Notice of
Standing Committee on Rules of Practice and Procedure
October 16, 2020 Open Meeting, 9:30 a.m.
Instructions for Members of the Public

The October 16, 2020, 9:30 a.m. open meeting of the Standing Committee on Rules of Practice and Procedure will be held virtually using the platform Zoom for Government. Members of the public may attend the meeting by emailing Rules@mdcourts.gov to receive a link to the meeting. Please email Rules@mdcourts.gov before October 15, 2020 at 3:30 p.m. to ensure that you receive the Zoom link prior to the meeting time.

If you have a comment related to a posted agenda item, you may e-mail it to rules@mdcourts.gov at least 24 hours prior to the beginning of the meeting. Your comment will be distributed to the members of the Rules Committee prior to the meeting.

Members of the public must observe the following protocols during the Zoom for Government virtual meeting:

- Upon joining the meeting, please note that your microphone will be muted. If you would like to request permission to speak, you may send a chat message in the Zoom platform to Wendy Purcell (the Zoom for Government meeting host). If there is an opportunity for you to speak, you will be recognized and your microphone will be unmuted by the host for the duration of your comment.

- You are advised that for the purpose of assisting staff with the preparation of minutes of the meeting, a back-up audio recording will be made. By speaking, you are consenting to the recording of your remarks.

- If there are any concerns regarding these procedures during the meeting, questions may be submitted via the chat tab during the meeting.

Agenda and Proposed Rules Changes

- The meeting agenda and proposed Rules changes are attached to this Notice. During the meeting, any updated materials will be available in the chat feature of the Zoom meeting.

The agenda for a meeting of the Rules Committee generally will be posted 7-10 days before the date of the meeting. At the discretion of the Chair, items may be deleted from or added to the agenda.

AGENDA FOR RULES COMMITTEE MEETING

October 16, 2020
(Friday)

To Be Held via Zoom for Government

Item 1. Consideration of proposed amendments to: Mr. McCloskey

Rule 14-305 (Procedure Following Sale)

Conforming amendments to:

Rule 2-644 (Sale of Property under Levy)
Rule 3-644 (Sale of Property under Levy)
Rule 3-722 (Receivers)

Item 2. Consideration of proposed amendments to: Mr. McCloskey

Rule 14-204 (Institution of Action)

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

New Rule 4-333.1 (Motion to Vacate Judgment of Conviction of Human Trafficking Victim)

Amendments to:

Rule 4-331 (Motions for New Trial; Revisory Power)

Rule 4-216.1 (Pretrial Release - Standards Governing)

Rule 4-231 (Presence of Defendant)

Rule 4-253 (Joint or Separate Trials)

Rule 4-345	(Sentencing - Revisory Power of Court)
Rule 4-351	(Commitment Record)
Rule 4-601.1	(Application for Law Enforcement Court Order)

Item 4. Consideration of proposed Rules changes pertaining to shielding certain information: — Judge Wilner

Amendments to:

Rule 16-915	(Case Records - Required Denial of Inspection - Specific Information)
Rule 10-108	(Orders)
Rule 15-1302	(Petition for Approval)
Rule 16-934	(Case Records - Court Order Denying or Permitting Inspection Not Otherwise Authorized by Rule)

Item 5. Consideration of proposed Rules changes pertaining to attorney numbers — Judge Wilner

Amendments to:

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

Item 6. Consideration of proposed amendments to: — Judge Wilner

Rule 20-109	(Access to Electronic Records in MDEC Actions)

Item 7. Consideration of proposed amendments to: — Judge Wilner

Rule 16-913 (Access to Administrative Records)

Item 8. Reconsideration of proposed amendments to: Mr. Frederick

Rule 15-504 (Temporary Restraining Order)

Item 9. Consideration of proposed amendments to: Mr. Frederick

Rule 15-1001 (Wrongful Death)

AGENDA ITEM 1

MARYLAND RULES OF PROCEDURE

TITLE 14 - SALES OF PROPERTY

CHAPTER 300 - JUDICIAL SALES

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

Rule 14-305. PROCEDURE FOLLOWING SALE

(a) Report of Sale

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

(b) Affidavit of Purchaser

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

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

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

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

(c) Affidavit of Auctioneer

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

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

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

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

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

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

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

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

(1) How Taken

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

(2) Ruling on Exceptions; Hearing

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

~~(e)~~(f) Ratification

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

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

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

~~(g)~~(h) Resale

If the purchaser defaults, the court, on application and after notice to the purchaser, may order a resale at the risk

and expense of the purchaser or may take any other appropriate action.

REPORTER'S NOTE

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

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

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

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

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 600 - JUDGMENT

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

Rule 2-644. SALE OF PROPERTY UNDER LEVY

. . .

(d) Transfer of Real Property Following Sale

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

. . .

REPORTER'S NOTE

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

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT

CHAPTER 600 - JUDGMENT

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

Rule 3-644. SALE OF PROPERTY UNDER LEVY

. . .

(d) Transfer of Real Property Following Sale

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

the purchaser in possession of the property. It shall not be necessary for the debtor to execute the deed.

. . .

REPORTER'S NOTE

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

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT

CHAPTER 700 - SPECIAL PROCEEDINGS

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

Rule 3-722. RECEIVERS

. . .

(f) Procedure Following Sale

(1) Notice by Mail

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

Rule 3-722 - Approved by
Property S.C. 08/26/20
For 10/16/20 R.C. Mtg.

(2) Posting of Property

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

(3) Exceptions to Sale

Exceptions to the sale may be filed within 30 days after the date of the mailing or posting of the notice, which ever is later. In all other respects, exceptions shall be governed by Rule 14-305 ~~(d)~~ (e).

. . .

REPORTER'S NOTE

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

AGENDA ITEM 2

MARYLAND RULES OF PROCEDURE

TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

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

Rule 14-204. INSTITUTION OF ACTION

~~(a) Who May File~~

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

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

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

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

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

(1) Minimum Fractional Interest Required

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

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

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

Source: This Rule is derived as follows:

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

REPORTER'S NOTE

In 2008, former Rules 14-202 and 14-207 were redrafted and combined to form current Rule 14-204. During the course of the 2008 revisions of these Rules, which were meant to be organizational and not substantive, Rule 14-204 was structured such that certain provisions in former Rules 14-202 and 14-207 concerning the parties that may seek to enforce a lien and the

priority of enforcement actions undertaken by fractional owners of debt were no longer as clear as they had been in former Rules 14-202 and 14-207. The concepts "under power of sale," "under assent to decree," and "fractional owners of debt" were all included in one section.

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

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

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

AGENDA ITEM 3

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

ADD NEW Rule 4-333.1, as follows:

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

(a) Scope

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

(b) Timing

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

(c) Content

The motion shall:

(1) be in writing; and

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

(d) Notice

The motion shall be:

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

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

(e) Disposition without a hearing

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

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

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

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

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

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

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

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

(f) Disposition

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

Reporter's Note

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

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

addresses vacating convictions, but applies only to motions filed by the State's Attorney. Criminal Procedure Article, § 8-302 directs the court to vacate a conviction, but no longer permits ordering a new trial or modifying a sentence. A motion pursuant to § 8-302 is filed by the defendant. Accordingly, new Rule 4-333.1 is proposed to address motions to vacate convictions of qualifying offenses filed by the defendant because he or she was a victim of human trafficking.

Section (a) sets forth the scope of Rule 4-333.1. Section (b) states that the motion shall be filed within a reasonable period of time after the conviction. Content requirements for the motion are set forth in section (c). Notice requirements for the motion are explained in section (d). Section (e) provides the circumstances under which the court may dismiss or grant the motion without a hearing. Section (f) provides that the court may grant a motion filed under this section on finding by a preponderance of the evidence that the movant's participation in the qualifying offense was a direct result of being a victim of human trafficking, and that the reasons for the ruling shall be stated on the record.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-331 to delete subsection (b)(2) regarding motions filed pursuant to Code, Criminal Procedure Article, § 8-302 and to re-letter subsections (b)(1)(A) and (b)(1)(2) as (b)(1) and (b)(2), as follows:

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

(a) Within Ten Days of Verdict

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

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

(b) Revisory Power

~~(1) Generally~~

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

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

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

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

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

. . .

Reporter's Note

As noted in the Reporter's note to Rule 4-333.1, amendments to Code, Criminal Procedure Article, § 8-302 became effective on June 1, 2020. The amended provisions of § 8-302 are incorporated into new Rule 4-333.1. Amendments to Rule 4-331 are therefore proposed to reflect that the provisions of § 8-302 are no longer addressed by the Rule.

Proposed amendments to Rule 4-331 delete subsection (b)(2) and re-letter subsections (b)(1)(A) and (b)(1)(2) as (b)(1) and (b)(2) respectively.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

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

RULE 4-216.1. PRETRIAL RELEASE--STANDARDS GOVERNING

(a) Definitions

The following definitions apply in this Rule:

. . .

(5) Pretrial Risk Scoring Instrument

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

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

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

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

Committee note: The principal differences between a personal recognizance and a bond are that the former does not provide for payment of a penalty sum if the defendant fails to appear when required and is not subject to any financial conditions.

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

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

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

"Special condition of release with financial terms" means the requirement of collateral security or the guarantee of the defendant's appearance by a compensated surety as a condition of the defendant's release. The term does not include (A) an unsecured bond by the defendant or (B) the cost associated with a service that is a condition of release and is affordable by the defendant or waived by the court.

Committee note: Examples of a condition of release that is not a special condition of release with financial terms are participation in an ignition interlock program, use of an alcohol consumption monitoring system, and GPS monitoring.

~~(8)~~(9) Surety

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

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

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

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

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

. . .

(f) Consideration of Factors

(1) Recommendation of Pretrial Release Services Program

In determining whether a defendant should be released and the conditions of release, the judicial officer shall give consideration to the recommendation of any pretrial release services program that has made a risk assessment of the defendant in accordance with a validated ~~risk assessment tool~~

pretrial risk scoring instrument and is willing to provide an acceptable level of supervision over the defendant during the period of release if so directed by the judicial officer.

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

(2) Other Factors

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

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

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

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

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

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

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

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

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

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

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

. . .

Reporter's Note

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

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

Criminal Procedure, § 5-103, the source of the definition. Former subsections (a)(5), (a)(6), (a)(7), (a)(8), (a)(9), and (a)(10) are re-numbered as (a)(6), (a)(7), (a)(8), (a)(9), (a)(10), and (a)(11), respectively.

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

MARYLAND RULES OF PROCEDURE

TITLE 4- CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

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

RULE 4-231. PRESENCE OF DEFENDANT

. . .

(d) Video Conferencing in District Court

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

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

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

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

(e) Electronic Proceedings in Circuit Court

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

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

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

REPORTER'S NOTE

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

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

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

Rule 4-253. JOINT OR SEPARATE TRIALS

. . .

(c) Prejudicial Joinder

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

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

. . .

REPORTER'S NOTE

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

a trial court the discretion to bifurcate charges in a single trial split between two factfinders.

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

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

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

RULE 4-345. SENTENCING - REVISORY POWER OF COURT

...

(f) Open Court Hearing

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

Cross reference: ~~See Code, Criminal Procedure Article, § 8-302, which allows the court to vacate a judgment, modify a sentence, or grant a new trial for an individual convicted of prostitution~~

~~if, when the crime was committed, the individual was acting under duress caused by the act of another committed in violation of Code, Criminal Law Article, § 11-303, the prohibition against human trafficking.~~ See Code, Criminal Law Article, § 5-609.1 regarding an application to modify a mandatory minimum sentence imposed for certain drug offenses prior to October 1, 2017, and for procedures relating thereto.

Reporter's Note

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

A proposed amendment to Rule 4-345 deletes the description of § 8-302 in a cross reference after section (f).

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-351, as follows:

RULE 4-351. COMMITMENT RECORD

. . .

(b) Effect of Error

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

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

. . .

REPORTER'S NOTE

Proposed amendments to Rule 4-351 clarify that the trial court may correct a commitment record on motion after sentencing. In *Bratt v. State*, __ Md. __ (2020), the Court of Appeals held that Rule 4-345 was not the appropriate vehicle to correct a record to reflect time served which was not noted at the time the defendant was sentenced. Rule 4-351 does not expressly authorize such a correction, but the Court noted that motions are currently being filed to address similar errors which do not impact the substance of the sentence.

Rule 4-351 - Approved by
Criminal Rules S.C. 09/21/20
For 10/16/20 R.C. Mtg.

MARYLAND RULES OF PROCEDURE

TITLE 4- CRIMINAL CAUSES

CHAPTER 600 - CRIMINAL INVESTIGATIONS AND MISCELLANEOUS PROVISIONS

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

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

(a) Application for Order

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

transmitted electronically, the application and proposed order shall be sent in an electronic text format approved by the State Court Administrator, and the judge shall retain a copy of the application.

(b) Signature on Application

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

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

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

(d) Wiretap Applications

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

Source: This Rule is new.

REPORTER'S NOTE

The Rules Committee received communication from the Honorable Norman Stone concerning Rule 4-601.1, which concerns applications for pen registers and trap and trace devices

presented in person or by electronic transmission to a judge. Judge Stone inquired whether the Committee would consider broadening the Rule to address the electronic review of all orders that law enforcement officers traditionally present in chambers, excluding requests for wiretaps.

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

The current title of the Rule is amended from "Pen Registers and Trap and Trace Devices" to "Application for Law Enforcement Court Order" to reflect the Rule's expanded applicability. Section (a) is modified to delete a reference to Code, Courts Article § 10-4B-03 and to indicate that, subject to section (d), the Rule encompasses applications for court orders authorized by law to be presented *ex parte* by a law enforcement officer to a judge. Section (c) is renamed and amended to remove a reference to Code, Courts Article § 10-4B-03. New section (d) is proposed, clarifying that the Rule does not apply to an application for an order authorizing the interception of a wire, oral, or electronic communication under Code, Courts and Judicial Proceedings, § 10-408.

AGENDA ITEM 4

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 900 - ACCESS TO JUDICIAL RECORDS

DIVISON 2. LIMITATIONS ON ACCESS

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

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

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

. . .

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

request form filed with the clerk or a request or petition filed under Rule 16-934.

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

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

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

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

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

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

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

REPORTER'S NOTE

On October 1, 2020, Chapter 539, 2020 Laws of Maryland (SB 213) became effective. The new legislation adds to Code, Criminal Procedure Article, § 11-205 by noting that, upon request, the address or telephone number of a victim, victim's representative, or witness to a domestically related crime may be withheld before the trial or an adjudicatory hearing, unless a judge finds good cause to release the information. The previous version of § 11-205 referred only to cases involving felonies or delinquent acts that would be felonies if committed by an adult.

The revisions to § 11-205 prompted consideration of Code, Criminal Procedure Article, § 11-301 and review of the access Rules regarding withholding the telephone number and address of certain persons. Code, Criminal Procedure Article, § 11-301 also addresses withholding the address or phone number of a victim or witness during a criminal trial or a juvenile delinquency adjudicatory hearing if such shielding is requested by the State, the victim, or the witness. Rules 16-915 and 16-934 reference shielding the contact information for a victim, a victim's representative, or a witness.

Rule 16-915 concerns the denial of inspection of specific information in a case record. Proposed amendments to Rule 16-915 aim to make the Rule's language consistent with the withholding of information permitted by Code, Criminal Procedure Article, § 11-205 and § 11-301.

In section (c), the proposed amendment clarifies that the State, not just the victim or the victim's representative, may request that the address, telephone number, and e-mail address of a victim or victim's representative in a criminal action, juvenile delinquency action, or an action under Code, Family Law Article, Title 4, Subtitle 5, be shielded.

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

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

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 - GENERAL PROVISIONS

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

Rule 10-108. ORDERS

(a) Order Appointing Guardian

. . .

(2) Confidential Information

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

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

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

Rule 10-108 - Approved by
Gen. Court Admin. S.C. 09/18/20
For 10/16/20 R.C. Mtg.

. . .

REPORTER'S NOTE

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

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1300 - STRUCTURED SETTLEMENT TRANSFERS

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

Rule 15-1302. PETITION FOR APPROVAL

. . .

(c) Contents of Petition

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

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

(A) a copy of the structured settlement agreement;

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

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

(D) a copy of the transfer agreement;

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

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

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

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

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

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

. . .

Reporter's Note

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

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 900 - ACCESS TO JUDICIAL RECORDS

DIVISON 4. RESOLUTION OF DISPUTES

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

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

. . .

(h) Request to Shield Certain Information

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

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

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

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

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

Reporter's Note

As noted in the Reporter's note to Rule 16-915, Chapter 539, 2020 Laws of Maryland (SB 213) became effective on October 1, 2020. The new legislation prompted review of the Criminal Procedure Article and the access Rules regarding the withholding of the telephone number and address of a victim, victim's representative or witness.

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

AGENDA ITEM 5

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 200 - ADMISSION TO THE BAR

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

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

(a) Motion for Special Admission

(1) Generally

A member of the Bar of this State who (A) is an attorney of record in an action pending (i) in any court of this State, or (ii) before an administrative agency of this State or any of its political subdivisions, or (B) is representing a client in an arbitration taking place in this State that involves the application of Maryland law, may move that an attorney who is a

member in good standing of the Bar of another state be admitted to practice in this State for the limited purpose of appearing and participating in the action as co-counsel with the movant.

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

(2) Where Filed

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

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

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

(3) Other Requirements

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

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

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

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

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

(b) Certification by Out-of-State Attorney

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

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

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

The certification [shall be substantially in the form provided in Appendix 19-A, Form A.1] and may be filed as a

separate paper or may be included in the motion under an appropriate heading.

(c) Order

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

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

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

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

Committee note: This Rule is not intended to permit extensive or systematic practice by attorneys not admitted in Maryland. Because specialized expertise or other special circumstances may be important in a particular case, however, the Committee has not recommended a numerical limitation on the number of special admissions to be allowed any out-of-state attorney.

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

REPORTER'S NOTE

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

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

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

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

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

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 200 - ADMISSION TO THE BAR

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

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

(Caption)

MOTION FOR SPECIAL ADMISSION OF OUT-OF-STATE ATTORNEY

UNDER RULE 19-217

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

~~.....~~, an
~~(address)~~

out-of-state attorney who is a member in good standing of the Bar of ....., for the limited

purpose of appearing and participating in this case as co-counsel with me.

Out-of-State Attorney Information:

.....
(Full Name)

.....
(Address)

.....
(Telephone)

.....
(Email Address)

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

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

.....
Signature of Moving Attorney

.....
Name

.....
Address

.....
Telephone

.....
Email Address

Attorney for .....

CERTIFICATE AS TO SPECIAL ADMISSIONS

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

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

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

Attorney Information System .....

Client Protection Fund .....

Maryland Electronic Courts (MDEC).....

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

Form 19-A.1 - Approved by
Gen. Court Admin. S.C. 09/18/20
For 10/16/20 R.C. Mtg.

.....
Name

.....
Address

.....
Telephone

.....
Email Address

(Certificate of Service)

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

REPORTER'S NOTE

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

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

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 200 - ADMISSION TO THE BAR

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

FORM 19-A.2. ORDER

ORDER

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

[ ] .....
Name

.....
Address

.....
Telephone

.....
Email Address

.....

Attorney Number/
Client Protection Fund ID

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

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

[ ] The Special Admission of

[ ] .....
Name

.....
Address

.....
Telephone

.....
Email Address

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

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

is denied for the following reasons: .....

Form 19-A.2. - Approved by
Gen. Court Admin. S.C. 09/18/20
For 10/16/20 R.C. Mtg.

.....

and the Clerk shall return any fee paid for the Special Admission.

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

.....
Name of Judge (Typed)

.....
(Signature) Judge

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

REPORTER'S NOTE

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

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-311 (a) by altering a reference to the identifying number attorney-filers must include in a signature, as follows:

RULE 1-311. SIGNING OF PLEADINGS AND OTHER PAPERS

(a) Requirement

Every pleading and paper of a party represented by an attorney shall be signed by at least one attorney who has been admitted to practice law in this State and who complies with Rule 1-312. Every pleading and paper of a party who is not represented by an attorney shall be signed by the party. Every pleading or paper filed shall contain (1) the signer's address, telephone number, facsimile number, if any, and e-mail address, if any, and (2) if the pleading or paper is signed by an attorney pursuant to Rule 20-107, the attorney's ~~Client Protection Fund ID number~~ identifying Attorney Number registered with the Attorney Information System.

Committee note: The requirement that a pleading contain a facsimile number, if any, and e-mail address, if any, does not alter the filing or service rules or time periods triggered by

the entry of a judgment. See *Blundon v. Taylor*, 364 Md. 1 (2001).

. . .

REPORTER'S NOTE

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

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 - GENERAL PROVISIONS

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

RULE 20-107. MDEC SIGNATURES

(a) Signature by Filer; Additional Information Below Signature

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

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

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

Rule 20-107 - Approved by
Gen. Court Admin. S.C. 09/18/20
For 10/16/20 R.C. Mtg.

. . .

REPORTER'S NOTE

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

AGENDA ITEM 6

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 - GENERAL PROVISIONS

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

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

(a) Generally

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

(b) Parties and Attorneys of Record

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

(c) Judges and Judicial Appointees

Judges and judicial appointees shall have full access, including remote access, to judicial records to the extent that

such access is necessary to the performance of their official duties. The Chief Judge of the Court of Appeals, by Administrative Order, may further define the scope of remote access by judges and judicial appointees.

(d) Clerks and Judicial Personnel

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

(e) Court-Designated ADR Practitioners

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

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

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

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

(1) Access Through CaseSearch

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

(2) Unshielded Documents

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

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

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

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

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

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

Source: This Rule is new.

REPORTER'S NOTE

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

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

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

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

AGENDA ITEM 7

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 900 - ACCESS TO JUDICIAL RECORDS

DIVISION 2. LIMITATIONS ON ACCESS

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

Rule 16-913. ACCESS TO ADMINISTRATIVE RECORDS

(a) Records Pertaining to Jurors

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

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

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

(3) After a source pool of qualified jurors has been emptied and re-created in accordance with Code, Courts Article, § 8-207,

and after every individual selected to serve as a juror from that pool has completed the individual's service, a trial judge, upon request, shall disclose the name, zip code, age, gender, education, occupation, marital status, and spouse's occupation of each person whose name was selected from that pool and placed on a jury list, unless, in the interest of justice, the trial judge determines that this information should remain confidential in whole or in part.

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

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

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

(b) Personnel Records — Generally

(1) Not Open to Inspection

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

(2) Open to Inspection

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

(A) the full name of the individual;

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

(C) the date employment commenced;

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

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

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

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

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

(I) a record that has become a case record.

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

(c) Personnel Records – Retirement

Unless inspection is permitted under the PIA or the record has become a case record, a custodian shall deny inspection of a retirement record of an employee of the court, other judicial agency, or special judicial unit.

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

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

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

(2) either (A) purely administrative in nature but not a local rule, policy, or directive that governs the operation of the court or (B) a draft of a document intended for

consideration by the author or others and not intended to be final in its existing form; and

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

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

(e) Educational and Training Materials

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

(f) Procurement Records

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

(g) Interagency and Intra-agency Memoranda

A custodian may deny inspection of all or any part of an interagency or intra-agency letter or memorandum that would not be available by law to a private party in litigation with the custodian or the unit in which the custodian works.

(h) Problem-Solving Court Program Records

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

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

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

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

Committee note: There exist committees, subcommittees, or work groups that are sub-units within a larger judicial entity that constitutes a public body under the Open Meetings Law. The predominant function of those committees, subcommittees, and work groups is to investigate issues within their jurisdiction and develop recommendations for the parent entity to consider.

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

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

REPORTER'S NOTE

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

AGENDA ITEM 8

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 500 - INJUNCTIONS

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

Rule 15-504. TEMPORARY RESTRAINING ORDER

(a) Standard for Granting

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

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

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

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

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

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

. . .

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

REPORTER'S NOTE

Proposed amendments to Rule 15-504 (a) clarify the standard for granting a temporary restraining order. In *Fuller v. Republican Cent. Comm.*, 444 Md. 613 (2015), the Court of Appeals addressed the appropriate standard and held that a party seeking a temporary restraining order must show the existence of immediate, substantial, and irreparable harm, as required by Rule 15-504 (a), and satisfy the four-factor test for interlocutory injunctions enunciated in *Dep't of Transp. v. Armacost*, 299 Md. 392, 404-405 (1984).

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

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

AGENDA ITEM 9

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 500 - WRONGFUL DEATH

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

Rule 15-1001. WRONGFUL DEATH

(a) Applicability

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

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

Cross reference: See Code, Courts Article, §§ 3-901 through 3-904, relating to wrongful death claims generally. See Code, Courts Article, § 3-905 (g) for the statute of limitations generally and § 5-201 (a) for statutes of limitations as to

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

(b) Required Plaintiffs

(1) Generally

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

(2) Preliminary Notice

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

(3) Failure to Comply

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

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

(c) Complaint

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

(d) Notice to Use Plaintiff after Filing

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

[Caption of case]

NOTICE TO _____[Name of Use Plaintiff] _____

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

motion to intervene by the earlier of the applicable deadlines, the court may find that you have lost your right to participate in the action and claim any recovery.

(e) Waiver by Inaction

(1) Definitions

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

(2) Failure to Satisfy Statutory Time Requirements

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

(3) Other Late Filing

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

(f) Subsequently Identified Use Plaintiff

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

Source: This Rule is derived as follows:

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

REPORTER'S NOTE

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

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

stepmother and her attorney for lack of jurisdiction over the stepmother, a North Carolina resident.

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

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

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

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