to the Court of Appeals, transmitting thereby the proposed deletion of Rule 16-819 and proposed new Title 9, Chapter 300 and Title 17, Chapter 500; new Rules 1-333, 1-501, 4-612, 7-206.1, 11-601, and 20-204.1; new Forms 11-601, 11-602, and 11-603; and proposed amendments to Rules 1-101 (q), (i), and (k), 1-303, 1-321, 1-322, 1-324, 1-325, 1-332, 2-131, 2-132, 2-501, 2-504, 2-506, 2-510, 2-521, 2-601, 2-603 (b) and (e), 2-623, 3-131, 3-132, 3-510, 3-601, 4-101, 4-216, 4-217, 4-265, 4-266, 4-326, 4-501, 4-601, 4-642, 7-103, 7-104, 7-202, 7-204, 7-206, 8-201, 8-202, 8-302, 8-303, 8-501, 8-503, 8-505, 8-606, 9-201, 9-206, 9-207, 10-107, 16-101, 16-301 d., 16-307, 16-506, 17-101, 20-102 (a)(1), and 20-109; Form 4-217.2; Rule 1.2 of the Maryland Lawyers' Rules of Professional Conduct; Appendix: Maryland Code of Conduct for Court Interpreters; and Appendix: Court Interpreter Inquiry Questions.

The Committee's One Hundred Eighty-Sixth Report and the proposed Rules changes are set forth below.

Interested persons are asked to consider the Committee's Report and proposed Rules changes and to forward on or before November 17, 2014 any written comments on those Rules that are not transmitted for adoption on an emergency basis they may wish to make to:

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Reporter, Rules Committee

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Bessie M. Decker
Clerk
Court of Appeals of Maryland

September 26, 2014

The Honorable Mary Ellen Barbera,
Chief Judge
The Honorable Glenn T. Harrell, Jr.
The Honorable Lynne A. Battaglia
The Honorable Clayton Greene, Jr.
The Honorable Sally D. Adkins
The Honorable Robert N. McDonald,
The Honorable Shirley M. Watts
Judges
The Court of Appeals of Maryland
Robert C. Murphy Courts of Appeal Building
Annapolis, Maryland 21401

Your Honors:

The Rules Committee submits this, its One Hundred Eighty-Sixth Report, and recommends that the Court adopt the new Rules and amendments to and repeal of existing Rules set forth in this Report. The Report includes a variety of matters, some of which have been under consideration for quite some time and are now ready for presentation to the Court, and some that developed more recently but have some urgency to them. The Report comprises sixteen categories of proposals. The Rules in Category 1 are submitted for emergency adoption.

Category 1 consists of new Rule 20-204.1 and amendments to Rules 20-102 (a)(1), 16-307, and 16-506. The first two are MDEC Rules; the second two are conforming amendments. Rule 20-102 (a) will list the counties subject to MDEC as those counties are added to the system. Anne Arundel County will be the first one. When the Rule was adopted last year, it was unclear when the program in that county would begin, so the Rule temporarily left that date to be determined later by the Court. It is now clear that MDEC will begin in Anne Arundel County on October 14, 2014. The proposed amendment inserts that date.

New Rule 20-204.1 is intended to provide a uniform procedure for the electronic filing of pleadings under MDEC that require service of process. Under the proposed Rule, the clerk will issue the summons and transmit it electronically to the filer. It will be up to the filer then to print and deliver to the sheriff or other process server copies of the summons and the other papers to be served. The intent of the Rule is to avoid requiring the clerks to print copies of the electronic complaint and attachments for each person to be served, which would be an extraordinary burden on the clerks.

That procedure differs from the one currently employed with respect to paper filings but keeps the burden of supplying service copies where it is now. Under Rules 2-111 and 3-111, for each summons to be issued, the plaintiff must furnish to the clerk a copy of the complaint and a copy of each exhibit or other paper filed with the complaint. Under Rule 2-112 (Circuit Court), the clerk then issues a summons for each defendant and delivers it, together with the complaint and attached papers, to the sheriff or other person designated by the plaintiff for service. In the District Court, under Rule 3-112, the clerk is directed either to do that or, where service by mail is permitted, to mail the papers to the defendant. The clerk, in other words, is responsible for inaugurating the service procedure, but the filer is responsible for supplying the copies to be served.

Where preprinted multi-copy complaint forms are used and there is only one defendant, as is often the case in the District Court, that is not a burden on either the clerk or the plaintiff -- the plaintiff simply hands the clerk tear-off copies from the multi-copy form. The District Court, through its printing office, has done the printing.

Except in those extremely rare cases where a defendant consents to electronic service of process, MDEC will require that service copies be printed by someone. That should not create any new burden in most situations, at least in the Circuit Courts, but in those cases, mostly in the District Court, where complaints currently are on preprinted multi-copy court forms, Rule 20-204.1 will introduce a new burden of printing service copies, which is exacerbated in bulk filing situations, and none of the actors want that burden imposed on them -- not the clerks, the sheriffs, or the filers. Pursuant to her authority under Rule 20-106 (c)(2)(E), the State Court Administrator, at least for the time being, has exempted from the requirement of electronic filing the major category of bulk filings in the District Court -- landlord/tenant actions under Code, Real Property Article, §8-401 -- which allows additional time to resolve the issue for those cases, but for cases that will require electronic filing, the Committee believes that the approach set forth in proposed Rule 20-204.1 is reasonable and

puts the burden where it belongs -- with the filer.[1]

Category 2 consists of amendments to Rule 4-601 (Search Warrants), in order to conform the Rule to Chapter 107, Laws of 2014 (HB 1109), which permits judges to receive applications for search warrants, to issue such warrants, and to file the papers associated with the warrant by electronic means (FAX or electronic mail). Several issues have arisen from the statute, in part from some of the statutory language and in part from uncertainties as to how the process of electronic transmission actually will work. These issues have been discussed with the Conference of Circuit Judges and counsel to the House Judiciary Committee, and the Rules Committee believes that at least some of them can be resolved through the proposed amendments to Rule 4-601.

Most applications for search warrants are made during ordinary business hours at the courthouse, although occasionally, if the police need a warrant at other times, they will, with advance notice, appear at a designated judge's home or some other place determined by the judge. The officer brings to the judge three copies of (1) an application for the warrant, (2) an affidavit setting forth the facts necessary to establish probable cause, and (3) the proposed warrant. If the judge signs the warrant, the judge keeps one copy of the three documents and returns two copies to the officer – one for service on the owner of the property to be seized or the occupant of the premises to be searched and one to accompany the officer's return of the executed warrant. The Code and the Rule permit the judge to seal the affidavit for up to 30 days, subject to one extension for an additional 30 days. The officer who serves the warrant must leave with the owner/occupant a copy of the three documents but does not leave the affidavit if it is under seal. The officer then prepares a verified inventory of what has been seized and includes it with a return showing the date and time the warrant was executed. The return is delivered to the judge who issued the warrant, who then attaches to it the application, affidavit, and warrant that the judge retained and files those papers with the clerk. The current Rule prohibits the filing of those papers with the clerk until the warrant has been executed.

Ch. 107 adds language to Code, Criminal Procedure Article, §1-203 (a). In new §1-203 (a)(2)(v), which is part of the subsection dealing with the application for and issuance of the warrant, the new statute states that the judge "shall file a copy of the signed and dated search warrant, the application, and the affidavit with the court." It does not specify **when** that filing is to be made. The Rules Committee, after consulting with counsel to the House

[1] It may be possible to continue using preprinted multi-copy forms as service copies, but that is a matter to be determined by the District Court.

Judiciary Committee and in the absence of any evidence in the legislative history of Ch. 107 to the contrary, believes that the Legislature did not intend by that language to trump the long-standing requirement that those papers are not to be filed with the clerk until after the warrant has been executed, a requirement that serves to maintain the security of the warrant and the investigation. To avoid any ambiguity on that point, the Rule will continue to specify that the filing is to be made after the warrant is executed and the return is made to the judge and that those papers shall not be filed with the clerk prior thereto.

Ch. 107 also contains a provision requiring the officer who executes the warrant to give a copy of the warrant, the application, **and the affidavit** to an authorized occupant of the premises searched or, if there is no such person, to leave a copy at the premises. Code, Criminal Procedure Article, §1-203 (e), however, which was unamended by Ch. 107, expressly permits the judge to seal the affidavit for up to 60 days for cogent enumerated reasons relating to the security of the investigation and specifies that the affidavit is not to be given to the person from whom the property was seized until after the seal expires or is lifted. The Rules Committee, again after consultation with counsel to the House Judiciary Committee and in the absence of any contrary evidence, believes that the Legislature did not intend in Ch. 107 to implicitly repeal that provision and require the officer to leave a copy of an affidavit that is under seal at the time the warrant is executed, which would utterly defeat the purpose of putting the affidavit under seal and likely endanger the lives of cooperating witnesses. That caveat is included in the amendments to Rule 4-601.

Apart from clarifying those two points, the proposed amendments to Rule 4-601 provide some greater guidance with respect to the electronic transmission of search warrant documents. New subsection (b)(1) makes clear that the electronic transmission of the application must be by secure and reliable electronic mail that permits the judge to print the complete text and that the proposed warrant must be in editable form.[2] The latter requirement tracks Rule 20-201 (h), applicable to the filing of proposed orders under MDEC. A Committee note to new subsection (b)(3) alerts judges and the police to the limitations on discussions between them regarding the application. Section (c) sets forth how the judge may issue the warrant. Section (d) provides for sealing the affidavit and

[2]By amendments to the original bill, the General Assembly made clear that any FAX or other electronic transmission must be "secure," but did not define or explain that term. That is not a matter that easily can be dealt with by Rule but, in its discussions, the Rules Committee noted concerns over (1) using adequate encryption technology to prevent transmissions from being intercepted and read, (2) where any FAX machines may be located and who may have access to them, and (3) how secure, for this purpose, any computer at the judge's home (or office) may be.

retention by the judge of one copy of the documents, pending a return by the officer, and makes clear that the printed copies retained by the judge constitute the original of those documents.

Section (e) deals with the return by the officer of an executed warrant. It clarifies a current ambiguity by requiring the return to include a general description of electronically stored information received pursuant to the warrant. It appears that some police officers are including such a description in a return and some are not. The Rules Committee believes that at least a general description of what was obtained under the warrant should be included in the return. Section (f) includes in the Rule the statutory requirement that search warrants be served within 15 days after their issuance and become void thereafter.

Category 3 consists of proposed new Rule 7-206.1 and amendments to Rules 7-202, 7-204, 7-206, and 2-603 (b), all dealing with actions for judicial review of Workers' Compensation Commission (WCC) decisions and awards. The impetus for most of these changes came initially from a judge of the Circuit Court for Prince George's County; they were strongly endorsed by the Workers' Compensation Commission and the Attorney General's Office. A copy of WCC's letter to the Rules Committee is attached as **Appendix A**.

With a few minor exceptions, the current Rules governing actions for judicial review (Title 7, Ch. 200) treat actions seeking the review of WCC awards the same as actions for review of other administrative agency decisions. There are two significant differences between WCC cases and most others, however, which call for different treatment in several respects, mostly in the requirement that the entire agency record be transmitted to the Circuit Court.

Judicial review of agency decisions is nearly always on the record made before the agency, and the requirement in Rule 7-206 that the agency transmit its record to the court is therefore critical. Although on-the-record review is permissible in WCC cases, in the great majority of those cases, the review is essentially *de novo* and may be, and often is, determined by a jury. *See Baltimore v. Kelly*, 391 Md. 64, 74-75 (2006); *Elms v. Renewal by Andersen*, ___Md. ___(2014).[3] The Commission record is kept in electronic form through the Web-Enabled File Management System. The current requirement in Rule 7-206 that WCC transmit the record of testimony and all exhibits and papers filed in the agency proceeding requires the Commission staff to print out all of the documents in the electronic case file and, along with the

[3] WCC advises that on-the-record review in WCC cases is mostly limited to actions directed at the award of attorneys' fees, denial or revocation of self-insurance status, changes in security requirements, or violations of the requirement that insurers have knowledgeable and experienced staff to adjust claims.

transcript of any hearings, mail them to the Circuit Court, which rarely has any need for most of them. The parties have full access to the electronic record and can easily get what they may need for the judicial review action. WCC has complained about the burden on it to produce the paper record, and judges have complained about unnecessarily bloated files.

With this background, the Rules Committee recommends:

(1) amending Rule 7-202:

- to require a petition for judicial review of a WCC decision to identify any issue that is to be reviewed on the WCC record and, if no issue is to be reviewed on the record, to attach to the petition only the employee claim form, the employer's first report, the wage statement, and all WCC orders;

- to require the petitioner to serve a copy of the petition on the Attorney General if the petitioner is seeking judicial review of a WCC decision regarding attorneys' fees[4]; and

- to permit WCC to give the required notice of the filing of a petition for judicial review electronically to parties who have subscribed to receive notices electronically.

(2) amending Rule 7-206 dealing with the administrative record to exempt WCC cases from the requirements of that Rule, except if judicial review of an issue is on the record of the WCC or the circuit court enters an order requiring the preparation and filing of all or part of the record;

(3) adopting new Rule 7-206.1 to deal with the transmission of the record in WCC cases; and

(4) making conforming amendments to Rules 2-603 (b) and 7-204.

Under this approach, as provided in new Rule 7-206.1, a transcript of testimony would be prepared, but if no issue is to be decided on the record before the Commission, it would not be transmitted to the court unless the court orders otherwise.

[4] As noted in the WCC letter, when the judicial review action complains about an award of attorneys' fees, the Attorney General's Office represents the Commission in the Circuit Court.

Category 4 consists of proposed amendments to Rules 2-521 and 4-326, dealing with communications from jurors. In the past decade, the Court has had several cases involving the procedure to be followed when communications are received from a juror, and the Rules Committee was asked to propose clarifying amendments to Rules 2-521 and 4-326 to address issues raised in those cases. In response to that request, the Committee, in its 174th Report, proposed clarifying amendments to those Rules.

Following the submission of that Report in July 2012, but before the Court's open hearing on it, the Court decided *Black v. State*, 426 Md. 328 (2012), which raised an additional issue – the duty of court employees to inform the judge when they receive communications from a juror -- which the Court felt should be addressed explicitly in the Rules. One of the sub-issues was whether court employees should be required to report minor communications that, in their view, did not pertain to the action. Because that issue had not been addressed in the 174th Report and therefore had not been circulated for comment, the Committee withdrew the version proposed in the 174th Report and submitted a revised version as part of its 177th Report, which was filed in March 2013.

The Court held an open hearing on the 177th Report on August 13, 2013, but deferred a decision on the proposed amendments to Rules 2-521 and 4-326 because of uncertainty as to whether employees should be required to report communications of a minor nature. The Committee offered to investigate how the Federal courts and other States dealt with juror communications.

On August 27, 2013, the Committee advised the Court of how the Federal courts and the courts in 15 other States dealt with that issue and suggested several options for the Court to consider. At an open hearing on October 17, 2013 on Part II of the Committee's 178th Report and some loose ends in the 177th Report, including this issue, the Court decided that court employees should be required to report to the judge *all* communications received from the jury or a juror and that the judge would then determine whether the communication pertained to the action and had to be reported to the parties.

The proposed amendments to Rules 2-521 and 4-326 implement that decision. A new subsection (d)(1) added to each Rule requires the judge to instruct the jurors to identify themselves in any written communication only by their juror number. That is because written communications from jurors are required to be filed in the court file. Subsection (d)(2) requires court officials or employees who receive **any** communication from a juror, written or oral, to notify the presiding judge of the communication immediately. The judge will then determine whether the

communication pertains to the action. If the judge determines that the communication pertains to the action, the judge must promptly, and before responding to the communication, direct that the parties be notified of the communication and invite and consider, on the record, the parties' position on any response. If the judge concludes that the communication does not pertain to the action, the judge may respond as he or she deems appropriate. A Committee note advises that whether a communication pertains to the action is defined by case law and cites *Harris v. State*, 428 Md. 700 (2012) and *Grade v. State*, 431 Md. 85 (2013) for guidance.

Subsection (d)(3) requires the clerk to enter on the docket the date and time each communication was received by or reported to the judge, whether the communication was written or oral, whether the judge concluded that the communication pertained to the action, and, if so, whether the parties were notified and had an opportunity to state their position, on the record, with respect to any response. The intent is to have a clear and complete record of every juror communication and what was done in response to it.

The Rules Committee decided not to address in the Rule the consequences of a violation but to leave that to the adjudicatory process. The law regarding the consequences of a judge's failure to notify and consult with the parties when a juror communication does pertain to the action is fairly clear. The Federal courts and several of the States whose Rules were examined tend to subject the failure of a court employee to notify the judge of a communication to a harmless error analysis based on the nature of the communication.

Category 5 consists of amendments to Rules 1-322 (a), 2-601, 3-601, 7-104, 8-202, and 8-302 intended to clarify when a pleading or other item is deemed to be filed and when a judgment is deemed to be entered.

The amendment to Rule 1-322 (a) results from information received by the Rules Committee of a lack of uniformity throughout the State as to when pleadings or other items are deemed filed. Pleadings and other papers are normally filed directly with the clerk, although, under Rule 1-322 (a) a judge may accept an item for filing. If a judge accepts the item for filing, the judge is required to note on the item the date the judge accepted it for filing and forthwith transmit the item to the clerk. The amendment to Rule 1-322 (a) requires the clerk, on the same day the clerk's office receives an item for filing, to note on the item the date it was received. The amendment further provides that an item shall be deemed filed on the earlier of the date the judge accepted the item for filing, if that occurred, or the date of receipt in the clerk's office noted by the clerk on the item.

The proposed amendments to the other Rules deal with how **judgments** are entered and when they are deemed to be entered. The need for these amendments arises from two sources – the lack of uniformity throughout the State in how clerks go about entering judgments and the fact that current Rules 2-601 (b) and 3-601 (b), governing the method of entering judgments, are obsolete and are not being followed anywhere in the State.

Rules 2-601 (b) and 3-601 (b) direct that the clerk enter a judgment "by making a record of it in writing on the file jacket, on a docket within the file, or on a docket book, according to the practice of each court." The Rules Committee was advised that none of the courts -- Circuit or District -- use any of those methods any more, because all judgments are entered electronically so they can go on Case Search. That will continue under MDEC. After considerable discussion with personnel from the Judicial Information System (JIS), which operates Case Search, and clerks of the Circuit and District Courts, the Committee proposes:

(1) amending Rules 2-601 (b) and 3-601 (b) to provide (i) that the clerk enter a judgment by making an entry of it on the docket of the electronic case management system used by that court, along with such description of the judgment as the clerk deems appropriate, and (ii) that, unless shielding is required by law or court order, the docket entry and the date of the entry shall be available to the public through the Case Search feature on the Judiciary website and in accordance with Rules 16-1002 and 16-1003[5]; and

(2) adding a new section (d) to Rule 2-601 and a new section (e) to Rule 3-601 to provide that, **on and after the effective date of the amendment** (which would be inserted in the respective Rules), the date of the judgment is the date that the clerk enters the judgment on the electronic case management system, regardless of the date the judgment was signed.

The Rules Committee's overarching intent is that, subject to shielding and sealing provisions, the date of entry of the judgment be the date when the judgment becomes accessible to the public. The Committee has been advised that a judgment will become accessible through Case Search automatically and immediately upon its entry on the court's electronic case management system. The amendments to Rules 7-104, 8-202, and 8-302 are conforming ones.

Category 6 consists of amendments to Rules 2-501 and 2-504 to address a matter arising most recently from *Beyer v. Morgan State*,

[5] As part of the general revision of the court administration Rules in Part I of the Committee's 178th Report, currently pending before the Court, Rules 16-1002 and 16-1003 would be renumbered 16-902 and 16-903, respectively.

369 Md. 335 (2002). In that case, the Court noted that, under Rule 2-311 (a), a motion presented at a trial or hearing need not be in writing and that there was nothing in current Rule 2-501 prohibiting a motion for summary judgment from being made orally. Accordingly, based on those Rules, the Court concluded that it was permissible to make an oral motion for summary judgment at trial.

The Rules Committee certainly takes no issue with that decision. It does believe, however, that, as a matter of judicial policy and consistency with the practice in the Federal courts and the courts of most States, motions for summary judgment should be in writing, that they should be regarded as pretrial motions, and that they should not be allowed after the commencement of trial or, absent permission of the court, after the deadline for filing dispositive motions specified in a scheduling order.

Although the Court has stated on a number of occasions that a motion for summary judgment may be filed "at any time," (*see Cox v. Sandler's, Inc.* 209 Md. 193, 197, (1956); *Myers v. Montgomery Ward & Co.*, 253 Md. 282, 289-90 (1969)), the motions in those cases were, in fact, filed prior to trial, and, historically, the Court has treated the function of motions for summary judgment as preventing the necessity and expense of preparing for trial on the merits when there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law. *See Whitcomb v. Horman*, 244 Md. 431, 443 (1966) and several other annotations under Rule 2-501. That is why pretrial deadlines for the filing of such motions are routinely provided for in scheduling orders issued under Rule 2-504. The motion, and any response, is normally founded upon affidavits, deposition testimony, other discovery responses, and relevant documents filed prior to trial on the merits. When filed other than during a hearing or trial, motions must be in writing under Rule 2-311 (a). That gives the party against whom the motion is filed a fair opportunity to respond.

Members of the Rules Committee expressed concern about a party who comes to court prepared for trial being caught off-guard by an oral motion for summary judgment filed during the trial -- after evidence has been admitted. There really were two concerns. As the Court itself noted in *Beyer*, an oral motion for summary judgment, especially when made at trial, may raise potential due process considerations -- issues of fair notice and opportunity to defend for the nonmoving party. *See Beyer*, 369 Md. at 359, n.16. That is especially the case if a scheduling order had been entered that set an earlier deadline for the filing of dispositive motions. Subject to an amendment to the scheduling order, the parties have a right to rely on deadlines set by the court.

Apart from the fact that the opportunity for a considered

response may be severely limited when such a motion is made after trial has commenced, it becomes unclear in that circumstance what "evidence" the court may consider in deciding the motion -- may the court continue to rely on affidavits, discovery responses, and deposition testimony that have not been admitted into evidence or only facts established by evidence that has been admitted?

The Rules Committee understood that there are occasions when, as a result of what occurs during the course of a trial, one party or another may become entitled to judgment (or partial judgment) as a matter of law, but observes that there are other ways to deal with that situation. A party may move for judgment under Rule 2-519 at the end of the plaintiff's case or at the end of the entire case. Under that Rule, the judge would be limited to the evidence admitted at trial. If the court were to exclude as inadmissible the testimony of a witness or a document that is legally essential to a party's case, or some discrete aspect of a party's case, the other party may move *in limine* to preclude further evidence, as being irrelevant. If such a motion is granted, a motion for judgment under Rule 2-519 would then lie. In short, the Committee believes that motions for summary judgment should remain pretrial motions intended to avoid the need for a trial and that motions for judgment made after trial has commenced and evidence has been received should be dealt with under Rule 2-519. A proposed Committee note to Rule 2-501 (a) explains, in part, the Committee's position.

The Committee's recommendation that motions for summary judgment not be allowed after the expiration of a scheduling order deadline for the filing of such motions rests on a similar concern. Current Rules 2-504 and 2-504.1, which provide for scheduling orders, were part of a package of Rules recommended by a broad-based Ad Hoc Committee on the Management of Litigation. *See* the 124th Report of the Rules Committee. They were intended to bring greater efficiency and fairness to the litigation process generally and to provide greater certainty to trial dates set by the courts. The Rules Committee recognizes that dates set early in the litigation in a scheduling order may turn out to be unworkable in some instances. Apart from the court's ability under Rule 2-504 (c) to modify such dates, the Committee recommends that the court be authorized to permit a late filing of a motion for summary judgment, but not after trial has commenced.

The Committee notes for the Court's consideration that Fed. R. Civ. Proc. 56 (b) provides that, "[u]nless a different time is set by local rule or the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery." The Committee has found no local U.S. District Court rules permitting motions for summary judgment to be filed once trial has commenced or permitting such motions to be made orally. A number of Federal circuits do permit the District

Court to enter summary judgment on its own initiative, provided it gives adequate notice to the parties. *See Powell v. U.S.*, 849 F.2d 1576, 1582, n.6 (5th Cir. 1988). At one time, the Maryland Rules permitted that as well, but not since 1984. *See Hartford Ins. Co. v. Manor* Inn, 335 Md. 135, 145-46 (1994).

Only two State court cases were found that sustained the granting of an oral motion for summary judgment filed at trial -- an Alabama case in which the court found from the facts that no prejudice was suffered by the losing party and a Connecticut case in which the decision was based on waiver -- that the losing party had asked the court to rule on the other party's motion. Neither court found oral motions at trial permissible, but simply found a basis not to reverse the granting of one. Most States have Rules that set time limits on the filing of summary judgment motions that would preclude their being filed at trial.

Category 7 consists of proposed amendments to three appellate Rules -- Rules 8-501 and 8-503, dealing with attachments to briefs, and Rule 8-606, dealing with the issuance of appellate mandates when a motion for reconsideration has been filed.

The amendments to Rules 8-501 and 8-503 are clarifying in nature. Rule 8-501 (a) requires that a record extract either be included as an "appendix" to the appellant's brief or filed as a separate document. Under Rule 8-503 (b), if filed separately, references to it must be in the form of "E" with the page number; if filed as part of the brief, references to it must be in the form of "App" or "Apx" with the page number. An appendix to a brief is not limited to the record extract. It is not uncommon for parties to include in an appendix other material as well, such as statutes, Rules, regulations, and unreported opinions that ordinarily would not be part of a record extract.

The Rules Committee suggests, for clarity, that references to a Record Extract be denoted as "E" with the page number, whether the extract is filed as a separate document or as part of the brief, and that an easy way to implement that approach is to provide that, if not filed as a separate document, the extract be regarded as "attached" to the brief, rather than as an "appendix" to it. The amendments to Rules 8-501 and 8-504 make that change.

The proposed amendments to Rule 8-606 are partly clarifying but are substantive as well. Rule 8-606 (b), dealing with mandates, provided that, unless a motion for reconsideration was filed or the Court ordered otherwise, the Clerk shall issue the mandate of the Court upon the expiration of 30 days after the filing of the Court's opinion or entry of the Court's order. Rule 8-605 (d), dealing with motions for reconsideration, consistently provides that a motion for reconsideration shall delay the issuance

of the mandate unless otherwise ordered by the Court.

On November 21, 2013, the Court adopted certain amendments to Rule 8-606 proposed in the Rules Committee's 180th Report, principally to provide that, if a petition for *certiorari* is filed while the record is in the possession of the Court of Special Appeals, that Court shall retain the record until either the petition is denied or, if it is granted, the Court of Special Appeals takes action in accordance with an ensuing mandate of the Court of Appeals. Just prior to the open hearing on the 180th Report, the Court issued an Opinion resolving a motion for reconsideration in *Richmond v. DeWolfe*, 434 Md. 444 (2013). There had been some uncertainty, on the part of the parties, regarding when a mandate implementing a ruling on a motion for reconsideration should issue. The State believed that the mandate would not issue until the expiration of 30 days after the filing of the Opinion; in fact, the mandate was issued 22 days after the Opinion denying the motion for reconsideration was filed.

During the Court's open hearing on the 180th Report, the Court asked the Rules Committee to study that issue and make a recommendation. The proposed amendments to Rule 8-606 (b)(4), transmitted with this Report, address that request. The Committee recommends that, when a motion for reconsideration is filed, unless the Court orders otherwise:

(1) the Clerk should continue the present practice of delaying the issuance of a mandate until (i) the motion is withdrawn, or (ii) an order is entered deciding the motion;

(2) if the Court denies the motion or grants it solely to make changes in the opinion or previous order that do not change the principal decision in the case, the Clerk shall issue the mandate immediately upon the filing of the order; and

(3) if the Court order, with or without an accompanying Opinion, grants the motion in such manner as to change the principal decision in the case, the Clerk shall issue the mandate upon the expiration of 30 days after the filing of the order.

The Committee's reasoning is as follows. First, as an overarching principle, the Court should maintain ultimate control over when its mandate should issue, in any circumstance. Subject to that ultimate control, if the ruling on a motion for reconsideration does not change the principal decision, but merely corrects language in the Opinion, alters the allocation of costs, or modifies a ruling on an issue that does not alter the ultimate decision in the case in any significant way, there is no need to delay issuance of the mandate. The motion has been considered and found not to warrant a change in the ultimate result. On the other hand, if the ruling on reconsideration *does* change the ultimate

result in a material way, it is a new and substantive decision, and, subject to any contrary order of the Court, the party that previously prevailed and now has lost ought, ordinarily, to have an opportunity to move for reconsideration of that ruling.

Category 8 consists of amendments to Rule 1.2 of the Maryland Lawyers' Rules of Professional Conduct (MLRPC 1.2) and Rules 1-321, 1-324, 2-131, 2-132, 3-131, and 3-132. These amendments are intended to implement recommendations by the Access to Justice Commission and others for an expansion of limited scope representation -- a form of "unbundled" legal services. That expansion falls into two categories -- attorney/client agreements under which the attorney will represent or assist the client in matters or proceedings that do not involve the attorney's entering an appearance in a court action, and agreements under which the attorney may enter an appearance in a court action, but only for specific parts of the action and not generally.

Current MLRPC 1.2 (c) permits an attorney to limit the scope of representation if (1) the limitation is reasonable under the circumstances, and (2) the client gives informed consent. Comment [6] to that Rule notes that a limited representation may be appropriate because the client has limited objectives. Comment [7] adds that the client's objective may be limited to obtaining general information about the law that the client needs to handle a common and uncomplicated legal matter. As in so many situations, the devil is in the details, particularly when what is anticipated is a limited appearance in a court proceeding.

Two amendments are proposed to MLRPC 1.2 (c) -- first to require that any limited scope representation be in accordance with applicable Maryland Rules, and second that the scope and limitations of any representation, beyond an initial consultation or brief advice provided without a fee, be clearly set forth in a writing, including any duty on the part of the attorney to forward notices to the client. That will be explained below. A new Comment [8] also is recommended. It requires that the objectives and tasks required of the attorney be clearly defined; it gives common examples of such limited tasks or objectives; and it requires that the client be fully and fairly informed of the extent and limits of the attorney's obligations. Those provisions will apply whether or not the attorney is expected to enter an appearance in a court action. Additionally, a new Comment [9] recognizes representation of a client in a collaborative law process as a type of permissible limited representation. Other proposed Rule changes pertaining to collaborative law processes are described in Category 9 of this Report.

The proposed amendments to the other Rules deal with limited appearances in court actions. Chronologically, it is best to start with Rule 2-131 and its District Court counterpart, Rule 3-131. A

new section (b) is proposed that expressly permits an attorney, acting pursuant to an agreement that complies with MLRPC 1.2, to enter an appearance limited to participation in a discrete matter or judicial proceeding. The notice of appearance must specify the scope of the appearance. With the notice of appearance, the attorney must file an acknowledgment signed by the client, substantially in the form set forth in subsection (b)(2), that sets forth the purpose and scope of the representation and acknowledges that, except for those services, the client is responsible for handling his/her case.

One of the troublesome issues that arose during the discussion of these Rules concerned the service of pleadings, papers, and notices in a limited representation case, where some of those documents concern matters that are within the scope of representation and some not. The Rules Committee desired that all such pleadings, papers, and notices be served on both the attorney and the client, to avoid the risk of the one needing the document or notice not receiving it. That is not a problem with documents filed by other parties, and it is provided for in the proposed amendments to Rule 1-321.

The problem is with documents and notices sent by the clerks. The Rules Committee was advised by the Judicial Information System (JIS) that, although dual service can be implemented under MDEC, the current operating systems throughout the State do not permit notices to be sent to both the attorney and the client and that, other than through MDEC, JIS is unwilling for fiscal reasons to alter the current systems to permit the dual service. Accordingly, Rule 1-324 (Notice of Orders) is amended to require that, in a non-MDEC county, the clerk will send all notices to the attorney, as if the attorney had entered a general appearance, and that it will be the attorney's responsibility to forward to the client notices pertaining to matters not within the scope of the limited appearance. That was a judgment call -- that it was safer to send all notices to the attorney and have the attorney determine which of them pertain to matters outside the scope of representation rather than sending them all to the client.[6]

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[6] During the final editing of Rule 1-324, the Style Subcommittee concluded that there was an apparent and important gap in the Rule. Notwithstanding its caption, which refers to "Notice of Orders," the text of the Rule requires the clerks to send "copies" of orders and rulings not made in the course of a trial or hearing, not simply "notices" of such orders or rulings. Apart from that, and more important, given the actual text, the Rule does not specifically require the clerk to send notice of hearings or trial dates, which may or may not be set by an actual order or ruling. That gap was reported to the Committee, which recommends that it be closed through a new section (a) to the Rule. The Committee was advised that clerks routinely **do** docket the setting of hearing and trial dates and **do** send notice of them to the parties. Adding that requirement in the Rule, therefore, is more in the nature of a clarification -- an expression of what already is done -- than the addition of a new duty.

Because it is likely that the tasks undertaken by the attorney may end before the entire action is resolved, Rule 2-132 is amended to provide for the withdrawal of the attorney's appearance when the particular proceeding or matter for which the appearance was entered has concluded. As noted, comparable amendments are proposed to the counterpart District Court Rules.

Category 9, which has an affinity to Category 8, consists of a new Chapter 500 to Title 17 (Rules 17-501 through 17-507) and conforming amendments to Rules 1-101 (q) and 17-101, intended to implement Chapter 342, Laws of 2014 (the Maryland Uniform Collaborative Law Act). In essence, a collaborative law process is one intended to resolve a dispute without the intervention of an adjudicative body -- a court, arbitrator, or administrative agency. Its key features are (1) an agreement between the attorney and client, founded on informed consent, to engage in that process, (2) a clear understanding that, subject to specific narrow exceptions, the collaborative attorney will not represent the client in any litigation and, if the dispute is not resolved through the collaborative law process and litigation ensues, the client will have to find another attorney or proceed as a self-represented litigant, and (3) if the collaborative law process is properly invoked after litigation has commenced, the court, on joint motion, will stay the litigation for a reasonable period to allow that process to proceed.

These features are described in Rules 17-503, providing for the written agreement based on informed consent, 17-504, providing for a stay of pending litigation and for the lifting of any stay, 17-505, providing for termination of the collaborative law process, and 17-506, precluding the collaborative law attorney from representing the client in litigation.

Category 10 consists of a rewriting of Rule 1-325, dealing with the waiver of court costs, and conforming amendments to Rules 2-603 (e), 7-103, 8-201, 8-303, 8-505, and 10-107. These amendments emanated from recommendations made by the Access to Justice Commission, the Maryland Legal Aid Bureau, Inc. (Legal Aid), and the Public Justice Center, and are intended to bring greater clarity and uniformity to when and how court costs may be waived by reason of a party's indigence. They apply only in civil cases and concern primarily prepaid costs -- costs that, unless prepayment is waived, must be paid before the clerk will docket or accept for docketing a pleading, paper, or other item or take other requested action. Rule 1-325 (c) makes clear that no fee may be charged for filing a request for waiver.

Except for section (f), Rule 1-325 applies only to the waiver of **prepayment** of prepaid costs, not a waiver of the costs themselves, which, in the event of a waiver, remain open and

subject to assessment at the conclusion of the case. Section (f) deals with that matter.

Rule 1-325 (d) sets forth the circumstances under which, upon request, prepayment of prepaid costs will be waived by the clerk, without the need for a court order. That will apply when the party is an individual -- not an entity -- and is represented by an attorney:

- retained through a *pro bono* or legal services program that is on a list submitted by the Maryland Legal Services Corporation to the State Court Administrator and posted on the Judiciary website, subject to certain conditions; or

- provided by Legal Aid or the Public Defender.[7]

Rule 1-325 (e) sets forth the procedure for waiver in all other circumstances, which require a court order. It begins with a written request for waiver accompanied by an affidavit substantially in the form approved by the State Court Administrator and a certification by the attorney that there is good ground to support the request. The Rules Committee and the agencies that requested these changes have developed a proposed form of affidavit for consideration by the State Court Administrator. The court will review the papers presented and may require the applicant to supplement or explain that information. Subsection (e)(2) requires the court to consider whether the party has a family household income that qualifies under the client income guidelines of the Maryland Legal Services Corporation for the current year and any other factor than may reflect on the party's ability to pay the prepaid cost. The Committee anticipates that the income guidelines will be posted on the Judiciary website.

If the court finds that the party is unable by reason of poverty to pay the prepaid cost and the underlying claim does not appear, on its face, to be frivolous, it will enter an order waiving prepayment. In its order, the court must state the basis for granting or denying the request. The Committee does not envisage that any extended explanation be provided – only that, based on the information at hand, the party qualifies or does not.

Section (f) deals with open costs at the end of the case. It permits a party to seek a waiver of open costs by filing a request and affidavit substantially in the form approved by the State Court Administrator. If the party had been granted a waiver of prepayment of prepaid costs by the court, the party may file an

[7] The Public Defender represents indigent individuals in a number of civil actions. *See* Code, Criminal Procedure Article, §16-204 (b).

affidavit simply asserting that fact and attesting to the party's continued inability to pay. In an action subject to Rules 2-603 (e) or 10-107 (b), the court must grant a waiver if the requirements of those Rules are met. In all other civil cases, the court may grant a final waiver if the party against whom the costs are assessed is unable to pay them by reason of poverty.

Section (g) deals with the waiver of appellate costs, in both appeals from the District Court to the Circuit Court and from the Circuit Court to the Court of Special Appeals or the Court of Appeals. In that setting, prepaid costs include the fee charged by the clerk of the lower court for assembling the record, including the cost of a transcript of the District Court proceedings, and the filing fee charged by the clerk of the appellate court. Waiver of those costs will be governed generally by sections (d) and (e), except that:

- the request for waiver of both fees will be filed in the trial court;
- waiver of the fee for assembling the record will be determined by the trial court;
- waiver of the appellate court fee will be determined by the appellate court, which **may** rely on a waiver of the fee for assembling the record;
- both fees will be waived if the appellant received an automatic waiver under section (d), will be represented in the appeal by an eligible attorney under that section, and the attorney certifies that the appeal is meritorious; and
- if the appellant received a waiver under section (e), the trial and appellate courts may rely on a supplemental affidavit attesting that the prior affidavit remains accurate and there have been no material changes in the appellant's financial condition or circumstances.

Subsection (g)(2) provides a simple procedure for how the two courts will determine whether the fees should be waived. The amendments to the other Rules are conforming ones.

Category 11 consists of a new Chapter 300 to Title 9 (Rules 9-301 - 9-309) of the Maryland Rules, dealing with protective orders in domestic violence cases, and conforming amendments to Rules 1-101 (i) and 9-201. The procedure in domestic violence cases is set forth largely by statute. There are no comprehensive Rules for the thousands of those cases that flow through both the District and Circuit Courts each year, but there are some gaps in the statutes that the Rules Committee believes can and should be addressed by

Rule.

The proposed Rules largely reference the relevant statutes. The one new area is in Rule 9-306 which addresses a problem first brought to the Committee's attention by the House of Ruth. As the Court is aware, there are three types of protective orders that may be issued in domestic violence cases -- (i) an interim order, effective generally for a maximum of two days, that may be issued by a District Court commissioner when the Circuit and District Court clerks' offices are closed (Code, Family Law Article (FL) §4-504.1); (ii) a temporary protective order, which may be issued by a judge, that is effective for a maximum of seven days, subject to extensions for up to six months (FL §4-505); and (iii) a final protective order, issued by a judge, that may be effective, depending on the circumstances, for up to one year or two years and could be made permanent (FL §4-506). The problem lies with the seven-day limit on temporary protective orders in light of the fact that those orders often cannot be served on the respondent within that period.

An interim order issued by a commissioner nearly always is the product of an *ex parte* proceeding. FL §4-504.1 requires that an interim order contain the date, time, and location of a temporary protective order hearing and a tentative date, time, and location of a final protective order hearing. The commissioner must immediately forward a copy of the order to the appropriate law enforcement agency for service on the respondent, and that agency must immediately attempt to effect service on the respondent. If service is effected timely, the respondent will have notice of the temporary protective order hearing. FL §4-505 (b) contains a similar service requirement for temporary protective orders. In both instances, the petitioner may, but is not required, to request notification through the VINE Protective Order Service Program, of when the respondent has been served.[8]

If there has been no interim order and the action is commenced by a petition filed in the District or Circuit Court, the temporary protective order hearing also is likely to be an *ex parte* proceeding. At that hearing, if the court is satisfied that there are reasonable grounds to believe that the petitioner is eligible for relief, the court will enter a temporary protective order in which a date for a final protective order hearing is set. FL §4-505 (b) requires the appropriate law enforcement agency to serve

[8] VINE is the acronym for Victim Information and Notification Everyday. It is a service operated by the State Board of Victim Services and the Governor's Office of Crime Control and Prevention that permits victims of crime and domestic violence to be promptly informed by telephone or e-mail about court proceedings and other events concerning their case. The VINE Protective Order Service Program allows domestic violence petitioners who register with the program to be notified when a protective order has been served. *See* https://www.vinelink.com.

the order immediately on the respondent. Often, however, the law enforcement agency is not able to serve the respondent prior to the date set for the final protective order hearing. The petitioner must appear just in case the respondent shows up. In those situations, the court generally will extend the temporary protective order for another seven days, in order to effect service. Unless the petitioner's presence is excused, the petitioner must appear again seven days later. This can go on for up to six months -- a new hearing set every seven days at which the petitioner, in order to avoid the risk of having the petition dismissed, must appear.

In order to provide relief from this burden, a number of judges have agreed to use a waiver of presence form in which the petitioner can waive his/her presence until such time as the respondent has been served and the court can proceed with a final protective order hearing. Some judges, however, have been reluctant to use that approach on the ground that there is no statute or Rule permitting it. Rule 9-306 addresses that concern and provides authority, subject to certain conditions, for courts to approve waiver of presence requests.

The Rule would apply when (1) the court has entered a temporary protective order and scheduled a hearing to consider a final protective order, (2) the respondent does not appear at the final protective order hearing due to lack of service of the temporary order, and (3) the court extends the temporary order pending service. The petitioner is required to attend the first scheduled final protective order hearing and, unless his/her presence is waived, each such hearing scheduled thereafter. Section (d) of the Rule, however, would require the court to grant a properly filed request by the petitioner to be excused from appearing at subsequent final protective order hearings scheduled for a date prior to service on the respondent. The order must require the petitioner to register with the VINE Protective Order Service Program and advise the petitioner to confirm the date of the final protective order hearing upon being notified that the respondent has been served.

Category 12 consists of an updating and revision of Rule 16-819, dealing with court interpreters. Rule 16-819 itself is proposed for repeal, to be replaced by amendments to Rules 1-332, 1-303, and 4-642, new Rule 1-333, and amendments to two Appendices in the Rule Book -- the Maryland Code of Conduct for Court Interpreters and the Court Interpreter Inquiry Questions. These revisions are based, in part, on recommendations submitted by the Maryland Court Interpreter Program (a unit within the Administrative Office of the Courts), an internal AOC audit of that program, the U.S. Department of Justice, the Access to Justice Commission, Legal Aid Bureau, Inc., and the Public Justice Center.

Current Rule 16-819 deals just with the appointment, qualifications, and compensation of court interpreters. There are two types of interpreters to whom the Rule applies -- spoken language interpreters for individuals who can hear but have limited proficiency in English (LEP) and sign language interpreters for individuals who are deaf. The appointment of sign language interpreters for the deaf is required by the Americans With Disabilities Act (ADA). The Civil Rights Division of the Department of Justice has taken the position, which seems to have gained increasing acceptance, that the appointment of spoken language interpreters for LEPs is required by Title VI of the Civil Rights Act of 1964. Accordingly, the provision of both kinds of interpreters must comply with applicable Federal law and regulations.

Accommodations under the ADA, which extend beyond the appointment of sign language interpreters, is provided for in Rule 1-332. To that extent, there is some overlap between the two Rules. Because both Rules govern important aspects of practice and procedure in all Maryland courts, the Rules Committee believes that they both belong in Title 1 of the Rules, not in Title 16, which deals with court administration matters that the public is not likely to consult when focused on pending cases. Moreover, for better cohesiveness and clarity, the Committee is recommending that Rule 1-332 deal with accommodations generally under the ADA and that the appointment of interpreters, whether sign language or spoken language, be dealt with in Rule 1-333.

Current Rule 1-332 is too narrow. It requires ADA accommodations for attorneys, parties, and witnesses, but those accommodations are also required for jurors, prospective jurors, and victims. The amendments to subsection (b)(1) of that Rule provide that extension. The amendments to subsection (b)(2) recognize that sign language interpreters are required under the ADA but cross-reference new Rule 1-333 for the method of their appointment.

Rule 1-333 generally tracks current Rule 16-819 but makes a number of substantive changes:

- The definition of "certified interpreter" is amended to reflect the current practice of accepting a certification by any constituent member of the Council for Language Access Coordinators, a unit of the National Center for State Courts. That will allow the appointment of interpreters certified by out-of-State counterparts to the Maryland Court Interpreter Program.

- The term "proceeding" is defined in subsection (a)(6). This is intended to authorize in the Rule the practice, established, at the moment, by directive of former Chief

Judge Bell, of providing interpreters for certain events that may not occur in open court but that are in some way connected with court proceedings -- things such as court-annexed ADR, transactions with the clerk's office, and parenting classes. The amendment does not cement any of those out-of-court proceedings in the Rule itself but continues to leave such extensions to Administrative Orders of the Chief Judge.

- At present, clerk's offices around the State differ in how they actually deal with requests for spoken language interpreters. Some require a separate request for each proceeding, including a postponed or continued proceeding for which a timely request had been made prior to the postponement or continuance. Others, at least with respect to parties, will provide an interpreter for all proceedings based on one timely request. Based on the recommendations of the Access to Justice Commission, the Public Justice Center, and Maryland Legal Aid Bureau, Inc., the Rules Committee recommends that, for **parties**, who generally have a right to appear and often do appear at all proceedings, an interpreter be provided for all proceedings, without the need of additional requests, if the party has so requested. Non-parties who are entitled to an interpreter will need to request one for each proceeding they wish, or are required, to attend.

- Current Rule 16-819 requires, even when a timely request for an interpreter is filed, that the court, after an examination of the individual in open court, determine whether an interpreter is needed. Subsection (b)(2) of Rule 1-333 eliminates that requirement when a timely application is made. The court can always deal with individuals who make false applications and requests, but the Committee believes that people generally will not request an interpreter unless they honestly and reasonably believe they need one and that, if they make a timely request -- no later than 30 days before the proceeding -- the court should routinely provide one.

- When a timely request has not been made, the court may conduct an examination to determine whether an interpreter is needed, but the Committee has added a requirement that the court nonetheless make a diligent effort to obtain an interpreter. The intent of these amendments is to err on the side of providing an interpreter rather than to punish the individual for not timely requesting one.

The amendments to Rules 1-303 and 4-642 are conforming ones.

Category 13 consists of amendments to Rules 2-510, 3-510, 4-265, and 4-266, dealing with subpoenas. The thrust of those amendments is (1) to clarify the proper use of subpoenas, (2) to provide for the methods by which subpoenas may be issued by the clerks, (3) to provide for a uniform form of subpoena usable by both the Circuit and District Courts in both civil and criminal cases, and (4) to require that subpoenas be served within 60 days after issuance.

Section (a) of Rules 2-510 and 3-510 sets forth the proper uses of subpoenas and prohibits their use for any other purpose. Section (b) sets forth the various manners in which subpoenas may be issued. On request by any person entitled to a subpoena, the clerk may either issue a completed subpoena or provide the person with a blank, but unsigned and unsealed, form, which the person may fill in and return to the clerk for signature and sealing. At the request of a member of the Maryland Bar in good standing, the clerk may issue a signed and sealed subpoena, which the attorney may fill in and serve. An attorney of record in a pending case may obtain from the clerk through MDEC an electronic version of a blank subpoena containing the signature of the clerk and the seal of the court, which the attorney may download, print, and fill in before service. The reason for treating attorneys, with proper identification, differently than other members of the public is that they are officers of the court and subject to significant sanctions if they use a subpoena improperly. The reason for requiring service within 60 days is to preclude people from keeping for too long a period their own stash of subpoena forms without having to obtain them from the clerk. The 60-day provision attempts to strike a reasonable balance between convenience to attorneys and others who need to have subpoenas issued and, in light of the fact that a subpoena is a court order issued under seal of the court and enforceable by coercive means, keeping some measure of control over its improper issuance.

Section (c) requires generally that all subpoenas be on a form approved by the State Court Administrator. With the able assistance of the Hon. Gary Everngam, District Court of Maryland for Montgomery County, and Kathleen Wherthey, Esq., of the Administrative Office of the Courts, an agreed-upon form has been developed for consideration by the State Court Administrator.

Category 14 consists of the addition of a new section e. to Rule 16-101 that requires judicial units that are funded through appropriations to the Judicial Branch, whose budgets are subject to approval by the Court of Appeals or the Chief Judge of that Court, or that are subject to audit by the Court of Appeals, the Administrative Office of the Courts, or the State Court Administrator to prepare their proposed budgets and exercise procurement and personnel decisions in conformance with standards and guidelines promulgated by the State Court Administrator. The

Attorney Grievance Commission is exempt from those provisions but is required to cooperate with the State Court Administrator in creating and drafting its budget requests, to cooperate as well in establishing procurement and personnel standards and guidelines, and to attest annually to the State Court Administrator that it has done so. The purpose of the amendments is to make the ultimate approval or review decision by the Court, the Chief Judge, or the State Court Administrator a more informed and reliable one.

Category 15 consists of proposed new Rules and amendments to existing Rules dealing with family and juvenile matters.

New Rule 1-501 implements the decision of the Judicial Council to designate masters in chancery and masters for juvenile causes who conduct family or juvenile proceedings as "family magistrates." This is a name change only. The proposed Rule makes clear that the name change does not affect in any way the powers, duties, salary, benefits, or pension of those individuals. Eventually, the Rules Committee will go through the myriad of Rules that provide for or mention "masters" and propose appropriate amendments.

New Rule 11-601 and new Forms 11-601, 11-602, and 11-603 implement Chapter 213, Laws of 2014, which provides for the expungement of certain juvenile delinquency and child in need of supervision records. Conforming amendments are proposed to Rules 1-101 (k), 4-101, and 4-501.

Proposed amendments to Rule 20-109 permit the Department of Juvenile Services to have access, including remote access, to case records to the extent that such access is authorized by statute and is necessary to the performance of official duties.

Proposed amendments to Rules 9-206 and 9-207, which contain forms for child support guideline worksheets and joint marital property statements, alter the current descriptive terminology of the parties to account for situations in which the parties to a divorce or the parents responsible for supporting their child are of the same sex. Rule 9-206 (Child Support Guidelines) currently uses the designations "mother" and "father." The amendment will change those designations to "Parent 1" and "Parent 2." Similarly, Rule 9-207 (Joint Statement of Marital and Non-Marital Property) uses the designations "Husband" and "Wife." The amendment will change those designations to "Spouse 1" and "Spouse 2."

Category 16 consists of amendments to Rules 2-506, 2-623, 4-216, and 4-217; new Rule 4-612; an amendment to Rule 16-301 d.; and amendments to Form 4-217.2

The amendments to Rules 2-506 and 2-623 are entirely stylistic. The amendment to Rule 4-216 (g) conforms that provision to Code, Criminal Procedure Article, §§5-203 and 5-205. The

amendment to Rule 4-217 merely adds a cross reference to those statutes. The amendment to Form 4-217.2 generally conforms the Form to the District Court Form actually being used and clarifies that collateral security for a bail bond may be in the form of cash.

New Rule 4-612 implements Chapter 191, Laws of 2014, which permits a court to authorize law enforcement officers to obtain "location information" from an electronic device under certain conditions.

The amendment to Rule 16-301 d. permits the State Court Administrator to review the selection and promotion of employees in the Clerks' offices, to ensure compliance with standards and procedures established by the State Court Administrator pursuant to Rule. The amendment adds the ability of the State Court Administrator to review discipline decisions as well, for the same purpose.

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

Respectfully submitted,

Alan M. Wilner
Chair

AMW:cdc
cc: Bessie M. Decker, Clerk
Hon. Robert A. Zarnoch, Vice Chair

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 20-102 (a)(1) by deleting certain parenthetical language and adding the date "October 14, 2014," as follows:

Rule 20-102. APPLICATION OF TITLE TO COURTS AND ACTIONS

(a) Trial Courts

(1) Applicable Counties and Dates

(A) Anne Arundel County is an applicable county from and after ~~[date to be set by further Order of the Court of Appeals]~~ October 14, 2014.

(B) There are no other applicable counties.

Committee note: The MDEC Program will be installed sequentially in other counties over a period of time. As additional counties become applicable counties, they will be listed in new subsections (a)(1)(B) through (a)(1)(X).

(2) Actions, Submissions, and Filings

(A) New Actions and Submissions

On and after the applicable date, this Title applies to (i) new actions filed in a trial court for an applicable county, (ii) new submissions in actions then pending in that court, (iii) new submissions in actions in that court that were concluded as of the applicable date but were reopened on or after that date, (iv) new submissions in actions remanded to that court by a higher court or the United States District Court, and (v) new submissions in actions transferred or removed to that court.

(B) Existing Documents; Pending and Reopened Cases

With the approval of the State Court Administrator, (i) the County Administrative Judge of the circuit court for an applicable county, by order, may direct that all or some of the documents that were filed prior to the applicable date in a pending or reopened action in that court be converted to electronic form by the clerk, and (ii) the Chief Judge of the District Court, by order, may direct that all or some of the documents that were filed prior to the applicable date in a pending or reopened action in the District Court be converted to electronic form by the clerk. Any such order shall include provisions to ensure that converted documents comply with the redaction provisions applicable to new submissions.

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REPORTER'S NOTE

The proposed amendment to Rule 20-102 (a) establishes October 14, 2014 as the date of implementation of MDEC in Anne Arundel County.

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 200 - FILING AND SERVICE

ADD new Rule 20-204.1, as follows:

Rule 20-204.1. ELECTRONIC ISSUANCE OF ORIGINAL PROCESS - CIVIL

(a) Applicability

This Rule applies to the issuance of process on an complaint or other submission electronically filed in a civil action requiring service by original process.

Committee note: This Rule does not apply to a paper submission, even if it is to be served by original process or is filed by a registered user pursuant to an exception listed in Rule 20-106.

(b) Inapplicability of Rules 2-111 (b) and 3-111 (a).

The filer of a complaint or other submission requiring service by original process shall not furnish any paper copies to the clerk.

Committee note: The filer of a paper submission must comply with Rule 2-111 (b) or 3-111 (a) by furnishing to the clerk the appropriate number of paper copies.

(c) Issuance of Process

For each summons, the clerk shall comply with Rule 2-112 or 3-112, as applicable, by issuing the summons and providing it electronically to the filer through the MDEC system. Unless otherwise ordered by the court, the clerk is not required to deliver process to any person other than the filer.

(d) Paper Copies of Process

For each person to be served, the filer shall print a paper copy of the summons and each paper to be served with the summons and shall deliver the summons, papers, and any required fee to the sheriff or other person who will be serving process.

(e) Responsibility of Filer for Service and Return of Process

The filer shall be responsible for service and return of process in accordance with the applicable Rules in Title 2 or 3.

Cross reference: For persons authorized to serve or execute process, see Rules 2-123 and 3-123.

Source: This Rule is new.

REPORTER'S NOTE

As the Judiciary prepares for the implementation of MDEC scheduled to begin in Anne Arundel County in the fall of 2014, Judiciary personnel have requested clarification of the procedures preceding service of process.

New Rule 20-204.1 has been drafted to provide that clarification.

For an electronically filed civil action, it would be impracticable for the clerk to issue paper summonses on each e-filed complaint and match those summonses with paper copies of the complaint provided by the plaintiff pursuant to Rule 2-111 (b) or 3-111 (a). Therefore, those two Rules have been made inapplicable to a submission that is electronically filed in MDEC.

In MDEC, instead of the current procedure for issuance of original process, Rule 20-204.1 requires the clerk to issue the summons electronically and provide it to the filer through the MDEC system. The filer then is responsible for service and return of process under the applicable Rules in Title 2 or Title 3.

No comparable Rule applicable to the issuance of original process in a criminal action is proposed for adoption at this time. During the initial phase of implementation of MDEC, it is anticipated that a charging document will be a submission that, pursuant to Rule 20-106 (c)(2)(E), the State Court Administrator

excludes from the requirement of electronic filing until after it has been served [e.g., a traffic citation] or issued for service by warrant or summons.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 300 - CIRCUIT COURT CLERKS' OFFICES

AMEND Rule 16-307 a. to add the words "or the Rules in Title 20," as follows:

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

a. Applicability; Conflicts with Other Rules

This Rule applies to the electronic filing of pleadings and papers in a circuit court and to the electronic filing of instruments authorized or required by law to be recorded and indexed in the land records. A pleading, paper or instrument may not be filed by direct electronic transmission to the court except in accordance with this Rule or the Rules in Title 20. To the extent of any inconsistency with any other Rule, this Rule and any administrative order entered pursuant to it shall prevail.

Committee note: Code, Real Property Article, §3-502.

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REPORTER'S NOTE

Proposed amendments to Rules 16-307 a. and 16-506 (a) resolve an apparent conflict between those two Rules and Rule 20-102 (c). Each Rule purports to prevail over other Rules "to the extent of any inconsistency."

Implementation of MDEC is scheduled to begin in Anne Arundel County in the fall of 2014, which may be prior to the adoption of proposed revisions to the Rules in Title 16 contained in the

178th Report of the Rules Committee. Therefore, current Rules 16-307 a. and 16-506 (a) are proposed to be amended by the addition of a reference to the Rules in Title 20.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 500 - COURT ADMINISTRATION - DISTRICT COURT

AMEND Rule 16-506 (a) to add the words "or the Rules in Title 20," as follows:

Rule 16-506. ELECTRONIC FILING OF PLEADINGS AND PAPERS

(a) Applicability; Conflicts with Other Rules

This Rule applies to the electronic filing of pleadings and papers in the District Court. A pleading or paper may not be filed by direct electronic transmission to the Court except in accordance with this Rule or the Rules in Title 20. This Rule and any administrative order entered pursuant to it prevail if inconsistent with any other Rule.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 16-307.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 600 - CRIMINAL INVESTIGATIONS AND MISCELLANEOUS PROVISIONS

AMEND Rule 4-601 by reorganizing it; by changing the tagline of and removing the cross reference after section (a); by adding a new section (b) that provides for the methods of submission of applications for search warrants, for an opportunity to request that warrants be sealed, and for a discussion of the application using certain types of communication; by adding a cross reference after section (b) to certain cases pertaining to changing the affidavit accompanying the warrant; by adding a new section (c) that provides certain methods of issuance of a search warrant and has language from former section (b); by deleting from section (d) certain language and by adding to section (d) new language providing for a 30-day extension for sealing the warrant, modifying language addressing when certain papers are required to be retained, and a requirement designating the original of an electronically transmitted warrant; by changing section (e) to expand the procedure for the officer's inventory of property seized, to add a certain exception for the papers that are to be left by the officer executing the warrant, and to change a certain term; by adding to section (f) language expanding the procedure for the officer making and delivering a return; by making stylistic changes to section (g); by adding to section (h)

language pertaining to the validity of a search warrant; by adding to section (i) language changing how the State's Attorney is notified and certain exceptions to the availability of the search warrant and other papers; by changing the tagline of section (j) and by adding language to section (j) that provides certain limits on disclosure of the fact that a search warrant has been applied for; and by making stylistic changes, as follows:

Rule 4-601. SEARCH WARRANTS

(a) ~~Issuance –~~ Authority to Issue; Title 5 Inapplicable

A search warrant may issue only as authorized by law. Title 5 of these Rules does not apply to the issuance of a search warrant.

~~Cross reference: Code, Criminal Procedure Article, §1-203.~~

(b) Submission of Application

(1) Method of Submission

An applicant may submit an application for a search warrant by (A) delivery of three copies of (i) the application, (ii) a supporting affidavit, and (iii) a proposed search warrant in person or by secure facsimile; or (B) transmission of those documents to the judge by secure and reliable electronic mail that permits the judge to print the complete text of the documents. If the documents are transmitted electronically the proposed warrant shall be sent in editable form, and the judge shall print and retain a copy of the documents.

(2) Request for Sealing Affidavit

The application may include a request that the affidavit be sealed pursuant to Code, Criminal Procedure Article, §1-203 (e).

(3) Discussion about Application

Upon receipt of an application, the judge may discuss it with the applicant in person or by telephone, video conferencing, or other electronic means.

Committee note: A discussion between the applicant and the judge may be explanatory in nature but may not be for the purpose of adding or changing any statement in the affidavit that is material to the determination of probable cause. Probable cause must be determined from the four corners of the affidavit. *See Abeokuto v. State*, 391 Md. 289, 338 (2006); *Valdez v. State*, 300 Md. 160, 168 (1984) (The four-corners rule "prevents consideration of evidence that seeks to supplement or controvert the truth of grounds stated in the affidavit.")

(c) Issuance of Search Warrant

The judge may issue a search warrant by (1) signing the warrant and recording on it the date and time of issuance, and (2) delivering the signed and dated warrant, along with a copy of the application and affidavit, to the applicant in person, by secure facsimile, or by transmission of those documents by secure and reliable electronic mail that permits the applicant to print the complete text of the documents.

~~(b)~~ (d) Retention of Application and Affidavits - Secrecy

~~A judge issuing a search warrant shall note on the warrant the date of issuance and shall retain a copy of the warrant, application, and supporting affidavit.~~

(1) ~~The~~ A search warrant shall be issued with all practicable

secrecy. ~~A~~ The judge may seal a supporting affidavit ~~may be sealed for not more than~~ for up to 30 days, subject to one 30-day extension as provided ~~by~~ in Code, Criminal Procedure Article, §1-203 (e). ~~The warrant and application, affidavit, or other papers upon which the warrant is based shall not be filed with the clerk until the search warrant is returned executed pursuant to section (e) of this Rule.~~

(2) A judge who issues a search warrant shall retain a copy of the application, affidavit, and warrant until the warrant is returned, executed or unexecuted, pursuant to section (g) or (h) of this Rule. Upon return of an executed warrant, the judge shall comply with section (g). If the signed and dated warrant was transmitted to the applicant by electronic mail, the printed copy retained by the judge, upon its filing pursuant to section (g), shall be the original. A warrant, application, or affidavit shall not be filed with the clerk prior to its return to the judge pursuant to section (g) or (h).

~~(c)~~ (e) Executed Warrant - Inventory; Copy

(1) An officer shall make, verify, and sign a written inventory of all property seized under a search warrant, including a general description of electronically stored information received pursuant to the warrant in electronic, disk, paper, or other form.

(2) At the time the ~~search~~ warrant is executed, ~~a copy of the inventory together with a copy of the search warrant, application, and supporting affidavit, except an affidavit that~~

~~has been sealed by order of court,~~ the officer executing the warrant shall ~~be left~~ leave with the person from whom the property ~~is~~ was taken ~~if the person is present~~ or, if that person is not present, ~~with the person apparently in charge~~ an authorized occupant of the premises from which the property ~~is~~ was taken (A) a copy of the search warrant and application, (B) a copy of the supporting affidavit, except an affidavit that has been sealed pursuant to section (d) of this Rule, and (C) a copy of the inventory.

(3) Subject to subsections (e)(2) and (e)(4) of this Rule, ~~If neither of those persons is~~ if the person from whom the property was taken and an authorized occupant of the premises from which the property was taken are not present at the time the search warrant is executed, the copies shall be left in a conspicuous place at the premises from which the property ~~is~~ was taken.

(4) ~~The officer preparing the inventory shall verify it before making the return. Upon the expiration of the order sealing an affidavit, the affidavit shall be unsealed and~~ If a copy of the supporting affidavit was not left because it was under seal, a copy shall be delivered ~~within 15 days~~ to the person from whom the property was taken or, if that person is not present, ~~the person apparently in charge~~ to an authorized occupant of the premises from which the property was taken within 15 days after the affidavit is unsealed.

~~(d)~~ (f) Executed Warrant - Return

(1) An officer who executes a search warrant shall prepare a

detailed search warrant return, which shall include the date and time of the execution of the warrant and a verified inventory.

(2) ~~An executed warrant shall be returned to the issuing judge,~~ The officer shall deliver the return to the judge who issued the warrant or, if that judge is not immediately available, to another judge of the same circuit, if the warrant was issued by a circuit court judge, or of the same district, if the warrant was issued by ~~the~~ a District Court judge, as promptly as possible and, in any event, (A) within ten days after the ~~date the search~~ warrant ~~is~~ was executed, or (B) within any earlier time set forth in the ~~search~~ warrant ~~for its return~~. The return shall be accompanied by the executed warrant and the verified inventory. ~~A search warrant unexecuted within 15 days after its issuance shall be returned promptly to the issuing judge.~~

(3) Delivery of the return, warrant, and verified inventory may be in person, by secure facsimile, or by secure electronic mail that permits the judge to print the complete text of the documents. If the delivery is by electronic mail, the officer shall sign the return and inventory as required by Rule 20-107 (e) and, no later than the next business day, deliver to the judge the original signed and dated return and inventory and the warrant that was executed.

(4) If the return is made to a judge other than the judge who issued the warrant, the officer shall notify the issuing judge of when and to whom the return was made, unless it is impracticable to give such notice.

(5) The officer shall deliver a copy of the return to an authorized occupant of the premises searched or, if such a person is not present, leave a copy of the return at the premises searched.

~~(e)~~ (g) Executed ~~Search~~ Warrant~~s~~ - Filing with Clerk

The judge to whom an executed search warrant is returned shall attach to the ~~search~~ warrant ~~copies of~~ the return, the verified inventory, and all other papers in connection with the issuance, execution, and return, including the copies retained by the issuing judge, and shall file them with the clerk of the court for the county in which the property was seized. The papers filed with the clerk shall be sealed and shall be opened for inspection only upon order of the court. The clerk shall maintain a confidential index of the search warrants.

~~(f)~~ (h) Unexecuted ~~Search~~ Warrants

(1) A search warrant is valid for 15 days from the date it was issued and may be served only within that time. After the expiration of 15 days, the warrant is void.

Cross reference: See Code, Criminal Procedure Article, §1-203 (a)(4).

(2) A search warrant that becomes void under subsection (h)(1) of this Rule shall be returned to the judge who issued it. The judge ~~to whom an unexecuted search warrant is returned~~ may destroy the ~~search~~ warrant and related papers or make any other disposition the judge deems proper.

~~(g)~~ (i) Inspection of Warrant, Inventory, and Other Papers

(1) The following persons may file an application under this section:

(A) ~~Upon application filed by~~ a person from whom or from whose premises property is taken under a search warrant; ~~or by~~

(B) a person having an interest in the property taken; and ~~or by~~

(C) a person aggrieved by ~~a~~ the search or seizure~~; the court of the county in which the search warrant is filed shall order that the warrant, inventory, and other related papers filed be made available to the person or to that person's attorney for inspection and copying~~.

(2) Upon the filing of the application, the ~~court may order that notice thereof be given~~ clerk shall send a copy of the application to the State's Attorney.

(3) Except for papers then under seal or subject to a protective order, upon an application filed under subsection (i)(1), the court shall order that the warrant, inventory, and other related papers filed with the clerk be made available to the person or that person's attorney for inspection and copying.

~~(h)~~ (j) Prohibited Disclosures; Contempt

(1) Except for disclosures required for the execution of a search warrant or directed by this Rule or by order of court issued pursuant to this Rule~~,~~:

(A) a person ~~who discloses before its execution~~ may not disclose that a search warrant has been applied for or issued prior to execution of the warrant, and ~~or a~~

(B) a public officer or employee ~~who discloses after its execution~~, may not disclose the contents of a search warrant or the contents of any other paper filed with it, even after execution of the warrant, except as authorized by a judge.

(2) Any person who violates this section may be prosecuted for criminal contempt of court.

Source: This Rule is derived from former Rule 780 and M.D.R. 780.

REPORTER'S NOTE

Amendments to Rule 4-601 are proposed to implement Chapter 107, Laws of 2014 (HB 1109) and to clarify procedures pertaining to the issuance of a search warrant. The bill provides for electronic transmission of search warrant documents. The Committee recommends adding a requirement to subsection (b)(1) that the application for a warrant that is delivered in person or faxed contain three copies of the application, the supporting affidavit, and the proposed search warrant. Another recommendation, which is in subsection (b)(1), is that applications transmitted electronically be sent in editable form, similar to the procedures for MDEC. The Committee proposes adding to subsection (d)(1) one 30-day extension for the sealing of supporting affidavits, which is a statutory provision, and designating the judge's printed copy of a warrant as the original after a signed and dated warrant has been transmitted to the applicant by electronic mail.

Language is added to subsection (e)(1) to clarify a current ambiguity by requiring the return of an executed warrant to contain a general description of electronically stored information received pursuant to the warrant.

The bill also provides that an officer who executes the warrant is required to give a copy of the warrant, the application, and the affidavit to an authorized occupant of the premises searched, or if there is not such a person, to leave a copy at the premises. Section (e) of Code, Criminal Procedure Article, §1-203, which had not been amended, expressly permits the judge to seal the affidavit for up to 60 days and specifies that the affidavit is not to be given to the person from whom the property was seized until after the seal expires or is lifted. With the advice of counsel to the House Judiciary Committee, the Committee believes that the legislature did not intend to

supersede that provision and require the officer to leave a copy of an affidavit under seal at the time the warrant is executed, which would defeat the purpose of putting the affidavit under seal. This is addressed in subsection (e)(2) of the Rule.

Section (f) of Rule 4-601 includes the statutory requirement that search warrants be served within 15 days after their issuance and become void thereafter.

AMEND Rule 7-202 to require identification of any issue to be reviewed on the record of the Workers' Compensation Commission, to require certain attachments to the petition under certain circumstances, to require service of the petition and attachments on the Attorney General under certain circumstances, to permit electronic service of a certain notice under certain circumstances, and to make stylistic changes, as follows:

Rule 7-202. METHOD OF SECURING REVIEW

(a) By Petition

A person seeking judicial review under this chapter shall file a petition for judicial review in a circuit court authorized to provide the review.

(b) Caption

The Petition shall be captioned as follows:

IN THE CIRCUIT COURT FOR _____ *	
*	
PETITION OF _____ *	
[name and address] *	
*	
FOR JUDICIAL REVIEW OF THE DECISION OF THE *	CIVIL
*	ACTION
_____ *	No. _____
[name and address of administrative agency *	
that made the decision] *	
*	
*	

IN THE CASE OF _____ *
[caption of agency proceeding, *
including agency case number] *

(c) Contents of Petition; Attachments

(1) Contents

The petition shall:

(A) request judicial review~~,~~;

(B) identify the order or action of which review is sought~~,~~; ~~and~~

(C) state whether the petitioner was a party to the agency proceeding~~.~~, and ~~If~~ if the petitioner was not a party~~, the petition shall~~ to the agency proceeding, state the basis of the petitioner's standing to seek judicial review~~.~~; and

(D) ~~If~~ if the ~~judicial~~ review sought is of a decision of the Workers' Compensation Commission ~~is sought~~, state whether any issue is to be reviewed on the record before the Commission and, if it is, identify the issue.

No other allegations are necessary.

Committee note: The petition is in the nature of a notice, much like a notice of appeal. The grounds for judicial review, required by former Rule B2 e to be stated in the petition, are now to be set forth in the memorandum filed pursuant to Rule 7-207.

(2) Attachments–Review of Workers' Compensation Commission Decision

If review of a decision of the Workers' Compensation Commission is sought, the petitioner shall attach to the petition:

(A) a certificate that copies of the petition and attachments were served pursuant to subsection (d)(2) of this Rule, and

(B) if no issue is to be reviewed on the record before the Commission, copies of (i) the employee claim form and (ii) all of the Commission's orders in the petitioner's case.

(d) Copies; Filing; Mailing

(1) Notice to Agency

Upon filing the petition, the petitioner shall deliver to the clerk a copy of the petition for the agency whose decision is sought to be reviewed. The clerk shall promptly mail a copy of the petition to the agency, informing the agency of the date the petition was filed and the civil action number assigned to the action for judicial review.

(2) Service by Petitioner in Workers' Compensation Cases

Upon filing a petition for judicial review of a decision of the Workers' Compensation Commission, the petitioner shall serve a copy of the petition, together with all attachments, by first-class mail on the Commission and each other party of record in the proceeding before the Commission. If the petitioner is requesting judicial review of the Commission's decision regarding attorneys' fees, the petitioner also shall serve a copy of the petition and attachments by first-class mail on the Attorney General.

Committee note: The first sentence of ~~This~~ this subsection is required by Code, Labor and Employment Article, §9-737. It does not relieve the clerk from the obligation under subsection (d)(1)

of this Rule to mail a copy of the petition to the agency or the agency from the obligation under subsection (d)(3) of this Rule to give written notice to all parties to the agency proceeding.

(3) By Agency to Parties

(A) Generally

Unless otherwise ordered by the court, the agency, upon receiving the copy of the petition from the clerk, shall give written notice promptly by ~~ordinary~~ first-class mail or, if permitted by subsection (d)(3)(B), electronically to all parties to the agency proceeding that:

~~(A)~~ (i) a petition for judicial review has been filed, the date of the filing, the name of the court, and the civil action number; and

~~(B)~~ (ii) a party wishing to oppose the petition must file a response within 30 days after the date the agency's notice was mailed unless the court shortens or extends the time.

(B) Electronic Notification in Workers' Compensation Cases

The Commission may give the written notice required under subsection (d)(3)(A) of this Rule electronically to a party to the Commission proceeding if the party has subscribed to receive electronic notices from the Commission.

(e) Certificate of Compliance

Within five days after mailing or electronic transmission, the agency shall file with the clerk a certificate of compliance with section (d) of this Rule, showing the date the agency's notice was mailed or electronically transmitted and the names and addresses of the persons to whom it was mailed. Failure to file

the certificate of compliance does not affect the validity of the agency's notice.

Source: This Rule is in part derived from former Rule B2 and is in part new.

REPORTER'S NOTE

Judicial review of agency decisions is almost always on the record made before the agency, and the agency is required to transmit its record to the court. Although on-the-record review is permissible in Workers' Compensation Commission ("WCC") cases, in the great majority of those cases, the review is essentially *de novo* and often is determined by a jury.

The WCC record is kept in electronic form. Currently, even when the review is entirely *de novo*, the WCC always must transmit the record. This requires the WCC staff to print paper copies of all of the documents in the electronic case file, prepare and print the transcript of any hearings, and mail all of these documents to the circuit court. Rarely is there any need for most of the documents. The WCC has complained about the burden on it to produce the paper record.

The Rules Committee recommends amending Rule 7-202 to require that a petition for judicial review of a WCC decision identify any issue that is to be reviewed on the WCC record. If no issue is to be reviewed on the record, Rule 7-202 would require that the employee claim form, the employer's first report, the wage statement, and all WCC orders be attached to the petition. Practitioners advise that these documents generally are necessary or desirable for the *de novo* review. The documents are not required to be attached to the petition if the review is on the record of the WCC because the documents would be included in the record that is being reviewed.

Also proposed to be added to Rule 7-202 are (1) a requirement that the petitioner serve a copy of the petition on the Attorney General if the petitioner is seeking judicial review of a WCC decision regarding attorneys' fees and (2) language permitting the WCC to give the required notice of the filing of a petition for judicial review electronically to parties who have subscribed to receive notices electronically.

Proposed new Rule 7-206.1 and amendments to Rule 7-206 exempt the WCC from the requirement that the administrative record be transmitted to the circuit court, except if (1) an issue is to be determined on the record of the WCC, or (2) the circuit court enters an order requiring the preparation and

filing of all or part of the record. At the request of practitioners and the WCC, the proposed Rules changes provide that, regardless of whether the WCC record is transmitted to the circuit court, a transcript of testimony is prepared, included in the WCC's record of the proceeding, and made available to the parties electronically.

Rules 2-603 (b) and 7-204 (b) contain conforming amendments.

MARYLAND RULES OF PROCEDURE

TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

CHAPTER 200 - JUDICIAL REVIEW OF ADMINISTRATIVE AGENCY DECISIONS

AMEND Rule 7-206 by making it inapplicable to judicial review of decisions of the Workers' Compensation Commission except under certain circumstances, as follows:

Rule 7-206. RECORD – GENERALLY

(a) Applicability

This Rule does not apply to judicial review of a decision of the Workers' Compensation Commission, except as otherwise provided by Rule 7-206.1.

~~(a)~~ (b) Contents; Expense of Transcript

The record shall include the transcript of testimony and all exhibits and other papers filed in the agency proceeding, except those papers the parties agree or the court directs may be omitted by written stipulation or order included in the record. If the testimony has been recorded but not transcribed before the filing of the petition for judicial review, the first petitioner, if required by the agency and unless otherwise ordered by the court or provided by law, shall pay the expense of transcription, which shall be taxed as costs and may be apportioned as provided in Rule 2-603. A petitioner who pays the cost of transcription shall file with the agency a certification of costs, and the agency shall include the certification in the record.

~~(b)~~ (c) Statement in Lieu of Record

If the parties agree that the questions presented by the action for judicial review can be determined without an examination of the entire record, they may sign and, upon approval by the agency, file a statement showing how the questions arose and were decided and setting forth only those facts or allegations that are essential to a decision of the questions. The parties are strongly encouraged to agree to such a statement. The statement, any exhibits to it, the agency's order of which review is sought, and any opinion of the agency shall constitute the record in the action for judicial review.

~~(c)~~ (d) Time for Transmitting

Except as otherwise provided by this Rule, the agency shall transmit to the clerk of the circuit court the original or a certified copy of the record of its proceedings within 60 days after the agency receives the first petition for judicial review.

~~(d)~~ (e) Shortening or Extending the Time

Upon motion by the agency or any party, the court may shorten or extend the time for transmittal of the record. The court may extend the time for no more than an additional 60 days. The action shall be dismissed if the record has not been transmitted within the time prescribed unless the court finds that the inability to transmit the record was caused by the act or omission of the agency, a stenographer, or a person other than the moving party.

~~(e)~~ (f) Duty of Clerk

Upon the filing of the record, the clerk shall notify the parties of the date that the record was filed.

Committee note: Code, Article 2B, §175 (e)(3) provides that the decision of a local liquor board shall be affirmed, modified, or reversed by the court within 90 days after the record has been filed, unless the time is "extended by the court for good cause."

Source: This Rule is in part derived from former Rule B7 and in part new.

REPORTER'S NOTE

See the Reporter's note to Rule 7-202.

ADD new Rule 7-206.1, as follows:

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

(a) Applicability

This Rule applies only in a action for judicial review of a decision of the Workers' Compensation Commission.

(b) If Review is on the Record

Subject to section (d) of this Rule, Rule 7-206 governs the preparation and filing of the record if judicial review of an issue is on the record of the Commission.

(c) If No Issue is to be Reviewed on the Record

If no issue is to be reviewed on the record of the Commission:

(1) a transcript of the proceedings before the Commission shall be prepared in accordance with Rule 7-206 (b), included in the Commission's record of the proceeding, and made available to all parties electronically in the same manner as other Commission documents;

(2) the transcript and all other portions of the record of the proceedings before the Commission shall not be transmitted to the circuit court unless the court, on motion of a party or on

the court's own initiative, enters an order requiring the preparation and filing of all or part of the record in accordance with the provisions of Rule 7-206 and section (d) of this Rule; and

(3) regardless of whether the record or any part of the record is filed with the court, payment for and the timing of the preparation of the transcript shall be in accordance with Rule 7-206 (b), (d), and (e).

Committee note: Section (c) of this Rule does not preclude a party from obtaining from the Commission a transcript of testimony or copies of other parts of the record upon payment by the party of the cost of the transcript or record excerpt.

(d) Electronic Transmission

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

Cross reference: See Code, Labor and Employment Article, §9-739.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 7-202.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 600 - JUDGMENT

AMEND Rule 2-603 (b) to conform an internal reference to amendments to Rule 7-206, as follows:

Rule 2-603. COSTS

. . .

(b) Assessment by the Clerk

The clerk shall assess as costs all fees of the clerk and sheriff, statutory fees actually paid to witnesses who testify, and, in proceedings under Title 7, Chapter 200 of these Rules, the costs specified by Rule 7-206 ~~(a)~~ (b). On written request of a party, the clerk shall assess other costs prescribed by rule or law. The clerk shall notify each party of the assessment in writing. On motion of any party filed within five days after the party receives notice of the clerk's assessment, the court shall review the action of the clerk.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 7-202.

MARYLAND RULES OF PROCEDURE

TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

CHAPTER 200 - JUDICIAL REVIEW OF ADMINISTRATIVE AGENCY DECISIONS

AMEND Rule 7-204 to conform a reference in a Committee note to amendments to Rule 7-206, as follows:

Rule 7-204. RESPONSE TO PETITION

. . .

(b) Preliminary Motion

A person may file with the response a preliminary motion addressed to standing, venue, timeliness of filing, or any other matter that would defeat a petitioner's right to judicial review. Except for venue, failure to file a preliminary motion does not constitute waiver of an issue. A preliminary motion shall be served upon the petitioner and the agency.

Committee note: The filing of a preliminary motion does not result in an automatic extension of the time to transmit the record. The agency or party seeking the extension must file a motion under Rule 7-206 ~~(d)~~ (e).

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 7-202.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-326 (d) by adding subsection (d)(1) to provide for juror communication using juror numbers, by adding the words "or a juror" to subsection (d)(2)(A), by adding language to subsection (d)(2)(B) providing for certain actions by a judge who receives a juror communication, by adding a Committee note after subsection (d)(2)(B), by adding language to subsection (d)(2)(C) pertaining to a judicial determination that a juror communication pertains to the action, and by amending subsection (d)(3) as to how the clerk handles a juror communication, as follows:

Rule 4-326. JURY - REVIEW OF EVIDENCE - COMMUNICATIONS

(a) Jurors' Notes

The court may, and on request of any party shall, provide paper notepads for use by sworn jurors, including any alternates, during trial and deliberations. The court shall maintain control over the jurors' notes during the trial and promptly destroy the notes after the trial. Notes may not be reviewed or relied upon for any purpose by any person other than the author. If a sworn juror is unable to use a notepad because of a disability, the court shall provide a reasonable accommodation.

(b) Items Taken to Jury Room

Sworn jurors may take their notes with them when they

retire for deliberation. Unless the court for good cause orders otherwise, the jury may also take the charging document and exhibits that have been admitted in evidence, except that a deposition may not be taken into the jury room without the agreement of all parties and the consent of the court. Electronically recorded instructions or oral instructions reduced to writing may be taken into the jury room only with the permission of the court. On request of a party or on the court's own initiative, the charging documents shall reflect only those charges on which the jury is to deliberate. The court may impose safeguards for the preservation of the exhibits and the safety of the jury.

Cross reference: See Rule 5-802.1 (e).

(c) Jury Request to Review Evidence

The court, after notice to the parties, may make available to the jury testimony or other evidence requested by it. In order that undue prominence not be given to the evidence requested, the court may also make available additional evidence relating to the same factual issue.

(d) Communications with Jury

(1) Instruction to Use Juror Number

The judge shall instruct the jury, in any preliminary instructions and in instructions given prior to jury deliberations that, in any written communication from a juror, the juror shall be identified only by juror number.

~~(1)~~ (2) Notification of Judge; Duty of Judge

(A) A court official or employee who receives any written or oral communication from the jury or a juror shall immediately notify the presiding judge of the communication.

(B) ~~If~~ The judge shall determine whether the communication pertains to the action~~,~~. If the judge determines that the communication does not pertain to the action, the judge may respond as he or she deems appropriate.

Committee note: Whether a communication pertains to the action is defined by case law. *See*, for example, *Harris v. State*, 428 Md. 700 (2012) and *Grade v. State*, 431 Md. 85 (2013).

(C) If the judge determines that the communication pertains to the action, the judge shall promptly, and before responding to the communication, direct that the parties be notified of the communication and invite and consider, on the record, the parties' position on any response. The judge may respond to the communication ~~(A)~~ in writing~~,~~ or ~~(B)~~ orally in open court on the record.

~~(2)~~ (3) Duty of Clerk

~~The clerk shall (A) record on any written communication the date and time it was received by the judge, and (B) enter on the docket (i) any written communication and the nature of any oral communication, (ii) the date and time the communication was received by the judge, (iii) that the parties were notified and had an opportunity on the record to state their position on any response, (iv) how the communication was addressed by the judge, and (v) any written response by the judge to the communication.~~

(A) The clerk shall enter on the docket (i) the date and

time that each communication from the jury or a juror was received by or reported to the judge, (ii) whether the communication was written or oral, and, if oral, the nature of the communication, (iii) whether the judge concluded that the communication pertained to the action, and (iv) if so, whether the parties and attorneys were notified and had an opportunity on the record to state their position on any response.

(B) The clerk shall enter in the electronic or paper file each written communication from the jury or a juror and each written response by the judge. Any identification of a juror other than the juror number shall be redacted.

(C) In any entry made by the clerk, a juror shall be identified only by juror number.

Source: This Rule is derived as follows:
Section (a) is new.
Section (b) is derived from former Rule 758 a and b and 757 e.
Section (c) is derived from former Rule 758 c.
Section (d) is derived in part from former Rule 758 d and is in part new.

REPORTER'S NOTE

The Court of Appeals decided a number of cases involving notes sent by jurors sitting in a case (e.g., *Perez v. State*, 420 Md. 57 (2011) and *Black v. State*, 426 Md. 328 (2012)). The Court requested that Rules 4-326 and 2-521 be expanded to address this issue.

In its 174th Report, the Rules Committee transmitted to the Court proposed amendments to clarify how jurors' notes are to be handled. Prior to the Court's open meeting on the proposed changes, the Court filed its opinion in *State v. Harris*, 428 Md. 700 (2012), which raised an additional issue that the Court believed should be addressed in Rules 4-326 and 2-521, requiring court employees to inform the judge of any communication from a juror. The Rules were remanded to the Committee, which included its recommended changes in the 177th Report. At an open meeting

on the 177th Report, the Court requested clarification of the phrase, "pertaining to the action," which appeared in both Rules, and referred the Rules back to the Committee.

To address the Court's request, the Committee recommends adding a Committee note after subsection (d)(2)(B) of Rule 4-326, which also would be added to Rule 2-521. The Committee's view is that although it is not necessary to notify the parties of every communication by a juror, clerks should be required to docket all communications received from jurors and notify the judge of each communication. The judge determines whether the communication pertains to the action and then takes appropriate action. As noted in the proposed Committee note, whether a communication pertains to the action is defined by case law.

A trial judge sent a comment to the Committee expressing the concern that this procedure would burden the docket and result in invasion of jurors' privacy if their identifying information is placed in the record. To address this concern, the Committee recommends that each juror communication be docketed, but that the juror be identified only by juror number.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-521 (d) by adding subsection (d)(1) to provide for juror communication using juror numbers, by adding the words "or a juror" to subsection (d)(2)(A), by adding language to subsection (d)(2)(B) providing for certain actions by a judge who receives a juror communication, by adding a Committee note after subsection (d)(2)(B), by adding language to subsection (d)(2)(C) pertaining to a judicial determination that a juror communication pertains to the action, and by amending subsection (d)(3) as to how the clerk handles a juror communication, as follows:

Rule 2-521. JURY - REVIEW OF EVIDENCE - COMMUNICATIONS

(a) Jurors' Notes

The court may, and on request of any party shall, provide paper notepads for use by sworn jurors, including any alternates, during trial and deliberations. The court shall maintain control over the jurors' notes during the trial and promptly destroy the notes after the trial. Notes may not be reviewed or relied upon for any purpose by any person other than the author. If a sworn juror is unable to use a notepad because of a disability, the court shall provide a reasonable accommodation.

(b) Items Taken to Jury Room

Sworn jurors may take their notes with them when they

retire for deliberation. Unless the court for good cause orders otherwise, the jury may also take exhibits that have been admitted in evidence, except that a deposition may not be taken into the jury room without the agreement of all parties and consent of the court. Written or electronically recorded instructions may be taken into the jury room only with the permission of the court.

Cross reference: See Rule 5-802.1 (e).

(c) Jury Request to Review Evidence

The court, after notice to the parties, may make available to the jury testimony or other evidence requested by it. In order that undue prominence not be given to the evidence requested, the court may also make available additional evidence relating to the same factual issue.

(d) Communications with Jury

(1) Instruction to Use Juror Number

The judge shall instruct the jury, in any preliminary instructions and in instructions given prior to jury deliberations that, in any written communication from a juror, the juror shall be identified only by juror number.

~~(1)~~ (2) Notification of Judge; Duty of Judge

(A) A court official or employee who receives any written or oral communication from the jury or a juror shall immediately notify the presiding judge of the communication.

(B) ~~If~~ The judge shall determine whether the communication pertains to the action~~,~~. If the judge determines that the

communication does not pertain to the action, the judge may respond as he or she deems appropriate.

Committee note: Whether a communication pertains to the action is defined by case law. *See*, for example, *Harris v. State*, 428 Md. 700 (2012) and *Grade v. State*, 431 Md. 85 (2013).

(C) If the judge determines that the communication pertains to the action, the judge shall promptly, and before responding to the communication, direct that the parties be notified of the communication and invite and consider, on the record, the parties' position on any response. The judge may respond to the communication ~~(A)~~ in writing~~,~~ or ~~(B)~~ orally in open court on the record.

~~(2)~~ (3) Duty of Clerk

~~The clerk shall (A) record on any written communication the date and time it was received by the judge, and (B) enter on the docket (i) any written communication and the nature of any oral communication, (ii) the date and time the communication was received by the judge, (iii) that the parties were notified and had an opportunity on the record to state their position on any response, (iv) how the communication was addressed by the judge, and (v) any written response by the judge to the communication.~~

(A) The clerk shall enter on the docket (i) the date and time that each communication from the jury or a juror was received by or reported to the judge, (ii) whether the communication was written or oral, and, if oral, the nature of the communication, (iii) whether the judge concluded that the communication pertained to the action, and (iv) if so, whether

the parties and attorneys were notified and had an opportunity on the record to state their position on any response.

(B) The clerk shall enter in the electronic or paper file each written communication from the jury or a juror and each written response by the judge. Any identification of a juror other than the juror number shall be redacted.

(C) In any entry made by the clerk, a juror shall be identified only by juror number.

Source: This Rule is derived as follows:
Section (a) is new.
Section (b) is derived from former Rules 558 a, b and d and 758 b.
Section (c) is derived from former Rule 758 c.
Section (d) is derived in part from former Rule 758 d and is in part new.

REPORTER'S NOTE

See the Reporter's note to Rule 4-326.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-322 to change the title of the Rule, to require the clerk to note on the pleading or other item the date the clerk received the item, to specify how the date of filing of pleadings and other items is determined, and to make stylistic changes, as follows:

Rule 1-322. FILING OF PLEADINGS, PAPERS, AND OTHER ITEMS

(a) Generally

The filing of pleadings, papers, and other items with the court shall be made by filing them with the clerk of the court, except that a judge of that court may accept the filing, in which event the judge shall note on the item the ~~filing~~ date the judge accepted it for filing and ~~then~~ forthwith transmit the item to the office of the clerk. On the same day that an item is received in a clerk's office, the clerk shall note on it the date it was received and enter on the docket that date and any date noted on the item by a judge. The item shall be deemed filed on the earlier of (1) the filing date noted by a judge on the item or (2) the date noted by the clerk on the item. No item may be filed directly by electronic transmission, except (1) pursuant to an electronic filing system approved under Rule 16-307 or 16-506, (2) as permitted by Rule 14-209.1, (3) as provided in section (b)

of this Rule, or (4) pursuant to Title 20 of these Rules.

(b) Electronic Transmission of Mandates of the U.S. Supreme Court

A Maryland court shall accept a mandate of the Supreme Court of the United States transmitted by electronic means unless the court does not have the technology to receive it in the form transmitted, in which event the clerk shall promptly so inform the Clerk of the Supreme Court and request an alternative method of transmission. The clerk of the Maryland court may request reasonable verification of the authenticity of a mandate transmitted by electronic means.

(c) Photocopies; Facsimile Copies

A photocopy or facsimile copy of a pleading or paper, once filed with the court, shall be treated as an original for all 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 upon the request of the court or any party.

Cross reference: See Rule 1-301 (d), requiring that court papers be legible and of permanent quality.

Source: This Rule is derived in part from the 1980 version of Fed. R. Civ. P. 5 (e) and Rule 102 1 d of the Rules of the United States District Court for the District of Maryland and is in part new.

REPORTER'S NOTE

Proposed amendments to Rule 1-322 (a) require the clerk, on the same day the clerk's office receives an item for filing, to note on the item the date it was received by the clerk. The amendment further provides that an item shall be deemed filed on the earlier of the date the judge accepted the item for filing,

if that occurred, or the date of receipt in the clerk's office noted by the clerk on the item.

Stylistic changes also are proposed, including addition of the word "papers" to the first sentence of the Rule and to the Title of the Rule.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 600 - JUDGMENT

AMEND Rule 2-601 to add an applicability provision in subsection (b)(1); to delete language from and add language to subsection (b)(2) to modify how a judgment is entered; to add subsection (b)(3), which provides that subject to a shielding exception, a docket entry is available to the public through a search feature on the Judiciary website and in accordance with certain Rules in Title 16; and to add section (d), which provides how the date of a judgment is determined before and after the date of the amendment to Rule 2-601, as follows:

Rule 2-601. ENTRY OF JUDGMENT

(a) Prompt Entry - Separate Document

Each judgment shall be set forth on a separate document. Upon a verdict of a jury or a decision by the court allowing recovery only of costs or a specified amount of money or denying all relief, the clerk shall forthwith prepare, sign, and enter the judgment, unless the court orders otherwise. Upon a verdict of a jury or a decision by the court granting other relief, the court shall promptly review the form of the judgment presented and, if approved, sign it, and the clerk shall forthwith enter the judgment as approved and signed. A judgment is effective only when so set forth and when entered as provided in section

(b) of this Rule. Unless the court orders otherwise, entry of the judgment shall not be delayed pending determination of the amount of costs.

(b) Applicability - Method of Entry ~~- Date of Judgment~~ - Availability to the Public

(1) Applicability

Section (b) of this Rule applies to judgments entered on and after [*effective date of the amendment*].

(2) Entry

The clerk shall enter a judgment ~~by making a record of it in writing on the file jacket, or on a docket within the file, or in a docket book, according to the practice of each court, and shall record the actual date of the entry. That date shall be the date of the judgment.~~ by making an entry of it on the docket of the electronic case management system used by that court along with such description of the judgment as the clerk deems appropriate.

(3) Availability to the Public

Unless shielding is required by law or court order, the docket entry and the date of the entry shall be available to the public through the case search feature on the Judiciary website and in accordance with Rules 16-1002 and 16-1003.

(c) Recording and Indexing

Promptly after entry, the clerk shall (1) record and index the judgment, except a judgment denying all relief without costs, in the judgment records of the court and (2) note on the docket

the date the clerk sent copies of the judgment in accordance with Rule 1-324.

(d) Date of Judgment

On and after [*effective date of the amendment*], regardless of the date a judgment was signed, the date of the judgment is the date that the clerk enters the judgment on the electronic case management system docket in accordance with section (b) of this Rule. The date of a judgment entered prior to [*effective date of the amendment*] is computed in accordance with the Rules in effect when the judgment was entered.

Source: This Rule is derived as follows:
Section (a) is new and is derived from the 1993 version of Fed. R. Civ. P. 58.
Section (b) is new.
Section (c) is new.
Section (d) is new.

REPORTER'S NOTE

Proposed amendments to Rules 2-601 and 3-601 change and make uniform the clerk's procedure for recording an entry of judgment. The proposed changes require the clerk to enter a judgment on the docket of the court's electronic case management system, instead of entering it in writing on a file jacket, on a docket within a file, or in a docket book.

The amendments specify that, for judgments entered on and after the Rule's effective date, the date of judgment is the date that the clerk enters it on the docket of the court's electronic case management system.

The Rule also provides that unless shielding is required by law or court order, a docket entry and its date of entry are available to the public under a search feature on the Judiciary website and in accordance with Rules 16-1002 and 16-1003.

Conforming amendments to Rules 7-104, 8-202, and 8-302 also are proposed.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT

CHAPTER 600 - JUDGMENT

AMEND Rule 3-601 to add an applicability provision in subsection (b)(1); to delete language from and add language to subsection (b)(2), to modify how a judgment is entered; to add subsection (b)(3), which provides that subject to a certain exception, a docket entry is available to the public through a search feature on the Judiciary website and in accordance with certain Rules in Title 16; and to add section (e), which provides how the date of judgment is determined before and after the date of the amendment to Rule 3-601, as follows:

Rule 3-601. ENTRY OF JUDGMENT

(a) When Entered

Upon a decision by the court denying or granting relief, the court shall enter the judgment promptly.

(b) Applicability - Method of Entry ~~- Date of Judgment~~ Availability to the Public

~~The court shall enter a judgment by making a record of it in writing on the file jacket, or on a docket within the file, or in a docket book, according to the practice of each court, and shall record the actual date of the entry. That date shall be the date of the judgment.~~

(1) Applicability

Section (b) of this Rule applies to judgments entered on and after [*effective date of the amendment*].

(2) Entry

The clerk shall enter a judgment by making an entry on the docket of the electronic case management system used by that court along with such description of the judgment as the clerk deems appropriate.

(3) Availability to the Public

Unless shielding is required by law or court order, the docket entry and the date of the entry shall be available to the public through the case search feature on the Judiciary's website and in accordance with Rules 16-1002 and 16-1003.

(c) Advice to Judgment Holder

Upon entering a judgment for a sum certain, except in Baltimore City, the court shall advise the judgment holder of the right to obtain a lien on real property pursuant to Rule 3-621.

(d) Recording and Indexing

Promptly after entry, the clerk shall record and index the judgment, except a judgment denying all relief without costs, in the judgment records of the court.

(e) Date of Judgment

On and after [*effective date of the amendment*], regardless of the date a judgment was signed, the date of the judgment is the date that the clerk enters the judgment on the electronic case management system docket in accordance with section (b) of this Rule. The date of a judgment entered prior to [*effective*

date of the amendment] is computed in accordance with the Rules in effect when the judgment was entered.

Source: This Rule is derived as follows:
Section (a) is new and is derived from the 1963 version of Fed. R. Civ. P. 58.
Section (b) is new.
Section (c) is derived from former M.D.R. 619 b.
Section (d) is new.
Section (e) is new.

REPORTER'S NOTE

See the Reporter's note to Rule 2-601.

MARYLAND RULES OF PROCEDURE

TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

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

AMEND Rule 7-104 to revise section (e), as follows:

Rule 7-104. NOTICE OF APPEAL - TIMES FOR FILING

. . .

(e) Date of Entry

"Entry" as used in this Rule occurs on the day when the District Court ~~first makes~~ enters a record ~~in writing of the judgment, notice or order on the file jacket, or on a docket within the file, according to the practice of that court, and records the actual date of the entry~~ on the docket of the electronic case management system used by that court.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 2-601.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 200 - OBTAINING REVIEW IN COURT OF SPECIAL APPEALS

AMEND Rule 8-202 to revise section (f), as follows:

Rule 8-202. NOTICE OF APPEAL - TIMES FOR FILING

. . .

(f) Date of Entry

"Entry" as used in this Rule occurs on the day when the clerk of the lower court ~~first makes~~ enters a record ~~in writing of the judgment, notice, or order on the file jacket, on a docket within the file, or in a docket book, according to the practice of that court, and records the actual date of the entry~~ on the docket of the electronic case management system used by that court.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 2-601.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 300 - OBTAINING APPELLATE REVIEW IN COURT OF APPEALS

AMEND Rule 8-302 to revise section (d), as follows:

Rule 8-302. PETITION FOR WRIT OF CERTIORARI - TIMES FOR FILING

. . .

(d) Date of Entry

"Entry" as used in this Rule occurs on the day when the clerk of the lower court ~~first makes~~ enters a record ~~in writing of the judgment, notice, or order on the file jacket, on a docket within the file, or in a docket book, according to the practice of that court, and records the actual date of the entry~~ on the docket of the electronic case management system used by that court.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 2-601.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-501 by requiring that a motion for summary judgment be in writing, by limiting the time when a motion can be filed, by requiring permission of the court to file the motion after the deadline for dispositive motions specified in the scheduling order entered pursuant to Rule 2-504 (b)(1)(E), by revising the Committee note after section (a), and by deleting the word "written" in section (b), as follows:

Rule 2-501. MOTION FOR SUMMARY JUDGMENT

(a) Motion

Any party may ~~make a~~ file a written motion for summary judgment on all or part of an action on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law. The motion shall be supported by affidavit if it is (1) filed before the day on which the adverse party's initial pleading or motion is filed or (2) based on facts not contained in the record. A motion for summary judgment may not be filed: (A) after any evidence is received on the merits, or (B) unless permission of the court is granted, after the deadline for dispositive motions specified in the scheduling order entered pursuant to Rule 2-504 (b)(1)(E).

Committee note: ~~For an example of a summary judgment granted at trial, see *Beyer v. Morgan State*, 369 Md. 335 (2002).~~ This Rule

does not prevent the trial court from exercising its discretion during trial to entertain any motions *in limine* or other preclusive motions that may have the same effect as summary judgment and lead to a motion for judgment under Md. Rule 2-519. See. e.g., *Univ. of Md. Medical System Corporation, et al. v. Rebecca Marie Waldt, et al*, 411 Md. 207 (2009). Such a procedure avoids confusion and potential due process deprivations associated with summary judgment motions raised orally or at trial. *See Beyer v. Morgan State Univ.*, 369 Md. 335, 359, fn. 16 (2002); *see also Hanson v. Polk County Land, Inc.*, 608 F.2d 129, 131 (5th Cir. 1979) (allowing oral motions for summary judgment leads to confusion with each side having a different recollection of what was contended.) Requiring a written motion also insures adequate notice to all sides.

(b) Response

A response to a ~~written~~ motion for summary judgment shall be in writing and shall (1) identify with particularity each material fact as to which it is contended that there is a genuine dispute and (2) as to each such fact, identify and attach the relevant portion of the specific document, discovery response, transcript of testimony (by page and line), or other statement under oath that demonstrates the dispute. A response asserting the existence of a material fact or controverting any fact contained in the record shall be supported by an affidavit or other written statement under oath.

. . .

REPORTER'S NOTE

Rule 2-501 is proposed to be amended by requiring that a motion for summary judgment and any response to the motion be in writing. The motion is required to be filed before evidence is received, and, if the motion is to be filed after the deadline for dispositive motions specified in the scheduling order entered pursuant to Rule 2-504 (b)(1)(E), it may be filed only with permission of the court.

The Committee suggests that the proposed amendments enhance due process by providing to the party against whom a dispositive

motion is filed better notice of the movant's assertions and a fuller opportunity to refute those assertions.

The Committee note after section (a) is amended by adding commentary that the trial court is not precluded from exercising its discretion to entertain motions *in limine* or other preclusive motions that may have the same effect as summary judgment and lead to a motion for judgment. The Committee note also observes, by citing *Beyer v. Morgan State Univ.*, 369 Md. 335, 359, fn. 16 (2002) and *Hanson v. Polk County Land, Inc.*, 608 F.2d 129, 131 (5th Cir. 1979), that a motion for summary judgment filed in writing avoids confusion and ensures adequate notice to both sides.

In the first line of section (b), the word "written" is deleted as unnecessary, since the amendment to section (a) requires <u>all</u> motions for summary judgment to be written. Thus, section (b) requires all responses to be in writing.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-504 to add a cross reference to Rule 2-501 (a) after subsection (b)(1)(E), as follows:

Rule 2-504. SCHEDULING ORDER

(a) Order Required

(1) Unless otherwise ordered by the County Administrative Judge for one or more specified categories of actions, the court shall enter a scheduling order in every civil action, whether or not the court orders a scheduling conference pursuant to Rule 2-504.1.

(2) The County Administrative Judge shall prescribe the general format of scheduling orders to be entered pursuant to this Rule. A copy of the prescribed format shall be furnished to the Chief Judge of the Court of Appeals.

(3) Unless the court orders a scheduling conference pursuant to Rule 2-504.1, the scheduling order shall be entered as soon as practicable, but no later than 30 days after an answer is filed by any defendant. If the court orders a scheduling conference, the scheduling order shall be entered promptly after conclusion of the conference.

(b) Contents of Scheduling Order

(1) Required

A scheduling order shall contain:

(A) an assignment of the action to an appropriate scheduling category of a differentiated case management system established pursuant to Rule 16-202;

(B) one or more dates by which each party shall identify each person whom the party expects to call as an expert witness at trial, including all information specified in Rule 2-402 (g)(1);

(C) one or more dates by which each party shall file the notice required by Rule 2-504.3 (b) concerning computer-generated evidence;

(D) a date by which all discovery must be completed;

(E) a date by which all dispositive motions must be filed, which shall be no earlier than 15 days after the date by which all discovery must be completed;

Cross reference: See Rule 2-501 (a), which provides that after the date by which all dispositive motions are to be filed, a motion for summary judgment may be filed only with the permission of the court.

(F) a date by which any additional parties must be joined;

(G) a date by which amendments to the pleadings are allowed as of right; and

(H) any other matter resolved at a scheduling conference held pursuant to Rule 2-504.1.

(2) Permitted

A scheduling order may also contain:

(A) any limitations on discovery otherwise permitted under

these rules, including reasonable limitations on the number of interrogatories, depositions, and other forms of discovery;

(B) the resolution of any disputes existing between the parties relating to discovery;

(C) a specific referral to or direction to pursue an available and appropriate form of alternative dispute resolution, including a requirement that individuals with authority to settle be present or readily available for consultation during the alternative dispute resolution proceeding, provided that the referral or direction conforms to the limitations of Rule 2-504.1 (e);

(D) an order designating or providing for the designation of a neutral expert to be called as the court's witness;

(E) in an action involving child custody or child access, an order appointing child's counsel in accordance with Rule 9-205.1;

(F) a further scheduling conference or pretrial conference date;

(G) provisions for discovery of electronically stored information;

(H) a process by which the parties may assert claims of privilege or of protection after production; and

(I) any other matter pertinent to the management of the action.

(c) Modification of Order

The scheduling order controls the subsequent course of the

action but shall be modified by the court to prevent injustice.

Cross reference: See Rule 5-706 for authority of the court to appoint expert witnesses.

Source: This Rule is in part new and in part derived as follows:
Subsection (b)(2)(G) is new and is derived from the 2006 version of Fed. R. Civ. P. 16 (b)(5).
Subsection (b)(2)(H) is new and is derived from the 2006 version of Fed. R. Civ. P. 16 (b)(6).

REPORTER'S NOTE

Rule 2-504 is proposed to be amended by the addition of a cross reference to Rule 2-501 (a) after subsection (b)(1)(E).

MARYLAND RULES OF PROCEDURE

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

CHAPTER 500 - RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-501 (a) by changing the word "appendix" to "attachment," as follows:

Rule 8-501. RECORD EXTRACT

(a) Duty of Appellant

Unless otherwise ordered by the appellate court or provided by this Rule, the appellant shall prepare and file a record extract in every case in the Court of Appeals, subject to section (k) of this Rule, and in every civil case in the Court of Special Appeals. The record extract shall be included as an ~~appendix~~ attachment to appellant's brief, or filed as a separate volume with the brief in the number of copies required by Rule 8-502 (c).

. . .

REPORTER'S NOTE

In an appeal, an attorney had attached a very small record extract as an appendix, basing this on the language of Rule 8-501 (a), which states that the record extract "shall be included as an appendix to appellant's brief, or filed as a separate volume with the brief in the number of copies required by Rule 8-502 (c)." The attorney had labeled the pages "App" and had made appropriate references to those pages in his brief. An appellate judge directed that the pages be labeled "E," not "App." The attorney's interpretation of the pertinent Rules is that a record extract, when attached as an appendix, is an appendix and should be labeled and referenced accordingly. He suggested that the Rules be clarified to eliminate any ambiguity.

The proposed amendment to Rule 8-501 clarifies section (a) by changing the word "appendix" to "attachment."

The proposed amendments to Rule 8-503 make clear that any reference to the record extract -- regardless of whether the record extract is included as an attachment to the appellant's brief or filed as a separate volume -- is indicated as (E.....). Stylistic changes to section (b) also are made.

MARYLAND RULES OF PROCEDURE

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

CHAPTER 500 - RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-503 (b) to clarify the form of references to pages in a record extract and to make stylistic changes, as follows:

Rule 8-503. STYLE AND FORM OF BRIEFS

. . .

(b) References

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

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 8-501.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 600 - DISPOSITION

AMEND Rule 8-606 (b)(4) to add language providing when the clerk shall delay issuance of the mandate and when the clerk shall issue the mandate, as follows:

Rule 8-606. MANDATE

(a) To Evidence Order of the Court

Any disposition of an appeal, including a voluntary dismissal, shall be evidenced by the mandate of the Court, which shall be certified by the Clerk under the seal of the Court and shall constitute the judgment of the Court.

(b) When Issued

(1) Generally

Subject to subsections (b)(2), (3), and (4) of this Rule, unless the Court orders otherwise, the Clerk shall issue the mandate upon the expiration of 30 days after the filing of the Court's opinion or entry of the Court's order.

(2) Voluntary Dismissal

Upon a voluntary dismissal, the Clerk shall issue the mandate immediately.

(3) Court of Special Appeals - Expedited Appeal

In any appeal proceeding under Rule 8-207 (a), issuance

of the mandate shall be as provided in Rule 8-207 (a)(6).

(4) Motion for Reconsideration

If a timely motion for reconsideration is filed, ~~issuance of the mandate ordinarily shall be delayed, as provided in Rule 8-605 (d)~~ unless the Court orders otherwise:

(A) the Clerk shall delay issuance of the mandate until the filing of (i) a withdrawal of the motion, or (ii) an order of the Court deciding the motion;

(B) if the Court denies the motion or grants it solely to make changes in the opinion or previous order that the Court finds do not change the principal decision in the case, the Clerk shall issue the mandate immediately upon the filing of the order; or

(C) if the Court order, with or without an accompanying new opinion, grants the motion in such manner that the Court finds does change the principal decision in the case, the Clerk shall issue the mandate upon the expiration of 30 days after the filing of the order.

(c) To Contain Statement of Costs

The mandate shall contain a statement of the order of the Court assessing costs and the amount of the costs taxable to each party.

(d) Transmission - Mandate and Record

(1) Generally

Except as provided in subsection (d)(2) of this Rule, upon issuance of the mandate, the Clerk shall transmit it to the

appropriate lower court. Unless the appellate court orders otherwise, the original papers comprising the record shall be transmitted with the mandate.

(2) Court of Special Appeals - Delayed Return

If a petition for a writ of certiorari is filed pursuant to Rule 8-303 while the record is in the possession of the Court of Special Appeals, the Clerk of the Court of Special Appeals shall not return the record to the lower court until (A) the petition is denied, or (B) if the petition is granted, the Court of Special Appeals takes action in accordance with the mandate of the Court of Appeals.

(e) Effect of Mandate

Upon receipt of the mandate, the clerk of the lower court shall enter it promptly on the docket and the lower court shall proceed in accordance with its terms. Except as otherwise provided in Rule 8-611 (b), the assessment of costs in the mandate shall not be recorded and indexed as provided by Rule 2-601 (c).

Cross reference: Code, Courts Article, §6-408.

Source: This Rule is derived from former Rules 1076, 1077, 876, and 877.

REPORTER'S NOTE

During an open meeting on previous amendments to Rule 8-606, the Court of Appeals requested that the Rules Committee study the issue of the timing of the issuance of a mandate and make proposals to clarify the existing provisions.

The Committee recommends adding language to subsection (b)(4) that clarifies when the mandate is to be issued if a timely motion for reconsideration has been filed unless the court

orders otherwise. Under these recommendations, the Clerk shall delay issuance of the mandate until the filing of a withdrawal of the motion or an order of the Court deciding the motion. If the motion is denied or if it is granted without changing the principal decision in the case, the Clerk shall issue the mandate immediately upon the filing of the order. If the motion is granted in a manner that does change the principal decision in the case, the Clerk shall issue the mandate upon the expiration of 30 days after the filing of the order.

CLIENT-RELATIONSHIP

AMEND Rule 1.2 to require that under certain circumstances the scope and limitations of a limited representation by an attorney be set forth in a writing, to add a new Comment [8] pertaining to the scope of a limited representation, to add a new Comment [9] pertaining to representation of a client in a collaborative law process, and to renumber existing Comments [8] through [13], as follows:

Rule 1.2. SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of the representation and, when appropriate, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement

of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation in accordance with applicable Maryland Rules if (1) the limitation is reasonable under the circumstances, ~~and~~ (2) the client gives informed consent, and (3) the scope and limitations of any representation, beyond an initial consultation or brief advice provided without a fee, are clearly set forth in a writing, including any duty on the part of the lawyer under Rule 1-324 to forward notices to the client.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

COMMENT

Scope of Representation. - [1] Both lawyer and client have authority and responsibility in the objectives and means of representation. The client has ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. Within those limits, a client also has a right to consult with the lawyer about the means to be used in pursuing those objectives. At the same time, a lawyer is not required to pursue objectives or employ means simply because a client may wish that the lawyer do so. A clear distinction between objectives and means sometimes cannot be drawn, and in many cases the client-lawyer relationship partakes of a joint undertaking. In questions of means, the lawyer should assume responsibility for technical and legal tactical issues, but should defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected.

[2] On occasion, however, a lawyer and a client may disagree about the means to be used to accomplish the client's objectives. Because of the varied nature of the matters about which a lawyer and client might disagree and because the actions in question may implicate the interests of a tribunal or other persons, this Rule does not prescribe how such disagreements are to be resolved. Other law, however, may be applicable and should be consulted by the lawyer. The lawyer should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental disagreement with the client, the lawyer may withdraw from the representation. See Rule 1.16 (b)(4). Conversely, the client may resolve the disagreement by discharging the lawyer. See Rule 1.16 (a)(3).

[3] At the outset of a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to Rule 1.4, a lawyer may rely on such an advance authorization. The client may, however, revoke such authority at any time.

[4] In a case in which the client appears to be suffering diminished capacity, the lawyer's duty to abide by the client's decisions is to be guided by reference to Rule 1.14.

Independence from Client's Views or Activities. - [5] Legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client does not constitute approval of the client's views or activities.

Agreements Limiting Scope of Representation. - [6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information

about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[8] A lawyer and a client may agree that the scope of the representation is to be limited to clearly defined specific tasks or objectives, including: (1) without entering an appearance, filing papers, or otherwise participating on the client's behalf in any judicial or administrative proceeding, (i) giving legal advice to the client regarding the client's rights, responsibilities, or obligations with respect to particular matters, (ii) conducting factual investigations for the client, (iii) representing the client in settlement negotiations or in private alternative dispute resolution proceedings, (iv) evaluating and advising the client with regard to settlement options or proposed agreements, or (v) drafting documents, performing legal research, and providing advice that the client or another attorney appearing for the client may use in a judicial or administrative proceeding; or (2) in accordance with applicable Maryland Rules, representing the client in discrete judicial or administrative proceedings, such as a court-ordered alternative dispute resolution proceeding, a *pendente lite* proceeding, or proceedings on a temporary restraining order, a particular motion, or a specific issue in a multi-issue action or proceeding. Before entering into such an agreement, the lawyer shall fully and fairly inform the client of the extent and limits of the lawyer's obligations under the agreement, including any duty on the part of the lawyer under Rule 1-324 to forward notices to the client.

[9] Representation of a client in a collaborative law process is a type of permissible limited representation. It requires a collaborative law participation agreement that complies with the requirements of Code, Courts Article, §3-1902 and Rule 17-503 (b) and is signed by all parties after informed consent.

~~[8]~~ [10] All agreements concerning a lawyer's representation of a client must accord with the Maryland Lawyers' Rules of Professional Conduct and other law. See, e.g., Rule 1.1, 1.8 and 5.6.

Criminal, Fraudulent and Prohibited Transactions. - ~~[9]~~ [11] Paragraph (d) prohibits a lawyer from knowingly counseling or assisting a client to commit a crime or fraud. This prohibition, however, does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. The fact that a client uses advice in a course of action that is criminal or fraudulent does not, of itself, make a lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

~~[10]~~ [12] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See Rule 1.16 (a). In some cases withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. See Rules 1.6, 4.1.

~~[11]~~ [13] Where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.

~~[12]~~ [14] Paragraph (d) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer must not participate in a transaction to effectuate criminal or fraudulent avoidance of tax liability. Paragraph (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of paragraph (d) recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

~~[13]~~ [15] If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Maryland Lawyers' Rules of Professional Conduct or other law or if the lawyer intends to act contrary to the client's instructions, the lawyer must consult with the client regarding the limitations on the lawyer's conduct. See Rule 1.4 (a)(4).

Model Rules Comparison. -- Rule 1.2 is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct except for wording changes in Rule 1.2

(a), the addition of Comments [8] and [9], and the retention of existing Maryland language in Comment [1].

REPORTER'S NOTE

The Maryland Access to Justice Commission and family law practitioners have requested that provisions concerning limited representation be added to the Maryland Rules. Amendments to Rules 1-321, 1-324, 2-131, 2-132, 3-131, and 3-132 and Rule 1.2 of the Maryland Lawyers' Rules of Professional Conduct are proposed by the Rules Committee to expressly authorize the entry of limited appearances in the District Court and circuit courts, to address the service of pleadings and papers after an attorney enters a limited appearance, to provide guidance regarding informed consent of the client when an attorney and a client wish to agree to limited representation, and to permit the filing of a notice of withdrawal of appearance after the proceeding for which the appearance was entered has concluded or the purpose of the limited representation has been accomplished.

New Comment [8] to Rule 1.2 pertains to limited representation, generally. New Comment [9] recognizes a collaborative law process as a type of permissible limited representation. References to the required contents of a collaborative law participation agreement are included in Comment [9].

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-321 to add a new section (b) pertaining to service after entry of limited appearance and to make stylistic changes, as follows:

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

(a) Generally

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

usual place of abode of that person with some individual of suitable age and discretion who is residing there. Service by mail is complete upon mailing.

(b) Service After Entry of Limited Appearance

Every document required to be served upon a party's attorney that is to be served after entry of a limited appearance also shall be served upon the party and, unless the attorney's appearance has been stricken pursuant to Rules 2-132 or 3-132, upon the limited appearance attorney.

Cross reference: See Rule 1-324 with respect to the sending of notices by a clerk when a limited appearance has been entered.

~~(b)~~ (c) Party in Default - Exception

No pleading or other paper after the original pleading need be served on a party in default for failure to appear except a pleading asserting a new or additional claim for relief against the party which shall be served in accordance with the rules for service of original process.

~~(c)~~ (d) Requests to Clerk - Exception

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

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

REPORTER'S NOTE

See the Reporter's note to Rule 1.2.

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 300 – GENERAL PROVISIONS

AMEND Rule 1-324 to change the title of the Rule, to require the clerk to send notices of certain court proceedings, to add a Committee note following section (a), to provide for the sending of certain notices when an attorney has entered a limited appearance pursuant to Rule 2-131 or Rule 3-131, and to make stylistic changes, as follows:

Rule 1-324. ~~NOTICE~~ NOTIFICATION OF ORDERS, RULINGS, AND COURT PROCEEDINGS

(a) Notification by Clerk

Upon entry on the docket of (1) any order or ruling of the court not made in the course of a hearing or trial or (2) the scheduling of a hearing, trial, or other court proceeding not announced on the record in the course of a hearing or trial, the clerk shall send a copy of the order, ~~or~~ ruling, or notice of the scheduled proceeding to all parties entitled to service under Rule 1-321, unless the record discloses that such service has already been made.

Committee note: In many counties, the Assignment Office is under the purview of the County Administrative Judge. In those counties, in accordance with the directives of the County Administrative Judge, an employee of the Assignment Office, rather than the Clerk, sends some of the notifications required by this Rule.

(b) Notification When Attorney Has Entered Limited Appearance

If, in an action that is not an affected action as defined in Rule 20-101 (a), an attorney has entered a limited appearance for a party pursuant to Rule 2-131 or Rule 3-131 and the automated operating system of the clerk's office does not permit the sending of notifications to both the party and the attorney, the clerk shall send all notifications required by section (a) of this Rule to the attorney as if the attorney had entered a general appearance. The clerk shall inform the attorney that, until the limited appearance is terminated, all notifications in the action will be sent to the attorney and that it is the attorney's responsibility to forward to the client notifications pertaining to matters not within the scope of the limited appearance. The attorney promptly shall forward to the client all such notifications, including any received after termination of the limited appearance.

Committee note: If an attorney has entered a limited appearance in an affected action, section (a) of this Rule requires the MDEC system or the clerk to send all court notifications to both the party and the party's limited representation attorney prior to termination of the limited appearance.

(c) Inapplicability of Rule

This Rule does not apply to show cause orders and does not abrogate the requirement for notice of a summary judgment set forth in Rule 2-501 (f).

Source: This Rule is in part derived from former Rule 1219 and is in part new.

REPORTER'S NOTE

Several amendments to Rule 1-324 are proposed.

As a matter of style, the Rule is divided into three sections.

An amendment to section (a) requires the clerk to send a notice of a hearing, trial, or other court proceeding that has been docketed but not announced on the record to all parties entitled to service under Rule 1-321. The Rule currently requires the clerk to send a copy of an "order or ruling" to the parties. It does not include a requirement that the clerk send notice of a hearing, trial, or other court proceeding. The proposed amendment encompasses that requirement.

A Committee note following section (a) notes that in some counties, some notifications that the clerk otherwise would be required to send are, instead, sent by an employee of the Assignment Office, which is under the purview of the County Administrative Judge.

New section (b) applies when an attorney has entered a limited appearance.

Proposed new Rule 1-321 (b) requires that, after entry of an attorney's limited appearance, service of documents is to be made upon both the attorney and the party. Rule 1-324 requires the clerk to send certain court notices to "all parties entitled to service under Rule 1-321." Therefore, in an action in which a limited appearance is entered, the clerk would be required to send notices to both the attorney and the party.

The Committee is informed that the clerks' operating systems currently in use throughout the State do not permit notices to be sent to both the attorney and the attorney's client. The Committee also is informed that reprogramming the systems to permit service upon both the attorney and the attorney's client would create an undue fiscal burden and that the new MDEC system, which is scheduled to begin rolling out on a county-by-county basis in the Fall of 2014, can be programmed to permit service on both.

In non-MDEC counties, if the clerk's operating system does not permit the sending of notices to both the attorney and the attorney's client, new Rule 1-324 (b) requires the clerk to send the notice to the attorney, who is then required to forward to the client all notices pertaining to matters not within the scope of the limited appearance, even if the notice is received by the attorney after the limited appearance has terminated.

Section (c), Inapplicability of Rule, carries forward the last sentence of current Rule 1-324, without change.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 2-131 to permit the entry of a limited appearance under certain circumstances, to add a form of acknowledgment of the scope of limited representation, and to add a cross reference pertaining to limited appearances, as follows:

Rule 2-131. APPEARANCE

(a) By an Attorney or in Proper Person

Except as otherwise provided by rule or statute: (1) an individual may enter an appearance by an attorney or in proper person and (2) a person other than an individual may enter an appearance only by an attorney.

(b) Limited Appearance

(1) Notice of Appearance

An attorney, acting pursuant to an agreement with a client for limited representation that complies with Rule 1.2 (c) of the Maryland Lawyers' Rules of Professional Conduct, may enter an appearance limited to participation in a discrete matter or judicial proceeding. The notice of appearance (A) shall be accompanied by an Acknowledgment of Scope of Limited Representation substantially in the form specified in subsection (b)(2) of this Rule and signed by the client, and (B) shall specify the scope of the limited representation, which shall not

exceed the scope set forth in the Acknowledgment.

(2) Acknowledgment of Scope of Limited Representation

The Acknowledgment of Scope of Limited Representation shall be substantially in the following form:

[CAPTION]

ACKNOWLEDGMENT OF SCOPE OF LIMITED REPRESENTATION

Client: _____

Attorney: _____

I have entered into a written agreement with the above-named attorney. I understand that the attorney will represent me for the following limited purposes (check all that apply):

- ❑ Arguing the following motion or motions:

  _____.
- ❑ Attending a pretrial conference.
- ❑ Attending a settlement conference.
- ❑ Attending the following court-ordered mediation or other court-ordered alternative dispute resolution proceeding for purposes of advising the client during the proceeding:

  _____.
- ❑ Acting as my attorney for the following hearing, deposition, or trial:

  _____.
- ❑ With leave of court, acting as my attorney with regard to the following specific issue or a specific portion

of a trial or hearing: _____

_____.

I understand that except for the legal services specified above, I am fully responsible for handling my case, including complying with court Rules and deadlines. I understand further that during the course of the limited representation, the court may discontinue sending court notices to me and may send all court notices only to my limited representation attorney. If the court discontinues sending notice to me, I understand that although my limited representation attorney is responsible for forwarding to me court notices pertaining to matters outside the scope of the limited representation, I remain responsible for keeping informed about my case.

_____
Client

_____
Signature

_____
Date

Cross reference: See Maryland Lawyers' Rules of Professional Conduct, Rule 1.2, Comment 8. For striking of an attorney's limited appearance, see Rule 2-132 (a).

~~(b)~~ (c) How Entered

Except as otherwise provided in section (b) of this Rule, ~~An~~ an appearance may be entered by filing a pleading or motion, by filing a written request for the entry of an appearance, or, if the court permits, by orally requesting the entry of an

appearance in open court.

~~(c)~~ (d) Effect

The entry of an appearance is not a waiver of the right to assert any defense in accordance with these rules. Special appearances are abolished.

Cross reference: Rules 1-311, 1-312, 1-313; Rules 14, 15, and 16 of the Rules Governing Admission to the Bar. See also Rule 1-202 (t) for the definition of "person".

Source: This Rule is in part derived from former Rule 124 and in part new.

REPORTER'S NOTE

See the Reporter's note to Rule 1.2.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 2-132 to permit an attorney who has entered a limited appearance to file a notice of withdrawal under certain circumstances, as follows:

Rule 2-132. STRIKING OF ATTORNEY'S APPEARANCE

(a) By Notice

~~When the client has another attorney of record, an~~ An attorney may withdraw an appearance by filing a notice of withdrawal when (1) the client has another attorney of record; or (2) the attorney entered a limited appearance pursuant to Rule 2-131 (b), and the particular proceeding or matter for which the appearance was entered has concluded.

(b) By Motion

When ~~the client has no other attorney of record, an~~ an attorney is not permitted to withdraw an appearance by notice under section (a) of this Rule, the attorney wishing to withdraw an appearance shall file a motion to withdraw. Except when the motion is made in open court, the motion shall be accompanied by the client's written consent to the withdrawal or the moving attorney's certificate that notice has been mailed to the client at least five days prior to the filing of the motion, informing the client of the attorney's intention to move for withdrawal and

advising the client to have another attorney enter an appearance or to notify the clerk in writing of the client's intention to proceed in proper person. Unless the motion is granted in open court, the court may not order the appearance stricken before the expiration of the time prescribed by Rule 2-311 for responding. The court may deny the motion if withdrawal of the appearance would cause undue delay, prejudice, or injustice.

(c) Notice to Employ New Attorney

When, pursuant to section (b) of this Rule, the appearance of the moving attorney is stricken and the client has no attorney of record and has not mailed written notification to the clerk of an intention to proceed in proper person, the clerk shall mail a notice to the client's last known address warning that if new counsel has not entered an appearance within 15 days after service of the notice, the absence of counsel will not be grounds for a continuance. The notice shall also warn the client of the risks of dismissal, judgment by default, and assessment of court costs.

(d) Automatic Termination of Appearance

When no appeal has been taken from a final judgment, the appearance of an attorney is automatically terminated upon the expiration of the appeal period unless the court, on its own initiative or on motion filed prior to the automatic termination, orders otherwise.

Source: This Rule is derived as follows:
Section (a) is new.
Section (b) is in part derived from former Rule 125 a and the

last sentence of c 2 and is in part new.
Section (c) is derived from former Rule 125 d.
Section (d) is derived from former Rule 125 e.

REPORTER'S NOTE

See the Reporter's note to Rule 1.2.

AMEND Rule 3-131 to permit the entry of a limited appearance under certain circumstances, to add a form of acknowledgment of the scope of limited representation, and to add a cross reference pertaining to limited appearances, as follows:

Rule 3-131. APPEARANCE

(a) By an Attorney or in Proper Person

Except as otherwise provided by rule or statute: (1) an individual may enter an appearance by an attorney or in proper person and (2) a person other than an individual may enter an appearance only by an attorney.

(b) Limited Appearance

(1) Notice of Appearance

An attorney, acting pursuant to an agreement with a client for limited representation that complies with Rule 1.2 (c) of the Maryland Lawyers' Rules of Professional Conduct, may enter an appearance limited to participation in a discrete matter or judicial proceeding. The notice of appearance (A) shall be accompanied by an Acknowledgment of Scope of Limited Representation substantially in the form specified in subsection (b)(2) of this Rule and signed by the client, and (B) shall specify the scope of the limited representation, which shall not

exceed the scope set forth in the Acknowledgment.

(2) Acknowledgment of Scope of Limited Representation

The Acknowledgment of Scope of Limited Representation shall be substantially in the following form:

[CAPTION]

ACKNOWLEDGMENT OF SCOPE OF LIMITED REPRESENTATION

Client: _____

Attorney: _____

I have entered into a written agreement with the above-named attorney. I understand that the attorney will represent me for the following limited purposes (check all that apply):

- ❑ Arguing the following motion or motions:

  _____.
- ❑ Attending a pretrial conference.
- ❑ Attending a settlement conference.
- ❑ Attending the following court-ordered mediation for purposes of advising the client during the proceeding:

  _____

  _____.
- ❑ Acting as my attorney for the following hearing or trial: _____

  _____

  _____.
- ❑ With leave of court, acting as my attorney with regard to the following specific issue or a specific portion

of a trial or hearing: _____

_____.

I understand that except for the legal services specified above, I am fully responsible for handling my case, including complying with court Rules and deadlines. I understand further that during the course of the limited representation, the court may discontinue sending court notices to me and may send all court notices only to my limited representation attorney. If the court discontinues sending notices to me, I understand that although my limited representation attorney is responsible for forwarding to me court notices pertaining to matters outside the scope of the limited representation, I remain responsible for keeping informed about my case.

_____
Client

_____
Signature

_____
Date

Cross reference: See Maryland Lawyers' Rules of Professional Conduct, Rule 1.2, Comment 8. For striking of an attorney's limited appearance, see Rule 3-132 (a).

~~(b)~~ (c) How Entered

Except as otherwise provided in section (b) of this Rule, ~~An~~ an appearance may be entered by filing a pleading, motion, or notice of intention to defend, by filing a written request for

the entry of an appearance, or, if the court permits, by orally requesting the entry of an appearance in open court.

~~(c)~~ (d) Effect

The entry of an appearance is not a waiver of the right to assert any defense in accordance with these rules. Special appearances are abolished.

Cross reference: Rules 1-311, 1-312, 1-313; Rules 14 and 15 of the Rules Governing Admission to the Bar. See also Rule 1-202 (t) for the definition of "person", and Code, Business Occupations and Professions Article, §10-206 (b) (1), (2), and (4) for certain exceptions applicable in the District Court.

Source: This Rule is in part derived from former Rule 124 and in part new.

REPORTER'S NOTE

See the Reporter's note to Rule 1.2.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 3-132 to permit an attorney who has entered a limited appearance to file a notice of withdrawal under certain circumstances, as follows:

Rule 3-132. STRIKING OF ATTORNEY'S APPEARANCE

(a) By Notice

~~When the client has another attorney of record, an~~ An attorney may withdraw an appearance by filing a notice of withdrawal when (1) the client has another attorney of record; or (2) the attorney entered a limited appearance pursuant to Rule 3-131 (b), and the particular proceeding or matter for which the appearance was entered has concluded.

(b) By Motion

When ~~the client has no other attorney of record, an~~ an attorney is not permitted to withdraw an appearance by notice under section (a) of this Rule, the attorney wishing to withdraw an appearance shall file a motion to withdraw. Except when the motion is made in open court, the motion shall be accompanied by the client's written consent to the withdrawal or the moving attorney's certificate that notice has been mailed to the client at least five days prior to the filing of the motion, informing the client of the attorney's intention to move for withdrawal

and advising the client to have another attorney enter an appearance or to notify the clerk in writing of the client's intention to proceed in proper person. Unless the motion is granted in open court, the court may not order the appearance stricken before the expiration of the time prescribed by Rule 3-311 for requesting a hearing. The court may deny the motion if withdrawal of the appearance would cause undue delay, prejudice, or injustice.

(c) Automatic Termination of Appearance

When no appeal has been taken from a final judgment, the appearance of an attorney is automatically terminated upon the expiration of the appeal period unless the court, on its own initiative or on motion filed prior to the automatic termination, orders otherwise.

Source: This Rule is derived as follows:
Section (a) is derived from former M.D.R. 125 a.
Section (b) is in part derived from former M.D.R. 125 a and is in part new.
Section (c) is derived from former M.D.R. 125 b.

REPORTER'S NOTE

See the Reporter's note to Rule 1.2.

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 100 – APPLICABILITY AND CITATION

AMEND Rule 1-101 (q) to add collaborative law processes to the applicability of Title 17, as follows:

Rule 1-101. APPLICABILITY

. . .

(q) Title 17.

Title 17 applies to alternative dispute resolution proceedings in civil actions in the District Court, a circuit court, and the Court of Special Appeals, except for actions or orders to enforce a contractual agreement to submit a dispute to alternative dispute resolution. Title 17 also applies to collaborative law processes under the Maryland Uniform Collaborative Law Act.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 1-101 (q) adds collaborative law processes under the Maryland Uniform Collaborative Law Act to the applicability of Title 17.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 17-101 by adding a new section (f) pertaining to the applicability of Chapter 500 and by making conforming amendments to section (a) and to the Committee note following section (a), as follows:

Rule 17-101. APPLICABILITY

(a) General Applicability of Title

Except as provided in sections (b) and (f) of this Rule, the Rules in this Title apply when a court refers all or part of a civil action or proceeding to ADR.

Committee note: The Rules in this Title other than the Rules in Chapter 500 do not apply to an ADR process in which the parties participate without a court order of referral to that process.

(b) Exceptions

Except as otherwise provided by Rule, the Rules in this Title do not apply to:

(1) an action or order to enforce a contractual agreement to submit a dispute to ADR;

(2) an action to foreclose a lien against owner-occupied residential property subject to foreclosure mediation conducted by the Office of Administrative Hearings under Rule 14-209.1;

(3) an action pending in the Health Care Alternative Dispute Resolution Office under Code, Courts Article, Title 3, Subtitle 2A, unless otherwise provided by law; or

(4) a matter referred to a master, examiner, auditor, or parenting coordinator pursuant to Rule 2-541, 2-542, 2-543, or 9-205.2.

(c) Applicability of Chapter 200

The Rules in Chapter 200 apply to actions and proceedings pending in a circuit court.

(d) Applicability of Chapter 300

The Rules in Chapter 300 apply to actions and proceedings pending in the District Court.

(e) Applicability of Chapter 400

The Rules in Chapter 400 apply to civil appeals pending in the Court of Special Appeals.

(f) Applicability of Chapter 500

The Rules in Chapter 500 apply to collaborative law processes under the Maryland Uniform Collaborative Law Act, regardless of whether an action or proceeding is pending in a court.

Source: This Rule is derived from former Rule 17-101 (2011).

REPORTER'S NOTE

Rule 17-101 is amended by the addition of new section (f), pertaining to the applicability of Chapter 500. Proposed new Chapter 500 contains Rules applicable to collaborative law processes under the Maryland Uniform Collaborative Law Act. The Rules apply regardless of whether an action or proceeding is

pending in a court. The amendments to section (a) and to the Committee note following section (a) conform to the addition of section (f).

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 500 – COLLABORATIVE LAW PROCESS

TABLE OF CONTENTS

MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 500 - COLLABORATIVE LAW PROCESS

ADD new Rule 17-501, as follows:

Rule 17-501. APPLICABILITY

This Chapter applies to a collaborative law process under Code, Courts Article, Title 3, Subtitle 19 (Maryland Uniform Collaborative Law Act).

Source: This Rule is new.

REPORTER'S NOTE

Rule 17-501 sets forth the applicability of proposed new Chapter 500.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 500 – COLLABORATIVE LAW PROCESS

ADD new Rule 17-502, as follows:

Rule 17-502. DEFINITIONS

In this Chapter, the definitions in Code, Courts Article §3-1901 apply except as expressly otherwise provided or as necessary implication requires, and the term "collaborative attorney" has the meaning stated in Code, Courts Article, §3-1901 (e) for "collaborative lawyer."

Committee note: Code, Courts Article, §3-1901 contains definitions of "person" and "proceeding" that differ from the definition in Rule 1-202. In this Chapter, the statutory definitions supersede the definitions of "person" and "proceeding" in Rule 1-202.

Source: This Rule is new.

REPORTER'S NOTE

Rule 17-502 incorporates by reference definitions in the Uniform Collaborative Law Act, except that the term "collaborative lawyer" in the Act is replaced by the term "collaborative attorney." The definitions of "person" and "proceeding" in the Act supersede the definitions of these words in Rule 1-202.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 500 – COLLABORATIVE LAW PROCESS

ADD new Rule 17-503 as follows:

Rule 17-503. INFORMED CONSENT; CONTENTS OF AGREEMENT

(a) Requirements Before a Collaborative Law Process Begins

Before beginning a collaborative law process, an attorney shall:

(1) discuss with the client factors the attorney reasonably believes relate to whether a collaborative law process is appropriate, including reasonably available alternatives to a collaborative law process;

(2) provide the client with information that the attorney reasonably believes is sufficient for the client to make an informed decision about the material benefits and risks of a collaborative law process;

(3) advise the client that participation in a collaborative law process is voluntary and any party has the right unilaterally to terminate a collaborative law process with or without cause;

(4) explain to the client that if the collaborative law proceeding terminates prior to full resolution of all collaborative matters, the client will need to obtain another attorney or proceed without an attorney; and

(5) make a reasonable effort to determine whether the client

has a history of a coercive or violent relationship with another prospective party, and if such circumstances exist, to determine whether a collaborative law process is appropriate.

(b) Certification and Acknowledgment

In addition to complying with the requirements of Code, Courts Article, §3-1902, a collaborative law participation agreement shall contain a certification by each collaborative attorney that the collaborative attorney has complied with section (a) of this Rule and an acknowledgment by all parties of the requirements under Rule 17-506 applicable to the party's attorney and to each other attorney who will participate in the collaborative law process.

Source: This Rule is new.

REPORTER'S NOTE

Rule 17-503 sets forth the requirements for informed consent and the contents of an agreement in a collaborative law process.

Section (a) covers the issues that an attorney must discuss with a client considering a collaborative law process. The intent of this section is to ensure that prior to entering into a collaborative law participation agreement, a client has sufficient information to decide whether the process meets the client's needs.

Subsections (a)(1) – (4) list the topics the collaborative attorney must discuss with the client before the agreement is signed. In addition, subsection (a)(5) requires the attorney to consider any history of a coercive or violent relationship and, if such history exists, make a reasonable effort to determine whether a collaborative law process is appropriate.

Section (b) requires that a collaborative law agreement contain a certification that the attorney has complied with section (a) and an acknowledgment by all parties as to limitations of the scope of representation applicable to each attorney who will participate in the collaborative law process.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 500 – COLLABORATIVE LAW PROCESS

ADD new Rule 17-504, as follows:

Rule 17-504. STAY

(a) Motion

The parties to a pending court action may file a joint motion to stay court proceedings during a collaborative law process. The motion shall include a certification that a collaborative law participation agreement that complies with the requirements of Code, Courts Article, §3-1902 and Rule 17-503 has been signed by all parties and their attorneys.

(b) Order; Extension of Stay

Subject to sections (c) and (d) of this Rule, upon the filing of a joint motion by all parties, the court shall stay court proceedings for a reasonable period of time during the collaborative law process, unless the court finds the existence of extraordinary circumstances requiring denial of the motion. On motion of the parties, for good cause shown, the court may enter an order to extend a stay. An order to stay court proceedings and an order to extend a stay shall specify the date on which the stay terminates, subject to an earlier lifting of the stay in accordance with section (d) of this Rule.

(c) Proceedings during Stay.

During a stay, a party and the party's attorney may appear before a court to:

(1) request or defend against a request for an emergency order to protect the health, safety, welfare, or interest of a party or party eligible for relief; or

(2) request approval of a full or partial settlement of a collaborative law matter.

Cross reference: See Code, Courts Article, §§3-1904 and 3-1905.

(d) Lift of Stay

A court shall lift a stay:

(1) upon request of any party;

(2) on the date stated in an order for stay or for extension of the stay entered pursuant to section (b) of this Rule;

(3) for lack of prosecution under Rule 2-507 or 3-507; or

(4) as necessary to comply with statutory time requirements for proceedings in an orphans' court or before a register of wills relating to the settlement of decedents' estates under Title 6 of the Maryland Rules.

Committee note: Time elapsed during a stay under this Rule is not included in the computation of time under any applicable case management time standards or guidelines.

Source: This Rule is new.

REPORTER'S NOTE

Rule 17-504 requires the court to stay a pending court case for a reasonable period of time during a collaborative law process upon a joint motion by all parties, unless the court finds that extraordinary circumstances require denial of the motion.

Section (b) requires that the order for stay contain a termination date and permits the court to extend the stay for good cause shown.

Section (c) comports with the requirements of Code, Courts Article, §§3-1904 and 3-1905, permitting certain court proceedings during a stay.

Section (d) provides for the lifting of the stay upon the occurrence of any of the four circumstances listed.

A Committee note at the end of the Rule notes that a stay order under Rule 17-504 does not adversely impact a court's compliance with any applicable case management time standards or guidelines.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 500 – COLLABORATIVE LAW PROCESS

ADD new Rule 17-505, as follows:

Rule 17-505. TERMINATION OF COLLABORATIVE LAW PROCESS; WITHDRAWAL OF APPEARANCE

(a) If All Collaborative Matters Resolved

At the conclusion of a collaborative law process that resolves all collaborative matters and all other issues in an action pending in a court, the parties shall file:

(1) a stipulation of dismissal;

(2) a consent judgment; or

(3) a request for other appropriate relief necessary or desirable to implement the parties' agreement resulting from the collaborative law process.

(b) Unresolved Collaborative Matters

If a collaborative matter or other issue remains unresolved at the conclusion of a collaborative law process pertaining to an action pending in a court, a collaborative law attorney shall:

(1) notify the court that the collaborative law process has terminated and, if a stay is in effect, request that it be lifted;

(2) if the parties agreed to a resolution of any

collaborative matter that requires court action for implementation of the parties' agreement, request such action from the court; and

(3) file a notice or a motion, as appropriate, to withdraw.

Cross reference: See Rules 2-132 and 3-132.

(c) Motion to Require Compliance

If a collaborative attorney who is required to file a notice or motion to withdraw has not done so within a reasonable time after termination of the collaborative law process, a party may file a motion to require the collaborative law attorney to comply with subsection (b)(3) of this Rule.

Source: This Rule is new.

REPORTER'S NOTE

Rule 17-505 sets forth the procedures for the termination of a collaborative law process and the withdrawal of an attorney's appearance.

Section (a) contains provisions to remove a stayed case from the court's docket when the collaborative law process has resolved all issues in the pending action. If all issues are resolved, the parties are required to file a stipulation of dismissal, a consent judgment, or a request for appropriate relief to implement the parties' agreement resulting from the collaborative law process.

If the collaborative law process has concluded without resolving all issues, section (b) requires a collaborative law attorney to (1) notify the court and request that any stay be lifted, (2) advise the court of the resolution of any collaborative matter that requires court action and request such action, and (3) file a notice or a motion to withdraw.

If an attorney does not file a required notice or motion to withdraw after termination of the collaborative law process, section (c) permits a party to file a motion to require compliance by the attorney.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 500 – COLLABORATIVE LAW PROCESS

ADD new Rule 17-506, as follows:

Rule 17-506. SCOPE OF REPRESENTATION

(a) Definitions

In this Rule, "firm" and "screened" have the meanings stated in Rule 1.0 of the Maryland Lawyers' Rules of Professional Conduct.

(b) Generally

Except as otherwise provided in section (c) of this Rule:

(1) a collaborative attorney who represents a client in a collaborative law process pursuant to a collaborative law participation agreement may not represent a party in a proceeding related to the collaborative matter, notwithstanding any subsequent agreement between the client and the attorney; and

(2) an attorney associated with a firm with which the collaborative attorney is associated may not appear before a tribunal to represent a party in a proceeding related to the collaborative matter if the collaborative attorney is prohibited from doing so under this section.

(c) Exceptions

(1) If the collaborative attorney is associated with a firm that is (A) a legal services organization providing legal

services to indigent individuals or (B) the legal department of a government, another attorney in the firm may represent the collaborative attorney's client in a proceeding, provided that the collaborative attorney is timely screened from participation in the subsequent representative and full disclosure of this exception is made and acknowledged in the collaborative law participation agreement.

Cross reference: See Rule 17-503 (b).

(2) A collaborative attorney may represent a party in connection with the filing of a stipulation, consent judgment, or request for court action to implement an agreement resolving a collaborative matter.

Cross reference: See Rule 17-505 (a) and (b)(2).

Source: This Rule is new.

REPORTER'S NOTE

Rule 17-506 sets forth the scope of representation in a collaborative law process. Subject to two exceptions, the Rule provides that after a collaborative law process ends, a collaborative attorney or an attorney associated with a firm with which the collaborative attorney is associated may not represent any party to the collaborative law process in a proceeding related to the collaborative matter.

One exception is that if a collaborative attorney is associated with the legal department of a government or with a legal services organization serving indigent individuals, another attorney associated with the legal department or organization may represent the client, provided that there was full disclosure of this exception in the collaborative law participation agreement and there is appropriate screening of the collaborative attorney from the subsequent representation.

A second exception permits continued representation if needed to implement an agreement resolving a collaborative matter.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 500 – COLLABORATIVE LAW PROCESS

ADD new Rule 17-507, as follows:

Rule 17-507. CONFIDENTIALITY; PRIVILEGE

Code, Courts Article, §§3-1908 through 3-1911 govern confidentiality of collaborative law communications and the privilege against disclosure of information.

Source: This Rule is new.

REPORTER'S NOTE

Rule 17-507 incorporates by reference the confidentiality and privilege provisions set forth in Code, Courts Article, §§3-1908 through 3-1911.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-325 to revise provisions pertaining to the waiver of certain costs, as follows:

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

~~(a) Generally~~

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

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

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

(a) Scope

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

(b) Definition

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

(c) No Fee for Filing Request

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

(d) Waiver of Prepaid Costs by Clerk

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

(1) the party is an individual who is represented (A) by an attorney retained through a pro bono or legal services program on a list of programs serving low income individuals that is submitted by the Maryland Legal Services Corporation to the State Court Administrator and posted on the Judiciary website, provided

that an authorized agent of the program provides the clerk with a statement that (i) names the program, attorney, and party; (ii) states that the attorney is associated with the program and the party meets the financial eligibility criteria of the Corporation; and (iii) attests that the payment of filing fees is not subject to Code, Courts Article, §5-1002 (the Prisoner Litigation Act), or (B) by an attorney provided by the Maryland Legal Aid Bureau, Inc. or the Office of the Public Defender, and

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

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

(e) Waiver of Prepaid Costs by Court

(1) Request for Waiver

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

process and it is not interposed for any improper purpose or delay.

(2) Review by Court; Factors to be Considered

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

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

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

(3) Order

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

(f) Award of Costs at Conclusion of Action

(1) Generally

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

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

(2) Waiver

(A) Request

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

(B) Determination by Court

In an action under Title 9, Chapter 200 of these Rules or Title 10 of these Rules, the court shall grant a final waiver of open costs if the requirements of Rules 2-603 (e) or 10-107 (b), as applicable, are met. In all other civil matters, the court may grant a final waiver of open costs if the party against whom the costs are assessed is unable to pay them by reason of poverty.

(g) Waiver of Prepaid Appellate Costs

(1) Scope of Section

This section applies to appeals from an order or judgment of the District Court to a circuit court and to appeals, applications for leave to appeal, and petitions for certiorari or other extraordinary relief seeking review in the Court of Special

Appeals or the Court of Appeals from an order or judgment of a circuit court in a civil action.

(2) Definition

In this section, "prepaid costs" means (A) the fee charged by the clerk of the trial court for assembling the record, including the cost of the transcript in the District Court, and (B) the filing fee charged by the clerk of the appellate court.

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

(3) Waiver

(A) Generally

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

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

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

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

(iv) both fees shall be waived if the appellant received a waiver of prepaid costs under section (d) of this Rule, will be

represented in the appeal by an eligible attorney under that section, and the attorney certifies that the appeal is meritorious and that the appellant remains eligible for representation in accordance with section (d) of this Rule; and

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

(B) Procedure

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

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

(iii) If either court denies, in whole or in part, a request for the waiver of its prepaid cost, it shall permit the appellant, within 10 days, to pay the unwaived prepaid cost. If, within that time, the appellant pays the full amount of the

unwaived prepaid cost, the appeal or application shall be deemed to have been filed on the day the request for waiver was filed in the trial court.

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

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

Source: This Rule is derived as follows:
Section (a) ~~is derived from former M.D.R. 102 and Courts Article §7-201~~ is new.
Section (b) is new.
Section (c) is new.
Section (d) is new.
Section (e) is new.
Section (f) is new.
Section (g) is new.
Section ~~(b)~~ (h) is derived from former Rules 883 and 1083 b.

REPORTER'S NOTE

Proposed amendments to Rule 1-325 rewrite the provisions of the Rule dealing with waiver of court costs in civil actions. Conforming amendments to Rules 2-603 (e), 7-103, 8-201, 8-303, 8-505, and 10-107 also are proposed. Detailed descriptions of the proposed changes and the reasons therefor are set forth in the "Category 10" section of this, the Committee's One Hundred Eighty-Sixth Report.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 600 - JUDGMENT

AMEND Rule 2-603 to conform with amendments to Rule 1-325, as follows:

Rule 2-603. COSTS

. . .

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

In an action under Title 9, Chapter 200 of these Rules, the court shall ~~waive~~ grant a final waiver of open costs, including any compensation, fees, and costs of a master or examiner if the court finds that the party against whom the costs are assessed is unable to pay them by reason of poverty. The party may seek the waiver at the conclusion of the case by filing a request for a final waiver of open costs, together with (1) an affidavit substantially in the form prescribed by Rule 1-325 (e)(1)(A), or (2) if ~~in accordance with Rule 1-325 (a). If~~ the party was granted a waiver of prepayment of prepaid costs by court order pursuant to ~~that~~ Rule 1-325 (e) and remains unable to pay the costs, ~~the~~ an affidavit ~~required by Rule 1-325 (a) need only~~ that recites the existence of the prior waiver and the party's continued inability to pay.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 1-325.

MARYLAND RULES OF PROCEDURE

TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

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

AMEND Rule 7-103 to conform with amendments to Rule 1-325, as follows:

Rule 7-103. METHOD OF SECURING APPELLATE REVIEW

(a) By Notice of Appeal

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

(b) District Court Costs

Unless the prepayment of prepaid costs has been waived in accordance with Rule 1-325, before ~~Before~~ the clerk transmits the record pursuant to section (d) of this Rule, the appellant shall pay to the clerk of the District Court the cost of preparation of a transcript, if a transcript is necessary to the appeal.

Cross reference: Rule 7-113 (b).

(c) Filing Fee

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

(1) if the appeal is in a civil action, the prepayment of prepaid costs has been waived in accordance with Rule 1-325; or

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

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

(d) Transmittal of Record

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

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

Source: This Rule is derived from former Rule 1311.

REPORTER'S NOTE

See the Reporter's note to Rule 1-325.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 200 - OBTAINING REVIEW IN COURT OF SPECIAL APPEALS

AMEND Rule 8-201 to conform with amendments to Rule 1-325, as follows:

Rule 8-201. METHOD OF SECURING REVIEW - COURT OF SPECIAL APPEALS

(a) By Notice of Appeal

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

(b) Filing Fees

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

(1) if the appeal is in a civil action, the prepayment of prepaid costs has been waived in accordance with Rule 1-325; or

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

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

(c) Transmittal of Record

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

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

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

REPORTER'S NOTE

See the Reporter's note to Rule 1-325.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 300 - OBTAINING APPELLATE REVIEW IN COURT OF APPEALS

AMEND Rule 8-303 to conform with amendments to Rule 1-325, as follows:

Rule 8-303. PETITION FOR WRIT OF CERTIORARI - PROCEDURE

(a) Filing

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

(1) if the petition is in a civil action, the prepayment of prepaid costs has been waived in accordance with Rule 1-325; or

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

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

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 1-325.

MARYLAND RULES OF PROCEDURE

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

CHAPTER 500 - RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-505 to conform with amendments to Rule 1-325, as follows:

Rule 8-505. BRIEFS - INDIGENTS

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

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

REPORTER'S NOTE

See the Reporter's note to Rule 1-325.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 10-107 to conform with amendments to Rule 1-325, as follows:

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

(a) Assessment

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

(b) Waiver

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

~~only~~ that recites the existence of the prior waiver and the person's continued inability to pay.

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

REPORTER'S NOTE

See the Reporter's note to Rule 1-325.

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

CHAPTER 300 - DOMESTIC VIOLENCE

TABLE OF CONTENTS

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

CHAPTER 300 - DOMESTIC VIOLENCE

ADD new Rule 9-301, as follows:

Rule 9-301. APPLICABILITY

The Rules is this Chapter apply to actions brought solely under Code, Family Law Article, Title 4, Subtitle 5.

Committee note: If relief is sought as part of a criminal, divorce, or other action, the Rules governing that action prevail.

Cross reference: For the issuance of a peace order for the protection of an individual who is not a "person eligible for relief" as defined in Code, Family Law Article, §4-501 (m), see Rule 3-731 and Code, Courts Article, Title 3, Subtitle 15 if the respondent is an adult and Code, Courts Article, Title 3, Subtitle 8A if the respondent is an individual under the age of 18 years.

Source: This Rule is new.

REPORTER'S NOTE

Proposed new Title 9, Chapter 300 contains procedures applicable to actions brought solely under Code, Family Law Article, Title 4, Subtitle 5 (Domestic Violence). As noted in the Committee note and cross reference that follow Rule 9-301, if an action is not brought *solely* under that statute, the procedures for obtaining relief are set forth elsewhere.

The Rules incorporate by reference the procedures pertaining to interim, temporary, and final protective orders that are contained in the statute and highlight *where* a petition may be filed [with the District Court or a circuit court or, after business hours, with a commissioner] and *who* may issue, modify, or extend each type of protective order.

Rule 9-306 adds a new procedure by which, after a temporary protective order has been entered, if the respondent has not been served prior to the date of the first scheduled hearing to consider a final protective order, the petitioner may obtain a

waiver of the petitioner's appearance at subsequent final protective order hearings until service on the respondent is made.

Code, Family Law Article, §4-505 (c) provides that a temporary protective order is not valid for more than seven days, but the court may extend the order for up to six months. Because of the short duration of each temporary protective order, courts are scheduling final protective order hearings at intervals of seven or less days.

New Rule 9-306 provides a mechanism by which the petitioner may maintain the protection of a temporary protective order without having to appear in court every week. After appearing at the first scheduled protective order hearing, a petitioner who is granted a waiver of appearance under Rule 9-306 need only appear at a final protective order hearing after the respondent has been served.

After service on the respondent, a petitioner who seeks a final protective order must appear at the next final protective order hearing; however, the Rule permits the court, on its own initiative, to excuse the petitioner's appearance at a final protective order hearing occurring after service on the respondent and continue or postpone the hearing if service on the respondent was so recent that the petitioner may not have been aware of the service.

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

CHAPTER 300 - DOMESTIC VIOLENCE

ADD new Rule 9-302, as follows:

Rule 9-302. DEFINITIONS

The definitions in Code, Family Law Article, §4-501 apply in this Chapter.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 9-301.

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

CHAPTER 300 - DOMESTIC VIOLENCE

ADD new Rule 9-303, as follows:

Rule 9-303. PETITION

(a) Generally

Except as permitted by section (b) of this Rule, a petitioner may seek relief from abuse by filing with the District Court or a circuit court a petition that complies with the requirements of Code, Family Law Article, §4-504.

(b) Exception

When neither the office of the clerk of the circuit court nor the Office of the District Court Clerk is open for business, the petition may be filed with a commissioner of the District Court.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 9-301.

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

CHAPTER 300 - DOMESTIC VIOLENCE

ADD new Rule 9-304, as follows:

Rule 9-304. INTERIM PROTECTIVE ORDERS

Only a commissioner may issue an interim protective order. Interim protective orders are governed by Code, Family Law Article, §4-504.1.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 9-301.

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

CHAPTER 300 - DOMESTIC VIOLENCE

ADD new Rule 9-305, as follows:

Rule 9-305. TEMPORARY PROTECTIVE ORDER

Only a judge may issue or extend a temporary protective order. Temporary protective orders are governed by Code, Family Law Article, §4-505.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 9-301.

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

CHAPTER 300 - DOMESTIC VIOLENCE

ADD new Rule 9-306, as follows:

Rule 9-306. FINAL PROTECTIVE ORDER HEARING - WAIVER OF PETITIONER'S PRESENCE IF RESPONDENT NOT SERVED

(a) Scope of Rule

This Rule applies when (1) the court has entered a temporary protective order pursuant to Code, Family Law Article, §4-505, (2) the court has scheduled a hearing to consider a final protective order pursuant to Code, Family Law Article, §4-506, (3) the respondent does not appear at the hearing due to lack of service of the temporary protective order and notice of the hearing, and (4) pursuant to Code, Family Law Article, §4-505 (c), the court extends the temporary protective order pending service on the respondent.

(b) Presence of Petitioner

The petitioner shall appear at the first scheduled hearing to consider a final protective order and, unless the petitioner's presence is waived pursuant to section (d) of this Rule, at each final protective order hearing scheduled thereafter.

(c) Request for Waiver of Presence by Petitioner

At the first hearing scheduled to consider a final protective order or at any time thereafter prior to service on

the respondent, the petitioner may request a waiver of the petitioner's presence at any final protective order hearings scheduled for a date prior to the date on which the respondent is served with the temporary protective order and notice of the hearing. The request for waiver shall be on a form prepared by the Administrative Office of the Courts and available in the clerks' offices and on the Judiciary website.

(d) Action by Court

(1) By Order entered pursuant to this section, the court shall grant a properly filed request for waiver and excuse the petitioner's presence at final protective order hearings scheduled for a date prior to the date on which the respondent is served.

(2) The Order shall:

(A) require the petitioner to register with the VINE Protective Order Service Program;

Committee note: The VINE Protective Order Service Program is an electronic notification system operated by the Governor's Office of Crime Control and Prevention and the State Board of Victim Services that, by telephone or e-mail, advises registrants of service of protective orders on respondents.

(B) advise the petitioner to confirm the date of the final protective order hearing by contacting the court promptly after being notified that the respondent was served;

(C) require that the clerk promptly mail extended temporary protective orders to the petitioner; and

(D) include notice to the petitioner of the consequences of non-compliance by the petitioner with the requirements in the Order.

(3) If the court has entered an order under subsection (d)(2) of this Rule, the court, on its own initiative, may excuse a petitioner's non-appearance at a final protective order hearing occurring after service on the respondent and continue or postpone the hearing if the court finds that service on the respondent was so recent that the petitioner may not have been aware of the service.

Committee note: Code, Family Law Article, §4-505 (c) provides that a temporary protective order is not effective for more than seven days after service. It is not uncommon, therefore, for the court, when faced with non-service on the respondent, to reschedule the final protective order hearing every seven days. If service is made on the respondent shortly before the next scheduled hearing, the petitioner may not have received notice, even under VINE, that the respondent was served and thus be unaware that petitioner's presence at the hearing is required. The Committee's intent is that subsection (d)(3) of this Rule be reasonably, but liberally construed. Subsection (d)(3) is not intended to limit or restrict the authority of the court to continue or postpone the hearing for other reasons.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 9-301.

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

CHAPTER 300 - DOMESTIC VIOLENCE

ADD new Rule 9-307, as follows:

Rule 9-307. FINAL PROTECTIVE ORDERS

Only a judge may issue a final protective order. Final protective orders are governed by Code, Family Law Article, §§4-505 (d) and 4-506.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 9-301.

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

CHAPTER 300 - DOMESTIC VIOLENCE

ADD new Rule 9-308, as follows:

Rule 9-308. MODIFICATION; RESCISSION; EXTENSION

Only a judge may modify, rescind, or extend a protective order. Modification, rescission, and extension of orders are governed by Code, Family Law Article, §4-507 (a).

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 9-301.

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

CHAPTER 300 - DOMESTIC VIOLENCE

ADD new Rule 9-309, as follows:

Rule 9-309. APPEALS

An appeal from a decision of a judge to grant or deny relief is governed by Code, Family Law Article, §4-507 (b).

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 9-301.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 100 - APPLICABILITY AND CITATION

AMEND Rule 1-101 (i) to add a reference to Code, Family Law Article, Title 4, Subtitle 5, as follows:

Rule 1-101. APPLICABILITY

. . .

(i) Title 9

Title 9 applies to proceedings under Code, Family Law Article, Title 5, Subtitles 3 (Guardianship to and Adoption through Local Department), 3A (Private Agency Guardianship and Adoption), and 3B (Independent Adoption)<u>;</u> ~~and~~ proceedings relating to divorce, annulment, alimony, child support, and child custody and visitation<u>; and proceedings under Code, Family Law Article, Title 4, Subtitle 5 (Domestic Violence)</u>.

. . .

<u>REPORTER'S NOTE</u>

Amendments to Rule 1-101 (i) are proposed to conform the section to the proposed addition of new Chapter 300 (Domestic Violence) to the Rules in Title 9.

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

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

AMEND Rule 9-201 by adding a cross reference following the Rule, as follows:

Rule 9-201. SCOPE

The Rules in this Chapter are applicable to a circuit court action in which divorce, annulment, alimony, child support, custody, or visitation is sought. These Rules do not apply to actions in a juvenile court or actions brought solely under Code, Family Law Article, Title 4, Subtitle 5.

Cross reference: For action brought solely under Code, Family Law Article, Title 4, Subtitle 5, see Title 9, Chapter 300 of these Rules.

Source: This Rule is new.

REPORTER'S NOTE

A cross reference to new Title 9, Chapter 300 (Domestic Violence) is proposed to be added following Rule 9-201.

DELETE Rule 16-819, as follows:

~~Rule 16-819. COURT INTERPRETERS~~

~~(a) Definitions~~

~~The following definitions apply in this Rule:~~

~~(1) Certified Interpreter~~

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

~~(A) the Maryland Administrative Office of the Courts;~~

~~(B) a member of the Consortium for State Court Interpreter Certification; or~~

~~(C) the Federal Administrative Office of the Courts.~~

~~(2) Interpreter~~

~~"Interpreter" means an adult who has the ability to render a complete and accurate interpretation or sight translation, without altering, omitting, or adding anything to what is stated or written and without explanation.~~

~~(3) Interpreter Eligible for Certification~~

~~"Interpreter eligible for certification" means an interpreter who is not a certified interpreter but who:~~

~~(A) has submitted to the Administrative Office of the Courts a completed Maryland State Judiciary Information Form for~~

~~Spoken and Sign Language Court Interpreters and a statement swearing or affirming compliance with the Maryland Code of Conduct for Court Interpreters;~~

~~(B) has attended the Maryland Judiciary's orientation workshop on court interpreting; and~~

~~(C) does not have, in a state or federal court of record, a pending criminal charge or conviction on a charge punishable by a fine of more than $500 or imprisonment for more than six months unless pardoned or expunged in accordance with law.~~

~~(4) Non-certified Interpreters~~

~~"Non-certified interpreter" means an interpreter other than a certified interpreter or an interpreter eligible for certification.~~

~~(5) Person Who Needs an Interpreter~~

~~"Person who needs an interpreter" means a party or a witness who is deaf or unable adequately to understand or express himself or herself in spoken or written English.~~

~~(b) Application for the Appointment of an Interpreter~~

~~A person who needs an interpreter may apply to the court for the appointment of an interpreter. As far as practicable, an application for the appointment of an interpreter shall be (1) presented on a form approved by administrative order of the Court of Appeals and available from the clerk of the court and (2) submitted not less than 30 days before the proceeding for which the interpreter is requested.~~

~~(c) Procedures to Determine the Need for Interpreters~~

~~(1) Sign Language Interpreter~~

~~The court shall determine whether a sign language interpreter is needed in accordance with the requirements of the Americans with Disabilities Act, 42 U.S.C. §12101, et seq.; Code, Courts Article, §9-114; and Code, Criminal Procedure Article, §§1-202 and 3-103.~~

~~(2) Spoken Language Interpreter~~

~~(A) Examination of Party or Witness~~

~~To determine whether a spoken language interpreter is needed, the court, on request or on its own initiative, shall examine a party or witness on the record. The court shall appoint a spoken language interpreter if the court determines that:~~

~~(i) the party does not understand English well enough to participate fully in the proceedings and to assist counsel, or~~

~~(ii) the party or a witness does not speak English well enough to be understood by counsel, the court, and the jury.~~

~~(B) Scope of Examination~~

~~The court's examination of the party or witness should include questions relating to:~~

~~(i) identification;~~

~~(ii) active vocabulary in vernacular English; and~~

~~(iii) the court proceedings.~~

~~Committee note: Examples of matters relating to identification are: name, address, birth date, age, and place of birth. Examples of questions that elicit active vocabulary in vernacular English are: How did you come to court today? What kind of work do you do? Where did you go to school? What was the highest~~

~~grade you completed? What do you see in the courtroom? Examples of questions relating to the proceedings are: What do you understand this case to be about? What is the purpose of what we are doing here in court? What can you tell me about the rights of the parties to a court case? What are the responsibilities of a court witness? Questions should be phrased to avoid "yes or no" replies.~~

~~(d) Selection and Appointment of Interpreters~~

~~(1) Certified Interpreter Required; Exceptions~~

~~When the court determines that an interpreter is needed, the court shall make a diligent effort to obtain the services of a certified interpreter. If a certified interpreter is not available, the court shall make a diligent effort to obtain the services of an interpreter eligible for certification. The court may appoint a non-certified interpreter only if neither a certified interpreter nor an interpreter eligible for certification is available. A person related by blood or marriage to a party or to the person who needs an interpreter may not act as an interpreter.~~

~~Committee note: The court should be cautious about appointing a non-certified interpreter and should consider carefully the seriousness of the case and the availability of resources before doing so.~~

~~(2) Inquiry of Prospective Interpreter~~

~~Before appointing an interpreter under this Rule, the court shall conduct an appropriate inquiry of the prospective interpreter on the record.~~

~~Committee note: The court should use the interpreter inquiry questions promulgated by the Maryland Judicial Conference Advisory Committee on Interpreters and published, together with suggested responses, in the October 20, 1998 Report of the Advisory Committee. The questions and suggested responses are reprinted as an Appendix to these Rules.~~

~~(3) Oath~~

~~Upon appointment by the court and before acting as an interpreter in the proceeding, the interpreter shall solemnly swear or affirm under the penalties of perjury to interpret accurately, completely, and impartially and to refrain from knowingly disclosing confidential or privileged information obtained while serving in the proceeding. If the interpreter is to serve in a grand jury proceeding, the interpreter also shall take and subscribe an oath that the interpreter will keep secret all matters and things occurring before the grand jury.~~

~~(4) Multiple Interpreters in the Same Language~~

~~At the request of a party or on its own initiative, the court may appoint more than one interpreter in the same language to ensure the accuracy of the interpretation or to preserve confidentiality if:~~

~~(A) the proceedings are expected to exceed three hours;~~

~~(B) the proceedings include complex issues and terminology or other such challenges; or~~

~~(C) an opposing party requires an interpreter in the same language.~~

~~Committee note: To ensure accurate interpretation, after interpreting for a period of forty-five minutes, an interpreter ordinarily should be granted a reasonable rest period.~~

~~(e) Removal from Proceeding~~

~~A court interpreter may be removed from a proceeding by a judge or judicial appointee within the meaning of Rule 16-814~~

~~(e)(1), who shall then notify the Administrative Office of the Courts that the action was taken.~~

~~(f) Compensation of Court Interpreters~~

~~Compensation for interpreters shall be in accordance with Code, Criminal Procedure Article, §§1-202 and 3-103 and Code, Courts Article, §9-114.~~

~~Committee note: Code, Courts Article, §9-114 provides for the appointment of interpreters for certain parties and witnesses, generally. Code, Criminal Procedure Article, §§1-202 and 3-103 provide for the appointment of interpreters for certain defendants in criminal proceedings and proceedings under Title 3 of that Article.~~

~~Source: This Rule is new.~~

REPORTER'S NOTE

Rule 16-819 is proposed to be deleted in light of the proposed adoption of new Rule 1-333 and amendments to Rule 1-332.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-332 by adding definitions of "ADA" and "victim"; by adding language pertaining to providing an accommodation under the ADA for victims, jurors, and prospective jurors; by adding a reference to the Judiciary website; by adding a new subsection (b)(2) that transfers certain provisions pertaining to sign language interpreters from Rule 16-819; by expressly stating the requirement that the court provide an accommodation under the ADA; and by adding a reference to Rule 1-333 (c) concerning the appointment of a sign language interpreter; as follows:

Rule 1-332. ~~NOTIFICATION OF NEED FOR~~ ACCOMMODATION UNDER THE AMERICANS WITH DISABILITIES ACT

(a) Definitions

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

(1) ADA

"ADA" means the Americans with Disabilities Act, 42 U.S.C. §12101, et seq.

(2) Victim

"Victim" includes a victim's representative as defined in Code, Criminal Procedure Article, §11-104.

(b) Accommodation under the ADA

(1) Notification of Need for Accommodation

A person requesting an accommodation under the ~~Americans With Disabilities Act, 42 U.S.C. § 12101, et seq.~~ ADA, for an attorney, a party, ~~or~~ a witness, a victim, a juror, or a prospective juror shall notify the court promptly. ~~As far as practicable~~ To the extent practicable, a request for an accommodation shall be (1) presented on a form approved by administrative order of the Court of Appeals and available from the clerk of the court and on the Judiciary website and (2) submitted not less than 30 days before the proceeding for which the accommodation is requested.

(2) Sign Language Interpreter

The court shall determine whether a sign language interpreter is needed in accordance with the requirements of the ADA; Code, Courts Article, §9-114; and Code, Criminal Procedure Article, §§1-202 and 3-103.

(3) Provision of Accommodation

The court shall provide an accommodation if one is required under the ADA. If the accommodation is the provision of a sign language interpreter, the court shall appoint one in accordance with Rule 1-333 (c).

Source: This Rule is new.

REPORTER'S NOTE

Proposed amendments to Rule 1-332 add definitions of "ADA" and "victim"; language pertaining to providing an accommodation under the ADA for victims, jurors, and prospective jurors; and a reference to the availability on the Judiciary's website of a form that a person may use to request an accommodation.

Subsection (b)(2) has been transferred from current Rule 16-819 (c)(1).

Subsection (b)(3) explicitly states an implicit requirement in the current Rule – that if an accommodation is required under the ADA, the court will provide it. The second sentence of subsection (b)(3) provides for the appointment of sign language interpreters in accordance with Rule 1-333 (c).

Stylistic changes also are made.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

ADD new Rule 1-333, as follows:

Rule 1-333. COURT INTERPRETERS

(a) Definitions

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

(1) Certified Interpreter

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

(A) the Maryland Administrative Office of the Courts;

(B) any member of the Council for Language Access Coordinators, provided that, if the interpreter was not approved by the Maryland member of the Council, the interpreter has successfully completed the orientation program required by the Maryland member of the Council; or

Committee note: The Council for Language Access Coordinators is a unit of the National Center for State Courts.

(C) the Administrative Office of the United States Courts.

(2) Individual Who Needs an Interpreter

"Individual who needs an interpreter" means a party, attorney, witness, or victim who is deaf or unable adequately to

understand or express himself or herself in spoken or written English and a juror or prospective juror who is deaf.

(3) Interpreter

"Interpreter" means an adult who has the ability to render a complete and accurate interpretation or sight translation, without altering, omitting, or adding anything to what is stated or written and without explanation.

(4) Interpreter Eligible for Certification

"Interpreter eligible for certification" means an interpreter who is not a certified interpreter but who:

(A) has submitted to the Maryland Administrative Office of the Courts a completed Maryland State Judiciary Information Form for Spoken and Sign Language Court Interpreters and a statement swearing or affirming compliance with the Maryland Code of Conduct for Court Interpreters;

(B) has successfully completed the Maryland Judiciary's orientation workshop on court interpreting; and

(C) does not have, in a state or federal court of record, a pending criminal charge or conviction on a charge punishable by a fine of more than $500 or imprisonment for more than six months unless the interpreter has been pardoned or the conviction has been overturned or expunged in accordance with law.

(5) Non-certified Interpreters

"Non-certified interpreter" means an interpreter other than a certified interpreter or an interpreter eligible for certification.

(6) Proceeding

"Proceeding" means (A) any trial, hearing, argument on appeal, or other matter held in open court in an action, and (B) an event not conducted in open court that is in connection with an action and is in a category of events for which the court is required by Administrative Order of the Chief Judge of the Court of Appeals to provide an interpreter for an individual who needs an interpreter.

(7) Victim

"Victim" includes a victim's representative as defined in Code, Criminal Procedure Article, §11-104.

(b) Spoken Language Interpreters

(1) Applicability

This section applies to spoken language interpreters. It does not apply to sign language interpreters.

Cross reference: For the procedure to request a sign language interpreter, see Rule 1-332.

(2) Application for the Appointment of an Interpreter

An individual who needs an interpreter shall file an application for the appointment of an interpreter. To the extent practicable, the application shall be filed not later than 30 days before the proceeding for which the interpreter is requested on a form approved by the State Court Administrator and available from the clerk of the court and on the Judiciary website. If a timely and complete application is filed, the court shall appoint

an interpreter free of charge in court proceedings in accordance with section (c) of this Rule.

(3) When Additional Application Not Required

(A) Party

If a party who is an individual who needs an interpreter includes on the application a request for an interpreter for all proceedings in the action, the court shall provide an interpreter for each proceeding without requiring a separate application prior to each proceeding.

Committee note: A nonparty who may qualify as an individual who needs an interpreter must timely file an application for each proceeding for which an interpreter is requested.

(B) Postponed Proceedings

Subject to subsection (b)(5) of this Rule, if an individual who needs an interpreter filed a timely application and the proceeding for which the interpreter was requested is postponed, the court shall provide an interpreter for the postponed proceeding without requiring the individual to file an additional application.

(4) Where Timely Application Not Filed

If an application is filed, but not timely filed pursuant to subsection (b)(2) of this Rule, or an individual who may qualify as an individual who needs an interpreter appears at a proceeding without having filed an application, the court shall make a diligent effort to secure the appointment of an interpreter and may either appoint an interpreter pursuant to

section (c) of this Rule or determine the need for an interpreter as follows:

(A) Examination on the Record

To determine whether an interpreter is needed, the court, on request or on its own initiative, shall examine a party, attorney, witness, or victim on the record. The court shall appoint an interpreter if the court determines that:

(i) the party does not understand English well enough to participate fully in the proceedings and to assist the party's attorney, or

(ii) the party, attorney, witness, or victim does not speak English well enough to readily understand or communicate the spoken English language.

(B) Scope of Examination

The court's examination of the party, witness, or victim should include questions relating to:

(i) identification;

(ii) active vocabulary in vernacular English; and

(iii) the court proceedings.

Committee note: Examples of matters relating to identification are: name, address, birth date, age, and place of birth. Examples of questions that elicit active vocabulary in vernacular English are: How did you come to court today? What kind of work do you do? Where did you go to school? What was the highest grade you completed? What do you see in the courtroom? Examples of questions relating to the proceedings are: What do you understand this case to be about? What is the purpose of what we are doing here in court? What can you tell me about the rights of the parties to a court case? What are the responsibilities of a court witness? Questions should be phrased to avoid "yes or no" replies.

(5) Notice When Interpreter is Not Needed

If an individual who needs an interpreter will not be present at a proceeding for which an interpreter had been requested, including a proceeding that had been postponed, the individual, the individual's attorney, or the party or attorney who subpoenaed or otherwise requested the appearance of the individual shall notify the court as far in advance as practicable that an interpreter is not needed for that proceeding.

(c) Selection and Appointment of Interpreters

(1) Certified Interpreter Required; Exceptions

When the court determines that an interpreter is needed, the court shall make a diligent effort to obtain the services of a certified interpreter. If a certified interpreter is not available, the court shall make a diligent effort to obtain the services of an interpreter eligible for certification. The court may appoint a non-certified interpreter only if neither a certified interpreter nor an interpreter eligible for certification is available. An individual related by blood or marriage to a party or to the individual who needs an interpreter may not act as an interpreter.

Committee note: The court should be cautious about appointing a non-certified interpreter and should consider carefully the seriousness of the case and the availability of resources before doing so.

(2) Inquiry of Prospective Interpreter

Before appointing an interpreter under this Rule, the court shall conduct an appropriate inquiry of the prospective interpreter on the record.

Committee note: The court should use the interpreter inquiry questions promulgated by the Maryland Judicial Conference Advisory Committee on Interpreters and published, together with suggested responses, in the October 20, 1998 Report of the Advisory Committee. The questions and suggested responses are reprinted as an Appendix to these Rules.

(3) Oath

Upon appointment by the court and before acting as an interpreter in the proceeding, the interpreter shall swear or affirm under the penalties of perjury to interpret accurately, completely, and impartially and to refrain from knowingly disclosing confidential or privileged information obtained while serving in the proceeding. If the interpreter is to serve in a grand jury proceeding, the interpreter also shall take and subscribe an oath that the interpreter will keep secret all matters and things occurring before the grand jury.

(4) Multiple Interpreters in the Same Language

At the request of a party or on its own initiative, the court may appoint more than one interpreter in the same language to ensure the accuracy of the interpretation or to preserve confidentiality if:

(A) the proceedings are expected to exceed three hours;

(B) the proceedings include complex issues and terminology or other such challenges; or

(C) an opposing party requires an interpreter in the same language.

Committee note: To ensure accurate interpretation, an interpreter should be granted reasonable rest periods at frequent intervals.

(d) Removal from Proceeding

A court interpreter may be removed from a proceeding by a judge or judicial appointee within the meaning of Rule 18-200.3 (a)(1), who shall then notify the Maryland Administrative Office of the Courts that the action was taken.

(e) Compensation of Court Interpreters

Compensation for interpreters shall be in accordance with a schedule adopted by the State Court Administrator consistent with Code, Criminal Procedure Article, §§1-202 and 3-103 and Code, Courts Article, §9-114.

Committee note: Code, Courts Article, §9-114 provides for the appointment of interpreters for certain parties and witnesses, generally. Code, Criminal Procedure Article, §§1-202 and 3-103 provide for the appointment of interpreters for certain defendants in criminal proceedings and proceedings under Title 3 of that Article.

Source: This Rule is derived from former Rule 16-819 (2013).

REPORTER'S NOTE

New Rule 1-333 carries forward the provisions of current Rule 16-819, with changes recommended by the Rules Committee, after having heard from representatives of the Public Justice Center, the Access to Justice Commission, and the Department of Justice. A proposed amendment to Rule 2-415 concerning interpreters at depositions is under review by the Discovery Subcommittee.

MARYLAND RULES OF PROCEDURE

APPENDIX: MARYLAND CODE OF CONDUCT FOR COURT INTERPRETERS:

MARYLAND CODE OF CONDUCT FOR COURT INTERPRETERS

AMEND Appendix: Maryland Code of Conduct for Court Interpreters to revise an internal reference in the Appendix, as follows:

APPENDIX: MARYLAND CODE OF CONDUCT FOR COURT INTERPRETERS

Preamble

In the absence of a court interpreter, many persons who come before the courts are partially or completely excluded from full participation in the proceedings because they have limited proficiency in the English language, have a speech impairment, or are deaf or hard of hearing. It is essential that the resulting communication barrier be removed, as far as possible, so that these persons are placed in the same position and enjoy equal access to justice as similarly situated persons for whom there is no such barrier. As officers of the court, interpreters help to ensure that these persons enjoy equal access to justice and that court proceedings and court support services function efficiently and effectively.

Applicability

This Code shall guide and be binding upon all certified interpreters and interpreters eligible for certification, as those terms are defined in Rule ~~16-819~~ 1-333, and all agencies

and organizations that administer, supervise the use of, or deliver interpreting services in the courts of this State.

. . .

REPORTER'S NOTE

An internal reference in Appendix: Maryland Code of Conduct for Court Interpreters is updated to conform to the appropriate revised Rule.

MARYLAND RULES OF PROCEDURE

APPENDIX: COURT INTERPRETER INQUIRY QUESTIONS

AMEND Appendix: Court Interpreter Inquiry Questions to update date references to a certain Administrative Order, as follows:

APPENDIX: COURT INTERPRETER INQUIRY QUESTIONS

. . .

Explanation of Responses to *Voir Dire* Questions for Interpreters*:

The following is an explanation or suggested responses to the voir dire questions used to determine the qualifications of interpreters working in Maryland courts. In some instances, the appropriateness of the response will depend on whether a sign or spoken language interpreter is being questioned.

. . .

(10) Have you attended the Maryland Judiciary's Orientation Workshop for Court Interpreters?

The answer should be "yes", as this is required under the Administrative Order issued on ~~December 7, 1995~~ October 18, 2012. This workshop includes components on legal terminology, ethics, and skills but is merely a 2-day overview and not an intensive course.

. . .

(31) Have you submitted to the Administrative Office of the Courts a completed information form, a statement swearing or affirming compliance with the Maryland Code of Conduct for Court Interpreters and a statement subscribing to the Interpreter's Oath?

The answer to this question should be "yes" as to the information form, as this is required under the Administrative Order dated ~~December 7, 1995~~ October 18, 2012. The remaining documents will be required should the Subcommittee report be adopted.

. . .

REPORTER'S NOTE

The proposed amendments to Appendix: Court Interpreter Inquiry Questions update date references to an Administrative Order pertaining to court interpreters.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-303 to revise internal references in the Rule, as follows:

Rule 1-303. FORM OF OATH

Except as provided in Rule ~~16-819 (d)(3)~~ 1-333 (c)(3), whenever an oral oath is required by rule or law, the person making oath shall solemnly swear or affirm under the penalties of perjury that the responses given and statements made will be the whole truth and nothing but the truth. A written oath shall be in a form provided in Rule 1-304.

Cross reference: For the oath made by a court interpreter, see Rule ~~16-819 (d)(3)~~ 1-333 (c)(3).

Source: This Rule is derived from former Rules 5 c and 21 and is in part new.

REPORTER'S NOTE

Internal references in Rule 1-303 are updated to conform to the appropriate revised Rule.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 600 - CRIMINAL INVESTIGATIONS AND MISCELLANEOUS PROVISIONS

AMEND Rule 4-642 to revise an internal reference in the Rule, as follows:

Rule 4-642. SECRECY

. . .

(c) Grand Jury - Who May be Present

. . .

(3) Appointment, Oath, and Compensation of Interpreter

If the State's Attorney requests that an interpreter be appointed for a witness or juror in a grand jury proceeding, the court shall appoint an interpreter. Before acting as an interpreter in a grand jury proceeding, the interpreter shall make oath as provided in Rule ~~16-819 (d)(3)~~ 1-333 (c)(3). Compensation for the interpreter shall be in accordance with Code, Courts Article, §9-114.

. . .

REPORTER'S NOTE

An internal reference in Rule 4-642 is updated to conform to the appropriate revised Rule.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-510 to reorganize the Rule, to provide for a uniform subpoena form approved by the State Court Administrator, to add certain provisions concerning the use and copying of subpoena forms, to add to a subpoena form a date of issuance and a certain statement as to when a subpoena may be served, to prohibit serving or attempting to serve a subpoena more than 60 days after the date of issuance, to add a Committee note following section (c), to permit electronic issuance of a blank form of subpoena under certain circumstances, and to make stylistic changes, as follows:

Rule 2-510. SUBPOENAS

(a) Required, Permissive, and Non-permissive Use

(1) A subpoena is required:

(A) to compel the person to whom it is directed to attend, give testimony, and produce designated documents, electronically stored information, or tangible things at a court proceeding, including proceedings before a master, auditor, or examiner.; and

(B) to compel a nonparty to attend, give testimony, and produce and permit inspection, copying, testing, or sampling of designated documents, electronically stored information, or tangible things at a deposition.

(2) A subpoena ~~is also required~~ may be used to compel ~~a nonparty and may be used to compel~~ a party over whom the court has acquired jurisdiction to attend, give testimony, and produce and permit inspection, copying, testing, or sampling of designated documents, electronically stored information, or tangible things at a deposition.

(3) A subpoena ~~shall~~ may not be used for any other purpose. If the court, on motion of a party ~~alleging a violation of this section~~ or on its own initiative, after affording the alleged violator an opportunity for a hearing, finds that a ~~party or attorney~~ person has used or attempted to use a subpoena or a copy or reproduction of a subpoena form for a purpose other than ~~a purpose~~ one allowed under this ~~section~~ Rule, the court may impose an appropriate sanction, ~~upon the party or attorney,~~ including an award of a reasonable attorney's fee and costs, the exclusion of evidence obtained ~~by the subpoena~~ as a result of the violation, and reimbursement of any person inconvenienced for time and expenses incurred.

(b) Issuance

A subpoena shall be issued by the clerk of the court in which an action is pending in the following manner:

(1) On the request of ~~a~~ any person entitled to the issuance of a subpoena, the clerk shall (A) issue a completed subpoena, or (B) provide to the person a blank form of subpoena, which the person shall ~~be filled in and returned~~ fill in and return to the clerk to be signed and sealed by the clerk before service.

(2) On the request of ~~an attorney or other officer of the court~~ a member in good standing of the Maryland Bar entitled to the issuance of a subpoena, the clerk shall issue a subpoena signed and sealed ~~but otherwise in blank~~ by the clerk, which the attorney shall ~~be filled~~ fill in before service.

(3) An attorney of record in a pending action who is a registered user under Rule 20-101 may obtain from the clerk through MDEC, for use in that action, an electronic version of a blank form of subpoena containing the clerk's signature and the seal of the court, which the attorney may download, print, and fill in before service.

(4) Except as provided in subsections (b)(2) and (b)(3) of this Rule, a person other than the clerk may not copy and fill in any blank form of subpoena for the purpose of serving the subpoena. A violation of this section shall constitute a violation of subsection (a)(3) of this Rule.

(c) Form

Except as otherwise permitted by the court for good cause, ~~Every~~ every subpoena shall be on a uniform form approved by the State Court Administrator. The form shall contain: (1) the caption of the action, (2) the name and address of the person to whom it is directed, (3) the name of the person at whose request it is issued, (4) the date, time, and place where attendance is required, (5) a description of any documents, electronically stored information, or tangible things to be produced and if testing or sampling is to occur, a description of the proposed

testing or sampling procedure, ~~and~~ (6) when required by Rule 2-412 (d), a notice to designate the person to testify, (7) the date of issuance, and (8) a statement that the subpoena may be served within 60 days after its issuance and may not be served thereafter. A subpoena may specify the form in which electronically stored information is to be produced.

Committee note: A subpoena may be used to compel attendance at a court proceeding or deposition that will be held more than 60 days after the date of issuance, provided that the subpoena is served within the 60-day period. The failure to serve a subpoena within the 60-day period does not preclude the reissuance of a new subpoena.

(d) Service

A subpoena shall be served by delivering a copy to the person named or to an agent authorized by appointment or by law to receive service for the person named or as permitted by Rule 2-121 (a)(3). Service of a subpoena upon a party represented by an attorney may be made by service upon the attorney under Rule 1-321 (a). A subpoena may be served by a sheriff of any county or by any person who is not a party and who is not less than 18 years of age. Unless impracticable, a party shall make a good faith effort to cause a trial or hearing subpoena to be served at least five days before the trial or hearing. A person may not serve or attempt to serve a subpoena more than 60 days after its issuance. A violation of this provision shall constitute a violation of subsection (a)(3) of this Rule.

Cross reference: See Code, Courts Article, §6-410, concerning service upon certain persons other than the custodian of public records named in the subpoena if the custodian is not known and

cannot be ascertained after a reasonable effort. As to additional requirements for certain subpoenas, see Code, Health-General

Article, §4-306 (b)(6) and Code, Financial Institutions Article, §1-304.

. . .

REPORTER'S NOTE

An issue arose regarding the availability and use of a blank form subpoena with no expiration date. The concern was having a blank, undated subpoena form available in electronic form, with no expiration date or restriction on copying. The Rules Committee recommends amendments to Rules 2-510, 3-510, 4-265, and 4-266 to address this concern and the potential for misuse of a form subpoena.

The recommendations include the use of a uniform form of subpoena that is approved by the State Court Administrator. The uniform form includes an issue date and a statement that the subpoena may not be served more than 60 days after the date it was issued. The uniform form must be used, unless otherwise permitted by the court for good cause.

The amendments prohibit the copying or reproduction of a subpoena form for a purpose other than one permitted by the Rules. The amendments also prohibit service of a subpoena more that 60 days after it was issued. The proposals restrict the availability of electronic blank subpoena forms to attorneys who are registered MDEC users. An attorney who is a "registered user" may download the form, fill it in, and print a completed subpoena for service.

The proposals do not change the procedures the clerk to issue a completed subpoena, except for the required use of the uniform form with the date of issuance on it.

Additionally, the Rules are reorganized, and stylistic changes are made.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT

CHAPTER 500 - TRIAL

AMEND Rule 3-510 to reorganize the Rule, to provide for a uniform subpoena form approved by the State Court Administrator, to add certain provisions concerning the use and copying of subpoena forms, to add to a subpoena form a date of issuance and a certain statement as to when a subpoena may be served, to prohibit serving or attempting to serve a subpoena more than 60 days after the date of issuance, to add a Committee note following section (c), to permit electronic issuance of a blank form of subpoena under certain circumstances, and to make stylistic changes, as follows:

Rule 3-510. SUBPOENAS

(a) Required, Permissive, and Non-permissive Use

(1) A subpoena is required:

(A) to compel the person to whom it is directed to attend, give testimony, and produce designated documents or other tangible things at a court proceeding, including proceedings before an examiner.; and

(B) to compel a nonparty to attend, give testimony, and produce and permit inspection and copying of designated documents or other tangible things at a deposition taken pursuant to Rule 3-401 or 3-431.

(2) A subpoena ~~is also required~~ may be used to compel ~~a nonparty and may be used to compel~~ a party over whom the court has acquired jurisdiction to attend, give testimony, and produce and permit inspection and copying of designated documents or other tangible things at a deposition taken pursuant to Rule 3-401 or 3-431.

(3) A subpoena ~~shall~~ may not be used for any other purpose. If the court, on motion of a party ~~alleging a violation of this section~~ or on its own initiative, after affording the alleged violator an opportunity for a hearing, finds that a ~~party or attorney~~ person has used or attempted to use a subpoena or a copy or reproduction of a subpoena form for a purpose other than ~~a purpose~~ one allowed under this ~~section~~ Rule, the court may impose an appropriate sanction, ~~upon the party or attorney,~~ including an award of a reasonable attorney's fee and costs, the exclusion of evidence obtained ~~by the subpoena~~ as a result of the violation, and reimbursement of any person inconvenienced for time and expenses incurred.

(b) Issuance

A subpoena shall be issued by the clerk of the court in which an action is pending in the following manner:

(1) On the request of ~~a~~ any person entitled to the issuance of a subpoena, the clerk shall (A) issue a completed subpoena, or (B) provide to the person a blank form of subpoena, which the person shall ~~be filled in and returned~~ fill in and return to the clerk to be signed and sealed by the clerk before service.

(2) On the request of ~~an attorney or other officer of the court~~ a member in good standing of the Maryland Bar entitled to the issuance of a subpoena, the clerk shall issue a subpoena signed and sealed ~~but otherwise in blank~~ by the clerk, which the attorney shall ~~be filled~~ fill in before service.

(3) An attorney of record in a pending action who is a registered user under Rule 20-101 may obtain from the clerk through MDEC, for use in that action, an electronic version of a blank form of subpoena containing the clerk's signature and the seal of the court, which the attorney may download, print, and fill in before service.

(4) Except as provided in subsections (b)(2) and (b)(3) of this Rule, a person other than the clerk may not copy and fill in any blank form of subpoena for the purpose of serving the subpoena. A violation of this section shall constitute a violation of subsection (a)(3) of this Rule.

(c) Form

Except as otherwise permitted by the court for good cause, ~~Every~~ every subpoena shall be on a uniform form approved by the State Court Administrator. The form shall contain: (1) the caption of the action, (2) the name and address of the person to whom it is directed, (3) the name of the person at whose request it is issued, (4) the date, time, and place where attendance is required, (5) a description of any documents or other tangible things to be produced, (6) the date of issuance, and (7) a

statement that the subpoena may be served within 60 days after its issuance and may not be served thereafter.

Committee note: A subpoena may be used to compel attendance at a court proceeding or deposition that will be held more than 60 days after the date of issuance provided that the subpoena is served within the 60-day period. The failure to serve a subpoena within the 60-day period does not preclude the reissuance of a new subpoena.

(d) Service

A subpoena shall be served by delivering a copy to the person named or to an agent authorized by appointment or by law to receive service for the person named or as permitted by Rule 3-121 (a)(3). Service of a subpoena upon a party represented by an attorney may be made by service upon the attorney under Rule 1-321 (a). A subpoena may be served by a sheriff of any county or by any person who is not a party and who is not less than 18 years of age. Unless impracticable, a party shall make a good faith effort to cause a trial or hearing subpoena to be served at least five days before the trial or hearing. A person may not serve or attempt to serve a subpoena more than 60 days after its issuance. A violation of this provision shall constitute a violation of subsection (a)(3) of this Rule.

Cross reference: See Code, Courts Article, §6-410, concerning service upon certain persons other than the custodian of public records named in the subpoena if the custodian is not known and cannot be ascertained after a reasonable effort. As to additional requirements for certain subpoenas, see Code, Health-General Article, §4-306 (b)(6) and Code, Financial Institutions Article, §1-304.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 2-510.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-265 to reorganize the Rule, to add certain provisions concerning the use and copying of subpoena forms, to permit electronic issuance of a blank form of subpoena under certain circumstances, and to make stylistic changes, as follows:

Rule 4-265. SUBPOENA FOR HEARING OR TRIAL

(a) Definitions

(1) Trial

For purposes of this Rule, "trial" includes hearing.

(2) Trial Subpoena

For purposes of this Rule, "trial subpoena" includes hearing subpoena.

(b) Issuance

A subpoena shall be issued by the clerk of the court in which an action is pending in the following manner:

~~(b)~~ (1) ~~Preparation by Clerk~~

On request of a party, the clerk shall prepare and issue a subpoena commanding a witness to appear to testify at trial. The request for subpoena shall state the name, address, and county of the witness to be served, the date and hour when the attendance of the witness is required, and which party has requested the subpoena. If the request is for a subpoena duces tecum, the

request also shall designate the relevant documents, recordings, photographs, or other tangible things, not privileged, that are to be produced by the witness.

~~(c) Preparation by Party or Officer of the Court~~

(2) On request of a party entitled to the issuance of a subpoena, the clerk shall provide a blank form of subpoena which shall be filled in and returned to the clerk to be signed and sealed before service.

(3) On request of ~~an attorney or other officer of the court~~ a member in good standing of the Maryland Bar entitled to the issuance of a subpoena, the clerk shall issue a subpoena signed and sealed ~~but otherwise in blank~~ by the clerk, which the attorney shall ~~be filled~~ fill in before service.

(4) An attorney of record in a pending action who is a registered user under Rule 20-101 may obtain from the clerk through MDEC, for use in that action, an electronic version of a blank form of subpoena containing the clerk's signature and the seal of the court, which the attorney may download, print, and fill in before service.

(5) Except as provided in subsections (b)(3) and (b)(4) of this Rule, a person other than the clerk may not copy and fill in any blank form of subpoena for the purpose of serving the subpoena.

~~(d)~~ (c) Issuance of Subpoena Duces Tecum

A subpoena duces tecum shall include a designation of the documents, recordings, photographs, or other tangible things, not privileged, that are to be produced by the witness.

~~(c)~~ (d) Filing and Service

Unless the court waives the time requirements of this section, a request for subpoena shall be filed at least nine days before trial in the circuit court, or seven days before trial in the District Court, not including the date of trial and intervening Saturdays, Sundays, and holidays. At least five days before trial, not including the date of the trial and intervening Saturdays, Sundays, or holidays, the clerk shall deliver the subpoena for service pursuant to Rule 4-266 (b). Unless impracticable, there must be a good faith effort to cause a trial subpoena to be served at least five days before the trial.

Cross reference: As to additional requirements for certain subpoenas, see Code, Health-General Article, §4-306 (b)(6) and Code, Financial Institutions Article, §1-304.

Source: This Rule is in part derived from former Rule 742 b and M.D.R. 742 a and in part new.

REPORTER'S NOTE

See the Reporter's note to Rule 2-510.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-266 to provide for a uniform subpoena form approved by the State Court Administrator, to add a date of issuance and a certain statement to a subpoena form, to add a Committee note following section (a), to prohibit serving or attempting to serve a subpoena more than 60 days after it was issued, and to make stylistic changes, as follows:

Rule 4-266. SUBPOENAS - GENERALLY

(a) Form

Except as otherwise permitted by the court for good cause, ~~Every~~ every subpoena shall be on a uniform form approved by the State Court Administrator. The form shall contain: (1) the caption of the action, (2) the name and address of the person to whom it is directed, (3) the name of the person at whose request it is issued, (4) the date, time, and place where attendance is required, ~~and~~ (5) a description of any documents, recordings, photographs, or other tangible things to be produced, (6) the date of issuance and an expiration date which shall be 60 days after the date of issuance, and (7) a statement that the subpoena may be served within 60 days after its issuance and may not be served thereafter.

Committee note: A subpoena may be used to compel attendance at a court proceeding or deposition that will be held more than 60

days after the date of issuance, provided that the subpoena is served within the 60-day period. The failure to serve a subpoena within the 60-day period does not preclude the reissuance of a new subpoena.

(b) Service

A subpoena shall be served by delivering a copy to the person named or to an agent authorized by appointment or by law to receive service for the person named or as permitted by Rule 2-121 (a)(3). A subpoena may be served by a sheriff of any county or by a person who is not a party and who is not less than 18 years of age. A subpoena issued by the District Court may be served by first class mail, postage prepaid, if the administrative judge of the district so directs. A person may not serve or attempt to serve a subpoena more than 60 days after its issuance.

Cross reference: See Code, Courts Article, §6-410, concerning service upon certain persons other than the custodian of public records named in the subpoena if the custodian is not known and cannot be ascertained after a reasonable effort.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 2-510.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 100 - COURT ADMINISTRATIVE STRUCTURE,

JUDICIAL DUTIES, ETC.

AMEND Rule 16-101 to add a new section (e) pertaining to compliance with certain fiscal, procurement, and personnel standards, as follows:

Rule 16-101. ADMINISTRATIVE RESPONSIBILITY

a. Chief Judge of the Court of Appeals

1. Generally

The Chief Judge of the Court of Appeals has overall responsibility for the administration of the courts of this State. In the execution of that responsibility, the Chief Judge:

(A) may exercise the authority granted by the Rules in this Chapter or otherwise by law;

(B) shall appoint a State Court Administrator to serve at the pleasure of the Chief Judge;

(C) may delegate administrative duties to other persons within the judicial system, including retired judges recalled pursuant to Md. Constitution, Article IV, §3A; and

(D) may assign a judge of any court other than an Orphans' Court to sit temporarily in any other court.

2. Pretrial Proceeding in Certain Criminal Cases

The Chief Judge of the Court of Appeals may, by Administrative Order, require in any county a pretrial proceeding in the District Court for an offense within the jurisdiction of the District Court punishable by imprisonment for a period in excess of 90 days.

b. Chief Judge of the Court of Special Appeals

The Chief Judge of the Court of Special Appeals, subject to the direction of the Chief Judge of the Court of Appeals and pursuant to the provisions of this Title, shall be responsible for the administration of the Court of Special Appeals. In fulfilling that responsibility, the Chief Judge of the Court of Special Appeals shall possess, to the extent applicable, the authority granted to a County Administrative Judge in section d of this Rule. In the absence of the Chief Judge of the Court of Special Appeals, the provisions of this Rule shall be applicable to the senior judge present in the Court of Special Appeals.

c. Circuit Administrative Judge

1. Designation

In each judicial circuit there shall be a Circuit Administrative Judge, who shall be appointed by order and serve at the pleasure of the Chief Judge of the Court of Appeals. In the absence of any such appointment, the Chief Judge of the judicial circuit shall be the Circuit Administrative Judge.

2. Duties

Each Circuit Administrative Judge shall be generally responsible for the administration of the several courts within

the judicial circuit, pursuant to these Rules and subject to the direction of the Chief Judge of the Court of Appeals. Each Circuit Administrative Judge shall also be responsible for the supervision of the County Administrative Judges within the judicial circuit and may perform any of the duties of a County Administrative Judge. The Circuit Administrative Judge shall also call a meeting of all judges of the judicial circuit at least once every six months.

Cross reference: For more detailed provisions pertaining to the duties of Circuit Administrative Judges, see section (d) of Rule 4-344 (Sentencing - Review); Rule 16-103 (Assignment of Judges); and Rule 16-104 (Judicial Leave).

d. County Administrative Judge

1. Appointment

After considering the recommendation of the Circuit Administrative Judge, the Chief Judge of the Court of Appeals shall appoint a County Administrative Judge for each circuit court, to serve in that capacity at the pleasure of the Chief Judge. Except as permitted by subsection c. 2. of this Rule, the County Administrative Judge shall be a judge of that circuit court.

2. Duties

Subject to the provisions of this Chapter, the general supervision of the Chief Judge of the Court of Appeals, and the general supervision of the Circuit Administrative Judge, the County Administrative Judge is responsible for the administration of the circuit court, including:

(A) supervision of the judges, officials, and employees of the court;

(B) assignment of judges within the court pursuant to Rule 16-202 (Assignment of Actions for Trial);

(C) supervision and expeditious disposition of cases filed in the court, control over the trial and other calendars of the court, assignment of cases for trial and hearing pursuant to Rule 16-102 (Chambers Judge) and Rule 16-202 (Assignment of Actions for Trial), and scheduling of court sessions;

(D) preparation of the court's budget;

(E) preparation of a case management plan for the court pursuant to Rule 16-202 b.;

(F) preparation of a continuity of operations plan for the court;

(G) preparation of a jury plan for the court pursuant to Code, Courts Article, Title 8, Subtitle 2;

(H) preparation of any plan to create a problem-solving court program for the court pursuant to Rule 16-206;

(I) ordering the purchase of all equipment and supplies for (i) the court, and (ii) the ancillary services and officials of the court, including masters, auditors, examiners, court administrators, court reporters, jury commissioner, staff of the medical offices, and all other court personnel except personnel comprising the Clerk of Court's office;

(J) supervision of and responsibility for the employment, discharge, and classification of court personnel and personnel of

its ancillary services and the maintenance of personnel files, unless a majority of the judges of the court disapproves of a specific action. Each judge, however, has the exclusive right, subject to budget limitations, any applicable administrative order pertaining to the judiciary's anti-nepotism policy, and any applicable personnel plan, to employ and discharge the judge's personal secretary and law clerk;

Committee note: Article IV, §9, of the Constitution gives the judges of any court the power to appoint officers and, thus, requires joint exercise of the personnel power.

(K) implementation and enforcement of all administrative policies, rules, orders, and directives of the Court of Appeals, the Chief Judge of the Court of Appeals, the State Court Administrator, and the Circuit Administrative Judge of the judicial circuit; and

(L) performance of any other administrative duties necessary to the effective administration of the internal management of the court and the prompt disposition of litigation in it.

Cross reference: See *St. Joseph Medical Ctr. v. Hon. Turnbull*, 432 Md. 259 (2013) for authority of the county administrative judge to assign and reassign cases but not to countermand judicial decisions made by a judge to whom a case has been assigned.

3. Delegation of Authority

(A) With the approval of the Circuit Administrative Judge or in accordance with a continuity of operations plan adopted by the court, a County Administrative Judge may delegate one or more of the administrative duties and functions imposed by this Rule

to (i) another judge or a committee of judges of the court, or (ii) one or more other officials or employees of the court.

(B) Except as provided in subsection d. 3. (C) of this Rule, in the implementation of Code, Criminal Procedure Article, §6-103 and Rule 4-271 (a), a County Administrative Judge may (i) with the approval of the Chief Judge of the Court of Appeals, authorize one or more judges to postpone criminal cases on appeal from the District Court or transferred from the District Court because of a demand for jury trial, and (ii) authorize not more than one judge at a time to postpone all other criminal cases.

(C) The administrative judge of the Circuit Court for Baltimore City may authorize one judge sitting in the Clarence M. Mitchell courthouse to postpone criminal cases set for trial in that courthouse and one judge sitting in Courthouse East to postpone criminal cases set for trial in that courthouse.

e. Compliance with Certain Fiscal, Procurement, and Personnel Standards

1. Applicability

Section e. of this Rule applies to units, other than courts, that are not part of the Executive or Legislative Branch of the State; and

(A) that are funded, in whole or in part, through appropriations to the Judicial Branch;

(B) whose budgets are subject to approval by the Court of Appeals or the Chief Judge of that Court; or

(C) that are subject to audit by the Court of Appeals, the Administrative Office of the Courts, or the State Court Administrator.

2. Budget, Procurement, and Personnel Standards

(A) Attorney Grievance Commission

The Attorney Grievance Commission shall:

(i) cooperate with the State Court Administrator in the creation and drafting of the budget submitted annually pursuant to Rule 16-711 (h)(15);

(ii) cooperate with the State Court Administrator in establishing procurement and personnel standards and guidelines; and

(iii) report annually in writing to the State Court Administrator that the Commission operated in a manner consistent with its established procurement and personnel standards and guidelines.

(B) Other Units

Units other than the Attorney Grievance Commission shall prepare their proposed budgets and exercise procurement and personnel decisions in conformance with standards and guidelines promulgated by the State Court Administrator.

3. Other Supervisory and Approval Authority

Section e. of this Rule is not intended to limit any other supervisory or approval authority of the Court of Appeals, the Chief Judge of that Court, the State Court Administrator, or the

Administrative Office of the Courts over units subject to that authority.

Source: This Rule is in part derived from former Rule 1200 and is in part new.

REPORTER'S NOTE

The proposed amendment to Rule 16-101 adds a new section e., pertaining to units of the Judicial Branch that (1) are funded in whole or in part through Judicial Branch appropriations, (2) have budgets subject to approval by the Court of Appeals or by the Chief Judge of that Court, or (3) are subject to audit by the Court of Appeals, the Administrative Office of the Courts, or the State Court Administrator. Section e. is not applicable to courts or to any unit of the Executive or Legislative Branch of State government.

The Rule change is intended to promote increased transparency and uniformity of fiscal, procurement, and personnel standards, while preserving the autonomy needed for the routine daily operation of the covered units.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 500 - FAMILY MAGISTRATES

ADD new Rule 1-501, as follows:

Rule 1-501. FAMILY MAGISTRATE

(a) Designation

The Administrative Judge of a county shall designate as "family magistrates" for that county the masters for juvenile causes and masters in chancery assigned to hear actions and matters in the categories listed in Rule 16-204 (b). An order designating a family magistrate shall state whether the individual is to perform the functions of a master in chancery, a master for juvenile causes, or both.

(b) Effect of Designation

The powers, duties, salary, benefits, and pension of a master are not affected by the individual's designation as a family magistrate. A master serving as a family magistrate shall comply with Rule 16-814, Maryland Code of Conduct for Judicial Appointees, and is required to file a financial disclosure statement in accordance with Rule 16-816.

(c) Rules of Construction

Rules and statutes that refer to a master in chancery, master for juvenile causes, or master apply to a family magistrate, as appropriate. Statutes and provisions in the

Constitution of Maryland that refer to a magistrate shall not be construed as referring to a family magistrate.

Cross reference: For references to "master" see Code, Business, Occupations & Professions Article, §10-603; Code, Courts Article, §§2-102, 2-501, 3-8A-04, 3-807, 3-1802; Code, Family Law Article, §1-203; Code, Land Use Article, §4-402; Code, State Government Article, §19-102; Code, State Personnel and Pensions Article, §§21-307, 21-309, 23-201, 27-201, 27-304, and 27-402; and Rules 1-325, 2-504.1, 2-510, 2-541, 2-603, 9-208, 9-209, 11-110, 11-111, 11-114, 11-115, 14-207.1, 15-206, 15-207, 16-202, 16-306, 16-814, 16-816, and 17-206. For references to "magistrate," see Maryland Constitution, §41-I; Code, Courts Article, §2-607; Code, Criminal Procedure Article, §9-103, Code, Health-General Article, §§10-1301 and 10-1303; Code, Natural Resources Article, §10-1201; and Code, State Government Article, §§16-104 and 16-105.

Source: This Rule is new.

REPORTER'S NOTE

At its April 10, 2014 meeting, the Judicial Cabinet approved the following recommendation of the Conference of Circuit Judges' Masters' Governance Committee:

> 3. The name of a master should be changed to Family Magistrate, Special Magistrate, or Standing Magistrate, depending on the area of practice. This naming convention is consistent with how the Maryland Rules designate masters.

The Minutes of the Cabinet meeting also state:

> After some discussion, the Cabinet ... with respect to Recommendation No. 3, approved the name Family Magistrate, adding that if the master does not handle family matters, then he or she would not fall within the group of masters for which this name has been approved.

By correspondence dated April 25, 2014, the Chair of the Conference of Circuit Judges notified the Circuit and County Administrative Judges of the Cabinet's decision. The judges and masters in at least one county would like the change to "family

magistrate” to occur as quickly as possible, and implementation procedures have been initiated in that county.

New Rule 1-501 is proposed to implement the decision of the Judicial Cabinet.

ADD new Rule 11-601, as follows:

Rule 11-601. EXPUNGEMENT OF JUVENILE RECORDS

(a) Applicability

This Rule applies to petitions for expungement of records under Code, Courts Article, §3-8A-27.1.

(b) Definitions

In this Rule, the following definitions apply:

(1) Expungement

"Expungement" means the removal of court or police records from public inspection:

(A) by obliteration;

(B) by removal to a separate secure area to which the public and other persons having no legitimate reason for being there are denied access; or

(C) if access to a court or police record can be obtained only by reference to another court or police record, by the expungement of that record or the part of that record providing the access.

(2) Juvenile Record

"Juvenile record" means a court or police record concerning a child alleged or adjudicated delinquent or in need of supervision or who has received a citation for a violation. A

juvenile record does not include records maintained under Code, Criminal Procedure Article, Title 11, Subtitle 7 or by a law enforcement agency for the sole purpose of collecting statistical information concerning juvenile delinquency and that do not contain any information that would reveal the identity of a person.

(3) Petition

"Petition" means a petition for expungement of juvenile records in accordance with this Rule.

(4) Petitioner

"Petitioner" means the person who files a petition for expungement of juvenile records in accordance with this Rule.

(5) Victim

"Victim" means a person against whom a delinquent act has been committed or attempted.

Cross reference: See Code, Courts Article, §3-801 for other definitions.

(c) Venue

A petitioner may file a petition for expungement of the juvenile record in the court in which the juvenile petition or citation was filed.

(d) Service

The clerk shall have a copy of the petition for expungement served by mail or delivered to:

(1) all listed victims in the case in which the petitioner is seeking expungement at the address listed in the court file in that case;

(2) all family members of a victim listed in subsection (d)(1) of this Rule, who are listed in the court file as having attended the adjudication for the case in which the petitioner is seeking expungement; and

(3) the State's Attorney.

(e) Contents

The petition shall be substantially in the form set forth in Form 11-601.

(f) Objection

A person entitled to service pursuant to section (d) of this Rule may file an objection to the petition.

(g) Hearing

(1) On Own Initiative

The court may hold a hearing on its own initiative, whether or not an objection is filed.

(2) If Objection Filed

Except as provided in subsection (g)(4) of this Rule, the court shall hold a hearing if an objection is filed within 30 days after the petition is served.

(3) If No Objection Filed

The court may grant the petition without a hearing if no timely objection is filed.

(4) Facially Deficient Petition

The court may deny the petition without a hearing if the court finds that the petition, on its face, fails to meet the requirements of Code, Courts Article, §3-8A-27.1 (c).

(h) Grant or Denial of Petition Following a Hearing

(1) Expungement Granted

If, after a hearing, the court finds that the petitioner is entitled to expungement, it shall grant the petition and order the expungement of all court and police records relating to the delinquency or the child in need of supervision petition or citation. An order for expungement shall be substantially in the form set forth in Form 11-602.

(2) Expungement Denied

If, after a hearing, the court finds that the petitioner is not entitled to expungement, it shall deny the petition.

(i) Service of Order and Compliance Form

Upon entry of a court order granting or denying expungement, the clerk shall serve a copy of the order and any stay of the order on all parties to the proceeding. Upon entry of an order granting expungement, the clerk shall serve on the custodian of juvenile records, a true copy of the order and a blank form of the Certificate of Compliance set forth in Form 11-603.

(j) Appeal

The petitioner or the State's Attorney may appeal an order granting or denying the petition within 30 days after entry of the order by filing a notice of appeal with the clerk of the

court from which the appeal is taken and by serving a copy on the opposing parties or attorneys.

Cross reference: A victim may appeal to the Court of Special Appeals from a final order that denies or fails to consider a right secured to the victim by law. See Code, Criminal Procedure Article, §11-103.

(k) Stay Pending Appeal

(1) Entry

If the court, over the objection of the State's Attorney, enters an order granting expungement, the order is stayed for 30 days after entry and thereafter if a timely notice of appeal is filed, pending the disposition of the appeal and further order of court.

(2) Lifting

The court shall lift a stay upon disposition of any appeal or, if no notice of appeal was timely filed, upon expiration of the time prescribed for filing a notice of appeal. If an order for expungement has been stayed and no appeal is pending, the stay may be lifted upon written consent of the State's Attorney.

(3) Notice

Promptly upon the lifting of a stay, the clerk shall send notice of the lifting of the stay to the parties and to the custodian of records, including the Central Repository, to which an order for expungement and a compliance form are required to be sent pursuant to section (i) of this Rule.

(l) Advice of Compliance

Unless an order is stayed pending an appeal, each custodian of juvenile records subject to the order of expungement shall advise, in writing, the court, the petitioner, and all parties to the petition for expungement proceeding of compliance with the order within 60 days after entry of the order.

Source: This Rule is new.

REPORTER'S NOTE

Chapter 213, Laws of 2014 (HB 79) provides a new procedure for expungement of juvenile court records. There has been an increasing demand by government and private employers, including the military, educational institutions, and licensing authorities, for individuals to consent to the release of juvenile court records. Former juvenile respondents have been forced to waive their rights to confidentiality and have been petitioning the courts to open the sealed records. Approximately 30 states have statutes authorizing some type of expungement or destruction of juvenile delinquency records, either automatically once specified events occur or on petition.

The Rules Committee recommends the addition of new Rule 11-601 setting out the specific procedure for petitioning for expungement of juvenile records and the addition of a petition form [Form 11-601], a form for an order for expungement [Form 11-602], and a form for a certificate of compliance [Form 11-603], similar to the forms for expungement of criminal records.

MARYLAND RULES OF PROCEDURE

FORMS FOR EXPUNGEMENT OF RECORDS

ADD new Form 11-601, as follows:

Form 11-601. PETITION FOR EXPUNGEMENT OF JUVENILE RECORDS

(Caption)

PETITION FOR EXPUNGEMENT OF JUVENILE RECORDS
(Code, Courts Article, §3-8A-27.1)

1. (Check one of the following boxes) On or about _____, I was [ ] arrested or [ ] served
(Date)
with a citation by an officer of the _____
(Law Enforcement Agency)
at _____, Maryland, as a result of the following incident _____
_____
_____.

2. I was charged with the offense of _____
_____.

3. On or about _____, the charge was disposed of as follows (check one of the following boxes):
(Date)

a. [ ] The State's Attorney entered a nolle prosequi.

b. [ ] The delinquency or Child in Need of Supervision petition or the citation was dismissed.

c. [ ] The court, in an adjudicatory hearing, did not find

that the allegations in the delinquency or Child in Need of Supervision petition or citation were true.

d. [ ] The adjudicatory hearing was not held within two years after the delinquency or Child in Need of Supervision petition or citation was filed.

e. [ ] The court, in a disposition hearing, found that I did not require guidance, treatment, or rehabilitation.

f. [ ] The court, in a disposition hearing, found that I did require guidance, treatment, or rehabilitation.

4. Each of the following statements are true (check each true statement):

a. [ ] I am at least 18 years old.

b. [ ] At least two years have elapsed since the last official action in my juvenile record.

c. [ ] I have never been adjudicated delinquent, or, I was only adjudicated delinquent one time.

d. [ ] I have not subsequently been convicted of any offense.

e. [ ] No delinquency petition or criminal charge is pending against me.

f. [ ] I have not been adjudicated delinquent for an offense that, if committed by an adult, would constitute: a crime of violence (as defined in Code, Criminal Law Article, §14-101); a violation of Code, Criminal Law Article, §3-308; or a felony.

g. [ ] I have not been required to register as a sex offender under Code, Criminal Procedure Article, §11-704.

h. [ ] I have not been adjudicated delinquent for an offense involving the use of a firearm, (as defined in Code, Public Safety Article, §5-101) in the commission of a crime of violence (as defined in Code, Criminal Law Article, §14-101).

i. [ ] I have fully paid any monetary restitution ordered by the court in the delinquency proceeding.

j. [ ] I understand that the court shall consider my best interests, my stability in the community, and the safety of the public in its consideration of this petition.

WHEREFORE, I request the court to enter an Order for Expungement of my juvenile record pertaining to the above action.

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

_____ _____
(Date) (Signature)

_____
(Address)

_____

_____
(Telephone No.)

REPORTER'S NOTE

See the Reporter's note to Rule 11-601.

MARYLAND RULES OF PROCEDURE

FORMS FOR EXPUNGEMENT OF RECORDS

ADD new Form 11-602, as follows:

Form 11-602. ORDER FOR EXPUNGEMENT OF JUVENILE RECORDS

(Caption)

ORDER FOR EXPUNGEMENT OF JUVENILE RECORDS

Having found that _____
(Name)

of _____
(Address)

is entitled to expungement of the juvenile records and the court records in this action, it is by the _____ Court for _____ City/County, Maryland, this _____ day of _____, _____.
(Month) (Year)

ORDERED that the clerk forthwith shall have a copy of this Order served by certified mail on or delivered to all listed victims in the case in which the person is seeking expungement; and it is further

ORDERED that the clerk forthwith shall have a copy of this Order served by certified mail on or delivered to all family members of the victim, who are designated in the court file as having attended the adjudication for the case in which the person is seeking expungement; and it is further

ORDERED that the clerk forthwith shall have a copy of this

Order served by certified mail on or delivered to the State's Attorney; and it is further

ORDERED that within 60 days after the entry of this Order or, if this Order is stayed, 30 days after the stay is lifted, the clerk and the following custodians of court and police records relating to the delinquency or Child in Need of Supervision petition or citation shall (1) expunge all court and police records relating to the delinquency or Child in Need of Supervision petition, or citation in their custody, (2) file an executed Certificate of Compliance, and (3) serve a copy of the Certificate of Compliance on the petitioner; and it is further

ORDERED that the clerk and other custodians of records forthwith upon receipt of this Order, if it is not stayed, or the stay has been lifted, shall expunge and remove the records from public inspection; and it is further

ORDERED that this Order

[ ] is stayed pending further order of the court.

[ ] is not stayed.

_____ _____

(Custodian) (Address)

_____

_____

_____

_____

_____

Date Judge

NOTICE TO PETITIONER: Until a custodian of records has received a copy of this Order AND filed a Certificate of Compliance, expungement of the records in the custody of that custodian is not complete and may not be relied upon.

REPORTER'S NOTE

See the Reporter's note to Rule 11-601.

MARYLAND RULES OF PROCEDURE

FORMS FOR EXPUNGEMENT OF RECORDS

ADD new Form 11-603, as follows:

Form 11-603. CERTIFICATE OF COMPLIANCE

(CAPTION)

CERTIFICATE OF COMPLIANCE

On this ..... day of ....., ..., I have
(month) (year)

complied with the Order for Expungement of Records dated

..... entered in the above-captioned case.

.....
Custodian

.....
Signature

.....
Title

REPORTER'S NOTE

See the Reporter's note to Rule 11-601.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 100 - APPLICABILITY AND CITATION

AMEND Rule 1-101 (k) to add language referring to expungement of juvenile records, as follows:

Rule 1-101. APPLICABILITY

. . .

(k) Title 11

Title 11 applies to juvenile causes and expungement of juvenile records under Code, Courts Article, Title 3, Subtitles 8 and 8A.

. . .

REPORTER'S NOTE

Chapter 213, Laws of 2014, (HB 79) provides a procedure for the expungement of juvenile records. In light of this new procedure, the Rules Committee recommends the addition of new Rule 11-601, Expungement of Juvenile Records, and three related Forms. The Committee recommends amending Rule 1-101 (k) to state that Title 11 applies to the expungement of juvenile records. The Committee also recommends amending Rules 4-101 and 4-501 to make clear the inapplicability of the expungement Rules and Forms in Title 4 to the new procedure.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 100 - GENERAL

AMEND Rule 4-101 by adding a cross reference to Rules 4-501 and 11-601, as follows:

Rule 4-101. APPLICABILITY

The rules in this Title govern procedure in all criminal matters, post conviction procedures, and expungement of records in both the circuit courts and the District Court, except as otherwise specifically provided.

Cross reference: See Rules 4-501 and 11-601 concerning expungement of juvenile records.

Source: This Rule is derived from former Rule 701 and M.D.R. 701.

REPORTER'S NOTE

See the Reporter's note to Rule 1-101 (k).

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 500 - EXPUNGEMENT OF RECORDS

AMEND Rule 4-501 by adding a certain exception, as follows:

Rule 4-501. APPLICABILITY

The procedure provided by this Chapter is exclusive and mandatory for use in all judicial proceedings for expungement of records whether pursuant to Code, Criminal Procedure Article, §§10-102 through 10-109 or otherwise, except that expungement of juvenile records is governed by Rule 11-601.

Source: This Rule is derived from former Rule EX2.

REPORTER'S NOTE

See the Reporter's note to Rule 1-101 (k).

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 20-109 to authorize remote electronic access under certain circumstances for registered users acting on behalf of the Department of Juvenile Services, as follows:

Rule 20-109. ACCESS TO ELECTRONIC COURT RECORDS

. . .

(f) 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 affected 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.

. . .

REPORTER'S NOTE

The Department of Juvenile Services is required to participate in certain proceedings, such as delinquency and Child in Need of Supervision actions, in which the Department is not a party. Code, Courts Article, §3-8A-27 permits the Department to have access to case records in such proceedings that otherwise are confidential and not subject to inspection by nonparties.

Currently, the case records are in paper form. Under MDEC, case records will be electronic. Because the Department is not a party, the remote access afforded by Rule 20-109 (b) to parties and their attorneys is inapplicable to the Department, and the

Department would have to view the electronic case records at the courthouse, on courthouse computer terminals.

The Department has requested an amendment to Rule 20-109 that would permit it to have remote access to the electronic case records to the same extent the Department currently has access to those records in paper form. To provide that access, a new section (f) is proposed to be added to Rule 20-109.

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

CHAPTER 200 - DIVORCE, ANNULMENT AND ALIMONY

AMEND Rule 9-206 by replacing references to "mother" and "father" with references to "Parent 1," "Parent 2," and "parent," as follows:

Rule 9-206. CHILD SUPPORT GUIDELINES

(a) Definitions

The following definitions apply in this Rule:

(1) Shared Physical Custody

"Shared physical custody" has the meaning stated in Code, Family Law Article, §12-201 (i).

(2) Worksheet

"Worksheet" means a document to compute child support under the guidelines set forth in Code, Family Law Article, Title 12, Subtitle 2.

(b) Filing of Worksheet

In an action involving the establishment or modification of child support, each party shall file a worksheet in the form set forth in section (c) or (d) of this Rule. Unless the court directs otherwise, the worksheet shall be filed not later than the date of the hearing on the issue of child support.

Cross reference: See Code, Family Law Article, §12-203 (a) and *Walsh v. Walsh*, 333 Md. 492 (1994).

(c) Primary Physical Custody

Except in cases of shared physical custody, the worksheet shall be in substantially the following form:

_____ In the

Circuit Court for _____

v.

_____ No. _____

WORKSHEET A - CHILD SUPPORT OBLIGATION: PRIMARY PHYSICAL CUSTODY

_____	_____	_____	_____
Name of Child	Date of Birth	Name of Child	Date of Birth
_____	_____	_____	_____
Name of Child	Date of Birth	Name of Child	Date of Birth
_____	_____	_____	_____
Name of Child	Date of Birth	Name of Child	Date of Birth

	~~Mother~~ Parent 1	~~Father~~ Parent 2	Combined
1. MONTHLY ACTUAL INCOME (Before taxes) (Code, Family Law Article, §12-201 (b))	$	$	/////// ///////
a. Minus preexisting child support payment actually paid	-	-	/////// ///////
b. Minus alimony actually paid	-	-	///////
c. Plus/minus alimony awarded in this case	+/-	+/-	/////// ///////
2. MONTHLY ADJUSTED ACTUAL INCOME	$	$	$

3. PERCENTAGE SHARE OF INCOME Divide each parent's income on line 2 by the combined income on line 2.)	% 	% 	//////// //////// //////// ////////
4. BASIC CHILD SUPPORT OBLIGATION (Apply line 2 Combined Income to Child Support Schedule.)	////// ////// //////	////// ////// //////	$
a. Work-Related Child Care Expenses (Code, Family Law Article, §12-204 (g))	$	$	+
b. Health Insurance Expenses (Code, Family Law Article, §12-204 (h)(1))	$	$	+
c. Extraordinary Medical Expenses (Code, Family Law Article, §12-204 (h)(2))	$	$	+
d. Cash Medical Support (Code, Family Law Article, §12-102 (c) - applies only to a child support order under Title IV, Part D of the Social Security Act)	$	$	+
e. Additional Expenses (Code, Family Law Article, §12-204 (i))	$	$	+
5. TOTAL CHILD SUPPORT OBLIGATION (Add lines 4, 4 a, 4 b, 4 c, 4 d, and 4 e).	////// ////// //////	////// ////// //////	$
6. EACH PARENT'S CHILD SUPPORT OBLIGATION (Multiply line 5 by line 3 for each parent.)	$	$	////// ////// //////
7. TOTAL DIRECT PAY BY EACH PARENT			//////

(Add the expenses shown on lines 4 a, 4 b, 4 c, 4 d, and 4 e paid by each parent.)	$	$	//////
8. RECOMMENDED CHILD SUPPORT AMOUNT (Subtract line 7 from line 6 for each parent.)	$	$	//////
9. RECOMMENDED CHILD SUPPORT ORDER (Bring down amount from line 8 for the non-custodial parent only. If this is a negative number, see Comment (2), below.)	$	$	//////

Comments or special adjustments, such as (1) any adjustment for certain third party benefits paid to or for the child of an obligor who is disabled, retired, or receiving benefits as a result of a compensable claim (see Code, Family Law Article, §12-204 (j) or (2) that there is a negative dollar amount on line 9, which indicates a recommended child support order directing the custodial parent to reimburse the non-custodial parent this amount for "direct pay" expenses):

PREPARED BY: DATE:

(d) Shared Physical Custody

In cases of shared physical custody, the worksheet shall be in substantially the following form:

_____ In the
Circuit Court for _____

v.

_____ No. _____

WORKSHEET B - CHILD SUPPORT OBLIGATION: SHARED PHYSICAL CUSTODY

Name of Child	Date of Birth	Name of Child	Date of Birth
Name of Child	Date of Birth	Name of Child	Date of Birth
Name of Child	Date of Birth	Name of Child	Date of Birth

	~~Mother~~ Parent 1	~~Father~~ Parent 2	Combined
1. MONTHLY ACTUAL INCOME (Before taxes) (Code, Family Law Article, §12-201 (b))	$	$	////// //////
a. Minus preexisting child support payment actually paid	-	-	////// //////
b. Minus alimony actually paid	-	-	//////
c. Plus/minus alimony awarded in this case	+/-	+/-	////// //////
2. MONTHLY ADJUSTED ACTUAL INCOME	$	$	$
3. PERCENTAGE SHARE OF INCOME (Divide each parent's income on line 2 by the combined income on line 2.)	%	%	////// ////// ////// //////
4. BASIC CHILD SUPPORT OBLIGATION (Apply line 2 Combined Income to Child Support Schedule.)	////// ////// //////	////// ////// //////	$
5. ADJUSTED BASIC CHILD SUPPORT OBLIGATION (Multiply Line 4 by 1.5)	////// ////// //////	////// ////// //////	$

6. OVERNIGHTS with each parent (must total 365)					365
7. PERCENTAGE WITH EACH PARENT (Line 6 divided by 365)	A	%	B	%	//////
STOP HERE IF Line 7 is less than 35% for either parent. Shared physical custody does not apply. (Use Worksheet A, instead.)	//////		//////		//////
8. EACH PARENT'S THEORETICAL CHILD SUPPORT OBLIGATION (Multiply line 5 by line 3 for each parent.)	A$		B$		//////
9. BASIC CHILD SUPPORT OBLIGATION FOR TIME WITH OTHER PARENT (Multiply line 8A by line 7B and put answer on Line 9A.) (Multiply line 8B by line 7A and put answer on line 9B.)	A$		B$		//////
10. NET BASIC CHILD SUPPORT OBLIGATION (Subtract lesser amount from greater amount in line 9 and place answer here under column with greater amount in Line 9.)	$		$		//////
11. EXPENSES:	//////		//////		
a. Work-Related Child Care Expenses (Code, Family Law Article, §12-204 (g))	//////		//////		+
b. Health Insurance Expenses (Code, Family Law Article §12-204 (h)(1))	//////		//////		+
c. Extraordinary Medical Expenses (Code, Family Law Article,	//////		//////		

§12-204 (h)(2))	//////	//////	+
d. Cash Medical Support (Code, Family Law Article, §12-102 (c) - applies only to a child support order under Title IV, Part D of the Social Security Act)	//////	//////	+
e. Additional Expenses (Code, Family Law Article, §12-204 (i))	//////	//////	+
12. NET ADJUSTMENT FROM WORKSHEET C. Enter amount from line l, WORKSHEET C, if applicable. If not, continue to Line 13.	$	$	//////
13. NET BASIC CHILD SUPPORT OBLIGATION (From Line 10, WORKSHEET B)	$	$	//////
14. RECOMMENDED CHILD SUPPORT ORDER (If the same parent owes money under Lines 12 and 13, add these two figures to obtain the amount owed by that parent. If one parent owes money under Line 12 and the other owes money under Line 13, subtract the lesser amount from the greater amount to obtain the difference. The parent owing the greater of the two amounts on Lines 12 and 13 will owe that difference as the child support obligation. NOTE: The amount owed in a shared custody arrangement may not exceed the amount that would be owed if the obligor parent were a non-custodial parent. See WORKSHEET A).	$	$	//////

Comments or special adjustments, such as any adjustment for certain third party benefits paid to or for the child of an obligor who is disabled, retired, or receiving benefits as a

result of a compensable claim (see Code, Family Law Article, §12-204 (j)):

PREPARED BY: DATE:

INSTRUCTIONS FOR WORKSHEET C: Use Worksheet C ONLY if any of the Expenses listed in lines 11 a, 11 b, 11 c, 11 d, or 11 e is directly paid out or received by the parents in a different proportion than the percentage share of income entered on line 3 of Worksheet B. Example: If ~~the mother~~ one parent pays all of the day care, or parents split education/medical costs 50/50 and line 3 is other than 50/50. If there is more than one 11 e expense, the calculations on lines i and j below must be made for each expense.

WORKSHEET C - FOR ADJUSTMENTS, LINE 12, WORKSHEET B

	~~Mother~~ Parent 1	~~Father~~ Parent 2
a. Total amount of direct payments made for Line 11 a expenses multiplied by each parent's percentage of income (Line 3, WORKSHEET B) (Proportionate share)	$	$
b. The excess amount of direct payments made by the parent who pays more than the amount calculated in Line a, above. (The difference between amount paid and proportionate share)	$	$
c. Total amount of direct payments made for Line 11 b expenses multiplied by		

each parent's percentage of income (Line 3, WORKSHEET B)	$	$
d. The excess amount of direct payments made by the parent who pays more than the amount calculated in Line c, above.	$	$
e. Total amount of direct payments made for Line 11 c expenses multiplied by each parent's percentage of income (Line 3, WORKSHEET B)	$	$
f. The excess amount of direct payments made by the parent who pays more than the amount calculated in Line e, above.	$	$
g. Total amount of direct payments made for Line 11 d expenses multiplied by each parent’s percentage of income (Line 3, WORKSHEET B)	$	$
h. The excess amount of direct payments made by the parent who pays more than the amount calculated in line g, above.	$	$
i. Total amount of direct payments made for Line 11 e expenses multiplied by each parent’s percentage of income (Line 3, WORKSHEET B)	$	$
j. The excess amount of direct payments made by the parent who pays more than the amount calculated in line i, above.	$	$
k. For each parent, add lines b, d, f, h, and j	$	$
l. Subtract lesser amount from greater amount in Line k, above. Place the answer on this line under the lesser		

amount in Line k. Also enter this answer on Line 12 of WORKSHEET B, in the same parent's column.	$	$

Source: This Rule is new.

REPORTER'S NOTE

An individual who writes proprietary computer programs that assist in the preparation of the forms and computations required by Rules 9-206 and 9-207 observed that the text of the forms does not provide for same-sex parents or same-sex spouses. He suggested that the forms be modified so that the first party to file would be "Parent 1" or "Spouse 1," while the defendant or second to file would be "Parent 2" or "Spouse 2."

The Rules Committee recommends the suggested changes.

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

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

AMEND Rule 9-207 by replacing references to "Husband" and "Wife" with "Spouse 1" and "Spouse 2," as follows:

Rule 9-207. JOINT STATEMENT OF MARITAL AND NON-MARITAL PROPERTY

(a) When Required

When a monetary award or other relief pursuant to Code, Family Law Article, §8-205 is an issue, the parties shall file a joint statement listing all property owned by one or both of them.

(b) Form of Property Statement

The joint statement shall be in substantially the following form:

JOINT STATEMENT OF PARTIES CONCERNING
MARITAL AND NON-MARITAL PROPERTY

1. The parties agree that the following property is "marital property" as defined by Maryland Annotated Code, Family Law Article, §8-201:

Description of Property	How Titled	Fair Market Value	Liens, Encumbrances, or Debt Directly Attributable

~~Husband's~~ Spouse 1 Assertion	~~Wife's~~ Spouse 2 Assertion	~~Husband's~~ Spouse 1 Assertion	~~Wife's~~ Spouse 2 Assertion	~~Husband's~~ Spouse 1 Assertion	~~Wife's~~ Spouse 2 Assertion

_____

_____

2. The parties agree that the following property is not marital property because the property (a) was acquired by one party before marriage, (b) was acquired by one party by inheritance or gift from a third person, (c) has been excluded by valid agreement, or (d) is directly traceable to any of those sources:

Description of Property	How Titled	Fair Market Value		Liens, Encumbrances, or Debt Directly Attributable	
~~Husband's~~ Spouse 1 Assertion	~~Wife's~~ Spouse 2 Assertion	~~Husband's~~ Spouse 1 Assertion	~~Wife's~~ Spouse 2 Assertion	~~Husband's~~ Spouse 1 Assertion	~~Wife's~~ Spouse 2 Assertion

_____

_____

3. The parties are not in agreement as to whether the following property is marital or non-marital:

Description of Property	How Titled	Fair Market Value		Liens, Encumbrances, or Debt Directly Attributable	
~~Husband's~~ Spouse 1 Assertion	~~Wife's~~ Spouse 2 Assertion	~~Husband's~~ Spouse 1 Assertion	~~Wife's~~ Spouse 2 Assertion	~~Husband's~~ Spouse 1 Assertion	~~Wife's~~ Spouse 2 Assertion

_____

_____

Date _____ _____
Plaintiff or Attorney

Date _____ _____
Defendant or Attorney

INSTRUCTIONS:

1. If the parties do not agree about the title or value of any property, the parties shall set forth in the appropriate column a statement that the title or value is in dispute and each party's assertion as to how the property is titled or the fair market value.

2. In listing property that the parties agree is non-marital because the property is directly traceable to any of the listed sources of non-marital property, the parties shall specify the source to which the property is traceable.

(c) Time for Filing; Procedure

The joint statement shall be filed at least ten days before the scheduled trial date or by any earlier date fixed by the court. At least 30 days before the joint statement is due to be filed, each party shall prepare and serve on the other party a proposed statement in the form set forth in section (b) of this Rule. At least 15 days before the joint statement is due, the plaintiff shall sign and serve on the defendant for approval and signature a proposed joint statement that fairly reflects the positions of the parties. The defendant shall timely file the

joint statement, which shall be signed by the defendant or shall be accompanied by a written statement of the specific reasons why the defendant did not sign.

(d) Sanctions

If a party fails to comply with this Rule, the court, on motion or on its own initiative, may enter any orders in regard to the noncompliance that are just, including:

(1) an order that property shall be classified as marital or non-marital in accordance with the statement filed by the complying party;

(2) an order refusing to allow the noncomplying party to oppose designated assertions on the complying party's statement filed pursuant to this Rule, or prohibiting the noncomplying party from introducing designated matters in evidence.

Instead of or in addition to any order, the court, after opportunity for hearing, shall require the noncomplying party or the attorney advising the noncompliance or both of them to pay the reasonable expenses, including attorney's fees, caused by the noncompliance, unless the court finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

Committee note: The Joint Statement of Marital and Non-Marital Property is not intended as a substitute for discovery in domestic relations cases.

Source: This Rule is derived from former Rule S74.

REPORTER'S NOTE

See the Reporter's note to Rule 9-206.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-506 (a)(2) by deleting the words "by filing," as follows:

Rule 2-506. VOLUNTARY DISMISSAL

(a) By Notice of Dismissal or Stipulation

Except as otherwise provided in these rules or by statute, a party who has filed a complaint, counterclaim, cross-claim, or third-party claim may dismiss all or part of the claim without leave of court by filing (1) a notice of dismissal at any time before the adverse party files an answer or (2) ~~by filing~~ a stipulation of dismissal signed by all parties to the claim being dismissed.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 2-506 (a)(2) corrects a grammatical error and is stylistic, only.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 600 - JUDGMENT

AMEND Rule 2-623 to make a stylistic change to section (a), as follows:

Rule 2-623. RECORDING OF JUDGMENT OF ANOTHER COURT AND DISTRICT COURT NOTICE OF LIEN

(a) Judgment of Another Court

Upon receiving a copy of a judgment of another court, certified or authenticated in accordance with these rules or statutes of this State, or of the United States, the clerk shall record and index the judgment if it was entered by ~~(a)~~ (1) the Court of Appeals, ~~(b)~~ (2) the Court of Special Appeals, ~~(c)~~ (3) another circuit court of this State, ~~(d)~~ (4) a court of the United States, or ~~(e)~~ (5) any other court whose judgments are entitled to full faith and credit in this State. Upon recording a judgment received from a person other than the clerk of the court of entry, the receiving clerk shall notify the clerk of the court of entry.

Cross reference: For enforcement of foreign judgments, see Code, Courts Article, §§11-801 through 11-807.

(b) District Court Notice of Lien

Upon receiving a certified copy of a Notice of Lien from the District Court pursuant to Rule 3-621, the clerk shall record and index the notice in the same manner as a judgment.

Source: This Rule is in part derived from former Rule 619 a and in part new.

REPORTER'S NOTE

The proposed amendment to Rule 2-623 replaces lower case letters with numbers to conform the style of the list in section (a) to the style of lists in other sections of the Maryland Rules.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-216 (g)(4)(B) to change the amount of collateral security from $100.00 to $25.00, as follows:

Rule 4-216. PRETRIAL RELEASE - AUTHORITY OF JUDICIAL OFFICER; PROCEDURE

. . .

(g) Conditions of Release

The conditions of release imposed by a judicial officer under this Rule may include:

(1) committing the defendant to the custody of a designated person or organization that agrees to supervise the defendant and assist in ensuring the defendant's appearance in court;

(2) placing the defendant under the supervision of a probation officer or other appropriate public official;

(3) subjecting the defendant to reasonable restrictions with respect to travel, association, or residence during the period of release;

(4) requiring the defendant to post a bail bond complying with Rule 4-217 in an amount and on conditions specified by the judicial officer, including any of the following:

(A) without collateral security;

(B) with collateral security of the kind specified in Rule 4-217 (e)(1)(A) equal in value to the greater of ~~$100.00~~ $25.00 or 10% of the full penalty amount, and if the judicial officer sets bail at $2500 or less, the judicial officer shall advise the defendant that the defendant may post a bail bond secured by either a corporate surety or a cash deposit of 10% of the full penalty amount;

(C) with collateral security of the kind specified in Rule 4-217 (e)(1)(A) equal in value to a percentage greater than 10% but less than the full penalty amount;

(D) with collateral security of the kind specified in Rule 4-217 (e)(1) equal in value to the full penalty amount; or

(E) with the obligation of a corporation that is an insurer or other surety in the full penalty amount;

(5) subjecting the defendant to any other condition reasonably necessary to:

(A) ensure the appearance of the defendant as required,

(B) protect the safety of the alleged victim, and

(C) ensure that the defendant will not pose a danger to another person or to the community; and

(6) imposing upon the defendant, for good cause shown, one or more of the conditions authorized under Code, Criminal Law Article, §9-304 reasonably necessary to stop or prevent the intimidation of a victim or witness or a violation of Code, Criminal Law Article, §9-302, 9-303, or 9-305.

Cross reference: See Code, Criminal Procedure Article, §5-201 (a)(2) concerning protections for victims as a condition of release. See Code, Criminal Procedure Article, §5-201 (b), and Code, Business Occupations and Professions Article, Title 20, concerning private home detention monitoring as a condition of release.

. . .

REPORTER'S NOTE

Code, Criminal Procedure Article, §§5-203 and 5-205 provide that to post a bail bond a defendant or private surety may deposit with the clerk of court the greater of 10% of the penalty amount or $25.00. To conform to the Code, the Rules Committee suggests changing the amount of the collateral security in subsection (g)(4)(B) of Rule 4-216 from $100.00 to $25.00.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-217 to add a cross reference after subsection (e)(1)(A) pertaining to orders setting cash bail or cash bond and to make stylistic changes, as follows:

Rule 4-217. BAIL BONDS

. . .

(e) Collateral Security

(1) Authorized Collateral

A defendant or surety required to give collateral security may satisfy the requirement by:

(A) depositing with the person who takes the bond the required amount in cash or certified check, or pledging intangible property approved by the court; or

Cross reference: See Code, Criminal Procedure Article, §§5-203 and 5-205, permitting certain persons to post a cash bail or cash bond when an order specifies that the bail or bond may be posted only by the defendant.

(B) encumbering one or more parcels of real estate situated in the State of Maryland, owned by the defendant or surety in fee simple absolute, or as chattel real subject to ground rent. No bail bond to be secured by real estate may be taken unless ~~(1)~~ (i) a Declaration of Trust of a specified parcel of real estate, in the form set forth at the end of this Title as Form 4-217.1, is executed before the person who takes the bond and is filed

with the bond, or ~~(2)~~ (ii) the bond is secured by a Deed of Trust to the State or its agent and the defendant or surety furnishes a verified list of all encumbrances on each parcel of real estate subject to the Deed of Trust in the form required for listing encumbrances in a Declaration of Trust.

(2) Value

Collateral security shall be accepted only if the person who takes the bail bond is satisfied that it is worth the required amount.

(3) Additional or Different Collateral Security

Upon a finding that the collateral security originally deposited, pledged, or encumbered is insufficient to ensure collection of the penalty sum of the bond, the court, on motion by the State or on its own initiative and after notice and opportunity for hearing, may require additional or different collateral security.

. . .

REPORTER'S NOTE

Chapter 487, Laws of 2013 (SB 505) allows an individual or a surety to post a cash bail or cash bond even when an order specifies that the bail or bond may be posted only by the defendant. The sole exception to this is a cash bail or cash bond in a case involving failure to pay support. The Rules Committee recommends adding a cross reference to the statute after Rule 4-217 (e)(1)(A) and adding a new category to Form 4-217.2 providing that an individual may secure payment on a bail bond.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 600 - CRIMINAL INVESTIGATIONS AND MISCELLANEOUS PROVISIONS

ADD new Rule 4-612, as follows:

Rule 4-612. ORDER FOR ELECTRONIC DEVICE LOCATION INFORMATION

(a) Definitions

The definitions in Code, Criminal Procedure Article, §1-203.1 (a) apply in this Rule.

(b) Issuance of Order

A court may issue an order authorizing or directing a law enforcement officer to obtain location information from an electronic device if there is probable cause to believe that a misdemeanor or felony has been or will be committed by the owner or user of the electronic device or by an individual about whom location information is being sought, and the location information being sought (1) is evidence of or will lead to evidence of the misdemeanor or felony being investigated or (2) will lead to the apprehension of an individual for whom an arrest warrant has been previously issued. The application for the order, the order issued, and the notice of the order shall conform to the requirements of Code, Criminal Procedure Article, §1-203.1.

Source: This Rule is new.

REPORTER'S NOTE

Chapter 191, Laws of 2014 (SB 698) created a new procedure permitting courts to issue orders authorizing or directing law enforcement officers to obtain location information from electronic devices if there is probable cause to believe that a misdemeanor or felony has been or will be committed by the owner or user of the device or by an individual about whom location information is being sought, and that information is evidence or will lead to evidence of the misdemeanor or felony being investigated or to the apprehension of an individual for whom an arrest warrant has been previously issued.

The Rules Committee recommends the addition of a new Rule referencing the new statute, which fully sets out the new procedure.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 300 - CIRCUIT COURT CLERKS' OFFICES

AMEND Rule 16-301 to include discipline of an employee in subsection d. (4), to permit the State Court Administrator to grant interim relief during the pendency of a grievance procedure, and to add a Committee note following subsection d. (4), as follows:

Rule 16-301. PERSONNEL IN CLERKS' OFFICES

a. Chief Deputy Clerk

(1) The clerk may appoint a chief deputy clerk. The appointment is not subject to subsection (d)(3) of this Rule.

(2) Subject to paragraph (3) of this section, a chief deputy clerk serves at the pleasure of the clerk.

(3) The appointment, retention and removal of a chief deputy clerk shall be subject to the authority and approval of the Chief Judge of the Court of Appeals, after consultation with the County Administrative Judge.

b. Other Employees

All other employees in the clerk's office shall be subject to a personnel system to be established by the State Court Administrator and approved by the Court of Appeals. The personnel system shall provide for equal opportunity, shall be based on

merit principles, and shall include appropriate job classifications and compensation scales.

c. Certain Deputy Clerks

Persons serving as deputy clerks on July 1, 1991 who qualify for pension rights under Code, State Personnel and Pensions Article, §23-404 shall hold over as deputy clerks but shall have no fixed term and shall in all respects be subject to the personnel system established pursuant to section (b) of this Rule.

d. Personnel Procedures

(1) The State Court Administrator shall develop standards and procedures for the selection and appointment of new employees and the promotion, reclassification, transfer, demotion, suspension, discharge or other discipline of employees in the clerks' offices. These standards and procedures shall be subject to the approval of the Court of Appeals.

(2) If a vacancy occurs in a clerk's office, the clerk shall seek authorization from the State Court Administrator to fill the vacancy.

(3) The selection and appointment of new employees and the promotion, reclassification, transfer, demotion, suspension, discharge or other discipline of employees shall be in accordance with the standards and procedures established by the State Court Administrator.

(4) The State Court Administrator may review the selection, ~~or~~ promotion, or discipline of an employee to ensure compliance

with the standards and procedures established pursuant to this Rule.

(5) An employee grievance shall be resolved in accordance with procedures established by the State Court Administrator. The clerk shall resolve a grievance within the clerk's office, but appeals of the grievance to the State Court Administrator or a designee of the State Court Administrator shall be allowed and shall constitute the final step in the grievance procedure. During the pendency of the grievance procedure, the State Court Administrator may grant interim relief, which, after consultation with the county administrative judge of each affected court, may include the transfer of an employee.

Committee note: The State Court Administrator may seek appropriate judicial relief to enforce a final determination and directive. See Rule 1-201 (a).

(6) The Administrative Office of the Courts shall prepare the payroll and time and attendance reports for the clerks' offices. The clerks shall submit the information and other documentation that the Administrative Office requires for this purpose.

Source: This Rule is former Rule 1212.

REPORTER'S NOTE

Three amendments to Rule 16-301 are proposed.

An amendment to subsection d. (4) permits the State Court Administrator to review the discipline of an employee in a clerk's office to ensure compliance with established standards and procedures.

An amendment to subsection d. (5) permits the State Court Administrator to grant interim relief during the pendency of a grievance procedure. The relief may include transfer of an

employee, after consultation with the county administrative judge.

A Committee note pertaining to enforcement of the State Court Administrator's final determination and directive is proposed to be added following subsection d. (5).

MARYLAND RULES OF PROCEDURE

BAIL BONDS FORMS

AMEND Form 4-217.2 to add the words "cash or other" before the descriptions of collateral security, to add a category indicating that to secure payment on a bail bond an individual has deposited a certain amount of money, to add a line pertaining to the payor of a fee or premium, and to make a stylistic change, as follows:

Form 4-217.2. BAIL BOND

(Caption)

BAIL BOND

KNOW ALL PERSONS BY THESE PRESENTS:

That I/we, the undersigned, jointly and severally acknowledge that I/we, our personal representatives, successors, and assigns are held and firmly bound unto the State of Maryland in the penalty sum of ..... Dollars ($ .....)<u>:</u>

[ ] without collateral security;

[ ] with <u>cash or other</u> collateral security equal in value to the greater of $25.00 or .....% of the penalty sum;

[ ] with <u>cash or other</u> collateral security equal in value to the full penalty amount;

[ ] with the obligation of the corporation ..... which is an insurer or other surety in the full penalty amount.

To secure payment the [ ] defendant [ ] surety [ ] individual has:

[ ] deposited [ ] in cash or [ ] by certified check the amount of $..... .

[ ] pledged the following intangible personal property:

.....

[ ] encumbered the real estate described in the Declaration of Trust filed herewith, or in a Deed of Trust dated the ..... day of ....., ..., from the undersigned surety to
(month) (year)

....., to the use of the State of Maryland.

THE CONDITION OF THIS BOND IS that the defendant personally appear, as required, in any court in which the charges are pending, or in which a charging document may be filed based on the same acts or transactions, or to which the action may be transferred, removed, or, if from the District Court, appealed.

IF, however, the defendant fails to perform the foregoing condition, this bond shall be forfeited forthwith for payment of the above penalty sum in accordance with law.

IT IS AGREED AND UNDERSTOOD that this bond shall continue in full force and effect until discharged pursuant to Rule 4-217.

AND the undersigned surety covenants that the only compensation chargeable in connection with the execution of this bond consisted of a [ ] fee, [ ] premium, [ ] service charge for the loan of money, or other (describe) .....

.....

in the amount of $ ..... .

[ ] Fee or premium paid by .....

(address) .....

AND the undersigned surety covenants that no collateral was or will be deposited, pledged, or encumbered directly or indirectly in favor of the surety in connection with the execution of this bond except: .....

IN WITNESS WHEREOF, these presents have been executed under seal this ..... day of ....., ...
(month) (year)

.....	(SEAL)	.....
Defendant		Address of Defendant
.....	(SEAL)	.....
Personal Surety/Individual		Address of Surety
.....	(SEAL)	.....
Surety-Insurer		Address of Surety-Insurer
By:	(SEAL)	.....
Bail Bondsman		Power of Attorney No.

SIGNED, sealed, and acknowledged before me:

.....
Commissioner/Clerk/Judge of the

.....Court for

.....County/City

REPORTER'S NOTE

A District Court Administrator requested that Form 4-217.2 be changed to conform to the bail bond form used by the District Court. The Rules Committee suggests adding the words "cash or other" before the descriptions of collateral security in the first part of the Form to indicate that collateral security could be in the form of cash.

The suggested addition to the form of the identity and address of the payor of a "fee or premium" facilitates compliance with Rule 4-217 (h), which provides for the refund of the fee or premium to the payor under certain circumstances.

See the Reporter's note to Rule 4-217 for the reason for the addition of the word "individual" to the Form.