

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 12, 2018
(Friday)

Judiciary Education and Conference Center
Rooms UL 4 & 5
2011 Commerce Park Drive
Annapolis, Maryland
9:30 a.m.

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| Item 1. | Consideration of proposed new Rule:

Rule 5-413 (Sex Offense Cases; Other Sexually Assaultive Behavior By Defendant)

And proposed amendments to:

Rule 4-251 (Motions is District Court)
Rule 5-404 (Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes) | Mr. Armstrong |
| Item 2. | Consideration of proposed amendments to Rule 5-703 (Bases of Opinion Testimony By Experts) | Mr. Armstrong |
| Item 3. | Consideration of proposed amendments to Rule 5-902 (Self-Authentication) | Mr. Armstrong |
| Item 4. | Consideration of proposed amendments to Rule 2-231 (Class Actions) | Judge Bryant |
| Item 5. | Consideration of proposed amendments to Rule 3-123 (Process - By Whom Served) | Judge Bryant |

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| Item 6. | Consideration of proposed amendments to Rule 16-207 (Problem Solving Court Programs) | Judge Wilner |
| Item 7. | Consideration of proposed amendments to Rule 19-738 (Discipline on Conviction of Crime) | Mr. Frederick |
| Item 8. | Consideration of proposed amendments to Rule 11-121 (Court Records - Confidentiality) | Reporter |

AGENDA ITEM 1

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 400 - RELEVANCY AND ITS LIMITS

ADD new Rule 5-413, as follows:

Rule 5-413. SEX OFFENSE CASES; OTHER SEXUALLY ASSAULTIVE
BEHAVIOR BY DEFENDANT

In prosecutions for sexually assaultive behavior as defined in Code, Courts Article, §10-923 (a), evidence of other sexually assaultive behavior by the defendant occurring before or after the offense for which the defendant is on trial may be admissible in accordance with §10-923.

Cross reference: See Rule 4-251 (b)(4), concerning the time for determination of a motion in the District Court.

REPORTER'S NOTE

New Rule 5-413 is proposed in light of Chapters 362/363, 2018 Laws of Maryland (HB 301/SB 270), which added Code, Courts Article §10-923.

A cross reference following the Rule refers to the time for determination of a motion of intent to introduce evidence of other sexually assaultive behavior that is filed in a criminal action in the District Court.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-251, by adding a reference to a motion under Code, Courts Article, §10-923, as follows:

Rule 4-251. MOTIONS IN DISTRICT COURT

. . .

(b) When Made; Determination

(1) A motion asserting a defect in the charging document other than its failure to show justification in the court or its witness is worn and before evidence is received on the merits.

(2) A motion filed before trial to suppress evidence or to exclude evidence by reason of any objection or defense shall be determined at trial.

(3) A motion to transfer jurisdiction of an action to the juvenile court shall be determined within 10 days after the hearing on the motion.

(4) Other motions, including a motion under Code, Courts Article, §10-923, may be determined at any appropriate time.

REPORTER'S NOTE

Rule 4-251 (b)(4) is proposed to be amended by adding a reference to Code, Courts Article, §10-923, which applies to motions of intent to introduce sexually assaultive behavior.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 400 - RELEVANCY AND ITS LIMITS

AMEND Rule 5-404 by adding a reference to Rule 5-413, as follows:

Rule 5-404. CHARACTER EVIDENCE NOT ADMISSIBLE TO PROVE CONDUCT; EXCEPTIONS; OTHER CRIMES

. . .

(b) Other Crimes, Wrongs, or Acts

Evidence of other crimes, wrongs, or other acts including delinquent acts as defined by Code, Courts Article §3-8A-01 is not admissible to prove the character of a person in order to show action in the conformity therewith. Such evidence, however, may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, ~~or~~ absence of mistake or accident, or in conformity with Rule 5-413.

REPORTER'S NOTE

Rule 5-404 (b) is proposed to be amended by adding a reference to proposed new Rule 5-413.

The new text adds an example of an additional purpose for which other crimes evidence may be admissible. Under Rule 5-

Rule 5-404 -
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413, and in accordance with Code, Courts Article, §10-923, in a prosecution for sexually assaultive behavior, evidence of other sexually assaultive behavior for which the defendant is not on trial may be admissible.

AGENDA ITEM 2

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 700 - OPINIONS AND EXPERT TESTIMONY

AMEND Rule 5-703, to set forth four elements to be considered and stated on the record when the court determines whether facts and data relied upon by an expert may be disclosed to the jury, to make stylistic changes, and to add a case citation to the Committee note at the end of the Rule, as follows:

Rule 5-703. BASES OF OPINION TESTIMONY BY EXPERTS

(a) In General

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

(b) Disclosure to Jury

If ~~determined~~ the court determines and states on the record that the facts or data relied upon by an expert pursuant to section (a) of this Rule to be(1) are trustworthy, necessary to illuminate testimony, and (2) are unprivileged, (3) were

Rule 5-703 -
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reasonably relied upon by the expert in forming the expert's opinion, and (4) are necessary to illuminate the expert's testimony, the facts or data, reasonably relied upon by an expert pursuant to section (a) may, in the discretion of the court, may be disclosed to the jury even if ~~those~~ the facts ~~and~~ or data are not admissible in evidence. Upon request, the court shall instruct the jury to use those facts and data only for the purpose of evaluating the validity and probative value of the expert's opinion or inference.

(c) Right to Challenge Expert

This Rule does not limit the right of an opposing party to cross-examine an expert witness or to test the basis of the expert's opinion or inference.

Committee note: Subject to Rule 5-403, and in criminal cases the confrontation clause, experts who rely on information from others may relate that information in their testimony if it is of a type reasonably relied upon by experts in the field. If it is inadmissible as substantive proof, it comes in merely to explain the factual basis for the expert opinion. The opposing party then is entitled to an instruction to the jury that it may consider the evidence only for that limited purpose. See, e.g., *Maryland Dept. of Human Resources v. Bo Peep Day Nursery*, 317 Md. 573 (1989); *Attorney Grievance Commission v. Nothstein*, 300 Md. 667 (1984); *Beahm v. Shortall*, 279 Md. 321 (1977); *Hartless v. State*, 327 Md. 558 (1992); *Lamalfa v. Hearn*, 457 Md. 350 (2018).

Source: Section (a) of this Rule is derived from F.R.Ev. 703. Sections (b) and (c) are derived from Ky.R.Ev. 703(b) and (c).

REPORTER'S NOTE

Rule 5-703 is proposed to be amended in response to footnote 7 in *Lamalfa v. Hearn*, 457 Md. 350 (2018).

In *Lamalfa*, the Court cites *Brown v. Daniel Realty Co.*, 409 Md. 565, 601 (2009), which provides four elements that must be satisfied for facts and data upon which an expert relied to be disclosable to a jury under Rule 5-703 (b). The Rule is restyled to clearly set out the four elements.

The Rule also is amended to add the requirement that the court state on the record the court's determination of the four elements.

AGENDA ITEM 3

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 900 - AUTHENTICATION AND IDENTIFICATION

AMEND Rule 5-902 by adding a new section (c) pertaining to authentication of certain electronic records and data and by adding a Committee note following section (c), as follows;

Rule 5-902. SELF-AUTHENTICATION

. . .

(c) Certified Records Generated by an Electronic Process or System and Certified Data Copied from an Electronic Device, Storage Medium, or File

(1) Procedure

Testimony of authenticity as a condition precedent to admissibility is not required as to the original or a duplicate of a record generated by an electronic process or system or data copied from an electronic device, storage medium, or file certified pursuant to subsection (c) (2) of this Rule, provided that at least ten days prior to the commencement of the proceeding in which the record [or data] will be offered into evidence, (A) the proponent (i) notifies the adverse party of the proponent's intention to authenticate the record [or data] under this subsection and (ii) makes a copy of the certificate

and record [or data] available to the adverse party and (B) the adverse party has not filed within five days after service of the proponent's notice written objection on the ground that the sources of information or the method or circumstances of preparation indicate lack of trustworthiness.

(2) Form of Certificate

For purposes of subsection (c) (1) of this Rule, records generated by an electronic process or system, or data copied from an electronic device, storage medium, or file shall be certified in substantially the following form:

CERTIFICATE OF AUTHENTICITY OF RECORDS

PURSUANT TO RULE 5-902 (c)

I, _____, solemnly affirm under penalties of perjury that the information contained in this certification is true and correct. I am employed by [Provider/Business/Entity], and my title is _____ . I am qualified to authenticate the records attached hereto because I am familiar with how the records were created, managed, stored, and retrieved. I state that the records attached hereto are true duplicates of the original records in the custody of [Provider/Business/Entity]. The attached records consist of _____ [GENERALLY DESCRIBE RECORDS (pages/CDs/megabytes)]. I further state that:

a. all records attached to this certificate were made at or near the time of the occurrence of the matter set forth by, or from information transmitted by, a person with knowledge of those matters, they were kept in the ordinary course of the regularly conducted business activity of [Provider/Business/Entity], and they were made by [Provider/Business/Entity] as a regular practice; and

b. such records were generated by [Provider's/Business's/Entity's] electronic process or system that produces an accurate result, to wit:

1. the records were copied from electronic device(s), storage medium(s), or file(s) in the custody of [Provider/Business/Entity] in a manner to ensure that they are true duplicates of the original records; and

2. that process or system is regularly verified by [Provider/Business/Entity], and at all times pertinent to the records certified here the process and system functioned properly and normally.

I further state that this certificate is intended to satisfy Rule 5-902 (c).

Date

Signature

Committee note: Section (c) is derived from Fed. R. Evid. 902 (13) and (14) and section (b) of this Rule. Section (c) sets

forth a procedure by which parties can authenticate certain electronic records and data copied from an electronic device, storage medium, or electronic file, other than through the testimony of a foundation witness. The Advisory Committee Notes attached to the Federal provisions provide a helpful explanation of how these provisions are intended to operate. Although the notice and other requirements of this Rule are important, Rule 5-104 (a) does permit a court, in the interest of justice, to decline to require strict application of them in determining issues of authentication. When dealing with unsophisticated self-represented litigants, some discretion may need to be exercised.

Nothing in section (c) is intended to limit a party from establishing authenticity of electronic evidence on any ground provided in these Rules, including under Rule 5-901 or through judicial notice where appropriate.

An objection to self-authentication under subsection (c)(1) of this Rule does not constitute a waiver of any other ground that may be asserted as to admissibility at trial.

A certification under this Rule can only establish that the proffered item is authentic. The opponent remains free to object to admissibility of the proffered item on other grounds--including hearsay, relevance, or in criminal cases the right to confrontation. For example, in a criminal case in which data copied from a hard drive is proffered, the defendant can still challenge hearsay found in the hard drive, and can still challenge whether the information on the hard drive was placed there by the defendant.

Source: This Rule is in part derived from F.R.Ev. 902 and in part new.

REPORTER'S NOTE

See the Committee note following proposed new section (c) of Rule 5-902.

AGENDA ITEM 4

MARYLAND RULES OF PROCEDURE
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT
CHAPTER 200 - PARTIES

AMEND Rule 2-231 to prohibit the naming and certification of a defendant class in a class action by adding new section (a), by making conforming amendments throughout, and by adding a Committee note, as follows:

RULE 2-231. CLASS ACTIONS

(a) Permitted Classes

Only plaintiff classes may be named in an action and certified by the court. Defendant classes shall not be named or certified.

~~(a)~~ (b) Prerequisites to a Class Action

One or more members of a plaintiff class may sue ~~or be sued~~ as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims ~~or defenses~~ of the representative parties are typical of the claims ~~or defenses~~ of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

Cross reference: See Code, Courts Article, § 4-402 (d), regarding aggregation of claims for jurisdictional amount.

~~(b)~~ (c) Class Actions Maintainable

Unless justice requires otherwise, an action may be maintained as a class action if the prerequisites of section (a) are satisfied, and in addition:

(1) the prosecution of separate actions by ~~or against~~ individual members of the class would create a risk of (A) inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible standards of conduct for the party opposing the class, or (B) adjudications with respect to individual members of the class that would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members and that a class action is superior to other available methods for the fair and

efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution ~~or~~ defense of separate actions, (B) the extent and nature of any litigation concerning the controversy already commenced by ~~or~~ against members of the class, (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum, (D) the difficulties likely to be encountered in the management of a class action.

~~(e)~~ (d) Certification

On motion of any party or on the court's own initiative, the court shall determine by order as soon as practicable after commencement of the action whether it is to be maintained as a class action. A hearing shall be granted if requested by any party. The order shall include the court's findings and reasons for certifying or refusing to certify the action as a class action. The order may be conditional and may be altered or amended before the decision on the merits.

~~(d)~~ (e) Partial Class Actions; Subclasses

When appropriate, an action may be brought or maintained as a class action with respect to particular issues, or a class may be divided into subclasses and each subclass treated as a class.

~~(e)~~(f) Notice

In any class action, the court may require notice pursuant to subsection ~~(f)~~(g) (2). In a class action maintained under subsection (b) (3), notice shall be given to members of the class in the manner the court directs. The notice shall advise that (1) the court will exclude from the class any member who so requests by a specified date, (2) the judgment, whether favorable or not, will include all members who do not request exclusion, and (3) any member who does not request exclusion and who desires to enter an appearance through counsel may do so.

~~(f)~~(g) Orders in Conduct of Actions

In the conduct of actions to which this Rule applies, the court may enter appropriate orders: (1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument, (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in the manner the court directs to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action, (3) imposing conditions on

the representative parties or intervenors, (4) requiring that the pleadings be amended to eliminate allegations as to representation of absent persons, and that the action proceed accordingly, (5) dealing with similar procedural matters. The orders may be combined with an order under Rule 2-504, and may be altered or amended as may be desirable from time to time.

~~(g)~~(h) Discovery

For purposes of discovery, only representative parties shall be treated as parties. On motion, the court may allow discovery by or against any other member of the class.

~~(h)~~(i) Dismissal or Compromise

A class action shall not be dismissed or compromised without the approval of the court. Notice of a proposed dismissal or compromise shall be given to all members of the class in the manner the court directs.

~~(i)~~(j) Judgment

The judgment in an action maintained as a class action under subsections (b)(1) and (2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under subsection (b)(3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subsection ~~(e)~~(f)(1) was

directed, and who have not requested exclusion, and whom the court finds to be members of the class.

Committee note: Nothing in this Rule is intended to interfere with the court's authority to regulate multiple defendant cases under Rules 2-503, 2-504.1, or 2-212, or any other provision for orderly proceedings in multiple defendant cases contained in these Rules.

REPORTER'S NOTE

The Committee was advised that, in at least one instance, a defendant in a class action was designated as a representative party of the defendant's class over the defendant's objection, and the class was certified. Absent the availability of an interlocutory appeal, the defendant was forced to bear the substantial costs of serving in this capacity. See Code, Courts and Judicial Proceedings Article, § 12-303. The proposed amendment addresses this issue by prohibiting certification of a defendant class.

AGENDA ITEM 5

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 3-123 by conforming the Rule to an amendment to Code, Real Property Article, § 8-401, as follows:

RULE 3-123. PROCESS--BY WHOM SERVED

(a) Generally

Service of process may be made by a sheriff or, except as otherwise provided in this Rule, by a competent private person, 18 years of age or older, including an attorney of record, but not by a party to the action.

(b) Sheriff

(1) All process requiring execution other than delivery, mailing, or publication shall be executed by the sheriff of the county where execution takes place, unless the court orders otherwise and notwithstanding subsection (b) (2).

(2) Upon a request from a plaintiff in an action to repossess nonresidential property under Code, Real Property Article, § 8-401, service of process on a tenant may be directed to any person authorized to serve process under section (a), in addition to the service required under subsection (b) (1).

(c) Elisor

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When the sheriff is a party to or interested in an action so as to be disqualified from serving or executing process, the court, on application of any interested party, may appoint an elisor to serve or execute the process. The appointment shall be in writing, signed by a judge, and filed with the clerk issuing the process. The elisor has the same power as the sheriff to serve or execute the process for which the elisor was appointed and is entitled to the same fees.

Source: This Rule is derived as follows:

Section (a) is derived from former M.D.R. 104 b 1 and h 2 and 116 a.

Section (b) is derived, in part, from former M.D.R. 116 a and is new, in part.

Section (c) is derived from former M.D.R. 117 a and b.

REPORTER'S NOTE

An amendment to Code, Real Property Article, § 8-401, became effective on October 1, 2018. This amendment allows a plaintiff to request service of process by a "person authorized under the Maryland Rules to serve process" in an action for repossession of nonresidential property. This is in addition to service by sheriff, which remains a requirement for an action to proceed.

Proposed amendments to Rule 3-123 include a new subsection (b)(2) that permits, in an action for repossession of nonresidential property, service by a person authorized under section (a).

In effect, service of process must be made by the sheriff of the appropriate county or municipality, but a plaintiff may elect, in addition to service by sheriff, to attempt service of process by a competent private person, 18 years of age or older, including an attorney of record, so long as the person is not a party to the action.

Rule 3-123 -
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10/12/2018 R.C.

AGENDA ITEM 6

MARYLAND RULES OF PROCEDURE
TITLE 16 - COURT ADMINISTRATION
CHAPTER 200 - GENERAL PROVISIONS -
CIRCUIT AND DISTRICT COURTS

AMEND Rule 16-207 to revise the procedure for approval of a problem-solving court program, as follows:

Rule 16-207. PROBLEM SOLVING COURT PROGRAMS

(a) Definition

(1) Generally

Except as provided in subsection (a)(2) of this Rule, "problem-solving court program" means a specialized court docket or program that addresses matters under a court's jurisdiction through a multi-disciplinary and integrated approach incorporating collaboration by the court with other governmental entities, community organizations, and parties.

(2) Exceptions

(A) The mere fact that a court may receive evidence or reports from an educational, health, rehabilitation, or social service agency or may refer a person before the court to such an agency as a condition of probation or other dispositional option does not make the proceeding a problem-solving court program.

(B) Juvenile court truancy programs specifically authorized by statute do not constitute problem-solving court programs within the meaning of this Rule.

(b) Applicability

This Rule applies in its entirety to problem-solving court programs submitted for approval on or after ~~July 1, 2016~~ [Date], 2019. Sections (a), (e), (f), and (g) of this Rule apply also to problem-solving court programs in existence on ~~July 1, 2016~~ [Date], 2019.

(c) Submission of Plan

After initial consultation with the Office of Problem-Solving Courts and any officials whose participation in the programs will be required, the County Administrative Judge of a circuit court or a District Administrative Judge of the District Court may prepare and submit to the ~~State Court Administrator~~ Office of Problem-Solving Courts a detailed plan for a problem-solving court program consistent with the protocols and requirements in an Administrative Order of the Chief Judge of the Court of Appeals.

Committee note: Examples of officials to be consulted, depending on the nature of the proposed program, include individuals in the Office of the State's Attorney, Office of the Public Defender; Department of Juvenile Services; health, addiction, and education agencies; the Division of Parole and Probation; and the Department of Human Services.

(d) Approval of Plan

After review of the plan and consultation with such other judicial entities as the State Court Administrator may direct, ~~the State Court Administrator~~ the Office of Problem-Solving Courts shall submit the plan, together with any comments and a recommendation, ~~to the Judicial Council for review by the Council and~~ to the State Court Administrator. The State Court Administrator shall review the materials and make a recommendation to the Chief Judge of the Court of Appeals. The program shall not be implemented until it is approved by order of the Chief Judge of the Court of Appeals.

(e) Acceptance of Participant into Program

(1) Written Agreement Required

As a condition of acceptance into a program and after the advice of an attorney, if any, a prospective participant shall execute a written agreement that sets forth:

(A) the requirements of the program;

(B) the protocols of the program, including protocols concerning the authority of the judge to initiate, permit, and consider ex parte communications pursuant to Rule 18-102.9 of the Maryland Code of Judicial Conduct;

(C) the range of sanctions that may be imposed while the participant is in the program, if any; and

(D) any rights waived by the participant, including rights under Rule 4-215 or Code, Courts Article, § 3-8A-20.

Committee note: The written agreement shall be in addition to any advisements that are required under Rule 4-215 or Code, Courts Article, § 3-8A-20, if applicable.

(2) Examination on the Record

The court may not accept the prospective participant into the program until, after examining the prospective participant on the record, the court determines and announces on the record that the prospective participant understands the agreement and knowingly and voluntarily enters into the agreement.

(3) Agreement to be Made Part of the Record

A copy of the agreement shall be made part of the record.

(f) Immediate Sanctions; Loss of Liberty or Termination from Program

If permitted by the program and in accordance with the protocols of the program, the court, for good cause, may impose an immediate sanction on a participant, except that if the participant is considered for the imposition of a sanction involving the loss of liberty or termination from the program, the participant shall be afforded notice, an opportunity to be heard, and the right to be represented by an attorney before the court makes its decision. If a hearing is required by section (f) of this Rule and the participant is not represented by an attorney, the court shall comply with Rule 4-215 in a criminal

action or Code, Courts Article, § 3-8A-20 in a delinquency action before holding the hearing.

Committee note: In considering whether a judge should be disqualified pursuant to Rule 18-102.11 of the Maryland Code of Judicial Conduct from post-termination proceedings involving a participant who has been terminated from a problem-solving court program, the judge should be sensitive to any exposure to ex parte communications or inadmissible information that the judge may have received while the participant was in the program.

(g) Credit for Incarceration Time Served

If a participant is terminated from a program, any period of time during which the participant was incarcerated as a sanction during participation in the program shall be credited against any sentence imposed or directed to be executed in the action.

Source: This Rule is derived from former Rule 16-206 (2016).

REPORTER'S NOTE

The State Court Administrator has requested that Rule 16-207 be amended to streamline the process for approval of a new problem-solving court program. Under the proposed revised procedure, the plan for a new program is submitted to the Office of Problem-Solving Courts, which will review the plan in consultation with such other judicial entities as the State Court Administrator may direct. Currently, the Specialty Courts and Dockets Committee of the Judicial Council reviews the plans, and it is anticipated that this entity will continue in its consultative role, but without the involvement of the full Judicial Council. The Office of Problem-Solving Courts will then submit the plan, together with any comments and a recommendation, to the State Court Administrator. The State Court Administrator will review the materials and provide a recommendation to the Chief Judge of the Court of Appeals. The revised Rule retains the current prohibition against

implementation of a program until it has been approved by Order of the Chief Judge of the Court of Appeals.

AGENDA ITEM 7

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

AMEND Rule 19-738 by adding previously deleted language to section (b), by adding language to section (g), and by revising language in section (i), as follows:

Rule 19-738. DISCIPLINE ON CONVICTION OF CRIME

(a) Definition

In this Rule, "conviction" includes a judgment of conviction entered upon acceptance by the court of a plea of nolo contendere.

(b) Duty of Attorney

An attorney charged with a serious crime in this State or any other jurisdiction shall promptly inform Bar Counsel in writing of (1) the filing of the charge, (2) any finding or verdict of guilty on such charge, ~~and~~ (3) the entry of a judgment of conviction on such charge, and (4) the final disposition of the charge in each court that exercises jurisdiction over the charge.

Cross reference: Rule 19-701 (1).

(c) Petition Upon Conviction

(1) Generally

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Attys & Judges Sub.
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Upon receiving and verifying information from any source that an attorney has been convicted of a serious crime, Bar Counsel may file a Petition for Disciplinary or Remedial Action pursuant to Rule 19-721 (a)(2). The petition may be filed whether an appeal or any other post-conviction proceeding is pending.

(2) Contents

The petition shall allege the fact of the conviction and include a request that the attorney be suspended immediately from the practice of law. A certified copy of the judgment of conviction shall be attached to the petition and shall be prima facie evidence of the fact that the attorney was convicted of the crime charged.

(d) Temporary Suspension

Upon filing of the petition pursuant to section (c) of this Rule, the Court of Appeals shall issue an order requiring the attorney to show cause within 15 days from the date of the order why the attorney should not be suspended immediately from the practice of law until the further order of the Court of Appeals. If, after consideration of the petition and the answer to the order to show cause, the Court of Appeals determines that the attorney has been convicted of a serious crime, the Court may enter an order suspending the attorney from the practice of

law until final disposition of the disciplinary or remedial action. The Court of Appeals shall vacate the order and terminate the suspension if the conviction is reversed or vacated.

Cross reference: Rule 19-742.

(e) Petition When Imposition of Sentence is Delayed

(1) Generally

Upon receiving and verifying information from any source that an attorney has been found guilty of a serious crime but that sentencing has been delayed for a period of more than 30 days, Bar Counsel may file a Petition for Interim Disciplinary or Remedial Action. The petition may be filed whether or not a motion for new trial or other relief is pending.

(2) Contents

The petition shall allege the finding of guilt and the delay in sentencing and request that the attorney be suspended immediately from the practice of law pending the imposition of sentence and entry of a judgment of conviction. Bar Counsel shall attach to the petition a certified copy of the docket reflecting the finding of guilt, which shall be prima facie evidence that the attorney was found guilty of the crime charged.

(3) Interim Temporary Suspension

Upon the filing of the petition, the Court of Appeals shall issue an order requiring the attorney to show cause within the time specified in the order why the attorney should not be suspended immediately from the practice of law, on an interim basis, until further order of the Court of Appeals. If, after consideration of the petition and any answer to the order to show cause, the Court of Appeals determines that the attorney was found guilty of a serious crime but that sentencing has been delayed for a period of more than 30 days, the Court may enter an order suspending the attorney from the practice of law on an interim basis pending further action by the trial court and further order of the Court of Appeals.

(4) Entry of Judgment of Conviction or Order for New Trial

Upon the imposition of sentence and entry of a judgment of conviction or upon the granting of a new trial by the trial court, Bar Counsel shall inform the Court of Appeals and attach a certified copy of the judgment of conviction or order granting a new trial. If a judgment of conviction was entered, Bar Counsel may file a petition under section (c) of this Rule. The Court shall then proceed in accordance with section (d) of this Rule but may order that any interim suspension remain in effect pending disposition of the new petition. If the trial court has vacated the finding of guilt and granted a new trial, or if the

attorney received probation before judgment, the Court of Appeals shall dismiss the petition for interim suspension and terminate any interim suspension that has been ordered.

(f) Statement of Charges

If the Court of Appeals denies a petition filed under section (c) of this Rule, Bar Counsel may file a Statement of Charges under Rule 19-718.

(g) Further Proceedings

When a petition filed pursuant to section (c) of this Rule alleges the conviction of a serious crime and the attorney denies the conviction or intends to present evidence in support of a disposition other than disbarment, the Court of Appeals may enter an order designating a judge pursuant to Rule 19-722 to hold a hearing in accordance with Rule 19-727.

(1) No Appeal of Conviction

If the attorney does not appeal the conviction, the hearing shall be held within a reasonable time after the time for appeal has expired.

(2) Appeal of Conviction

If the attorney appeals the conviction, the hearing shall be delayed, except as provided in section (h) of this Rule, until the completion of appellate review.

(A) If, after completion of appellate review, the conviction is reversed or vacated, the judge to whom the action is assigned shall either dismiss the petition or hear the action on the basis of evidence other than the conviction.

(B) If, after the completion of appellate review, the conviction is not reversed or vacated, the hearing shall be held within a reasonable time after the mandate is issued.

(3) Effect of Incarceration

If the attorney is incarcerated as a result of the conviction, the hearing shall be delayed until the termination of incarceration unless the attorney requests an earlier hearing and makes all arrangements (including financial arrangements) to attend the hearing or waives the right to attend.

(h) Right to Earlier Hearing

If the hearing on the petition has been delayed under subsection (g)(2) of this Rule and the attorney has been suspended from the practice of law under section (d) of this Rule, the attorney may request that the judge to whom the action is assigned hold an earlier hearing, at which the conviction shall be considered a final judgment.

(i) Conclusive Effect of Final Conviction

In any proceeding under this Chapter, a final judgment of any court of record convicting an attorney of a crime, whether

the conviction resulted from acceptance by the court of a plea of guilty or nolo contendere, or a verdict after trial, is conclusive evidence of the attorney's guilt of that crime. As used in this Rule, "final judgment" means a judgment as to which all rights to direct appellate review have been exhausted. The introduction of the judgment does not preclude the Commission or Bar Counsel from introducing additional evidence or the attorney from introducing evidence or otherwise showing cause why ~~no~~ discipline a disposition other than disbarment should be ~~imposed~~ entered.

(j) Duties of Clerk of Court of Appeals

The applicable provisions of Rule 19-761 apply when an order is entered under this Rule.

Source: This Rule is derived from former Rule 16-771 (2016).

REPORTER'S NOTE

Changes to Rule 19-738 are proposed that add previously deleted language back into section (b) and that address dispositions other than disbarment.

At the request of Bar Counsel, amendments are made to sections (g) and (i) to reference "a disposition other than disbarment."

Under the change to section (g), if Bar Counsel learns that an attorney who has been convicted of a serious crime intends to present evidence in support of a disposition other than disbarment, Bar Counsel may file a petition with the Court of Appeals, and the Court may enter an order designating a judge to hold a hearing.

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Under section (i), if a final judgment demonstrating an attorney's conviction of a crime is introduced at a proceeding, the final judgment constitutes conclusive evidence of guilt. The introduction of the final judgment, however, does not preclude the attorney from submitting evidence or otherwise showing cause why a disposition other than disbarment should be entered.

At the same time that changes to sections (g) and (i) were considered by the Attorneys and Judges Subcommittee, the issue of language previously deleted from section (b) was raised.

In 2013, the Rules Committee voted to amend section (b) as follows:

~~(a)~~ (b) Duty of Attorney Charged

An attorney charged with a serious crime in this State or any other jurisdiction shall promptly inform Bar Counsel in writing of ~~the criminal charge~~ (1) the filing of the charge, (2) any finding or verdict of guilty on such charge, and (3) the entry of a judgment of conviction on such charge. ~~Thereafter, the attorney shall promptly notify Bar Counsel of the final disposition of the charge in each court that exercises jurisdiction over the charge.~~

After consideration, the Subcommittee believes the re-addition of language requiring prompt disclosure of "the final disposition of the charge in each court that exercises jurisdiction over the charge," located at new subsection (b)(4), is appropriate.

AGENDA ITEM 8

MARYLAND RULES OF PROCEDURE
TITLE 11 - JUVENILE CAUSES
CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 11-121 (a) to revise an internal reference, as follows:

Rule 11-121. COURT RECORDS--CONFIDENTIALITY

(a) Sealing of Records

Files and records of the court in juvenile proceedings, including the docket entries and indices, are confidential and shall not be open to inspection except by order of the court or as otherwise expressly provided by law. On termination of the court's juvenile jurisdiction, the filed and records shall be sealed pursuant to Section 3-828 (c) of the Courts Article, and all index references shall be marked "sealed." If a hearing is open to the public pursuant to the Code, Courts Article ~~§3-812~~ §3-8A-13 (f), the name of the respondent and the date, time, and location of the hearing are not confidential.

(b) Unsealing of Records

Sealed files and records of the court in juvenile proceedings may be unsealed and inspected by order of the court.

Cross reference: For confidentiality in appellate proceedings, see Rule 8-121 (Appeals from Courts Exercising Juvenile Jurisdiction--Confidentiality).

Source: This Rule is derived from former Rule 921.

REPORTER'S NOTE

The Committee has been advised that the reference to Code, Courts Article §3-812 in Rule 11-121 (a) is obsolete. Currently, Code, Courts Article §3-812 governs CINA proceedings, which are not open to the public. The proposed amendment to the Rule updates the reference to Code, Courts Article §3-8A-13 (f), which applies to hearings in certain juvenile proceedings that are open to the public.