Notice of In-Person Meeting

Standing Committee on Rules of Practice and Procedure
January 10, 2025 Open Meeting, 9:30 a.m.
Instructions for Members of the Public

The January 10, 2025, 9:30 a.m. open meeting of the Standing Committee on Rules of Practice and Procedure will be held in-person at the Maryland Judicial Center, Rooms 131-132, 187 Harry S. Truman Parkway, Annapolis, MD 21401. Members of the public may attend.

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.

Agenda and Proposed Rules Changes

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

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

January 10, 2025 (Friday)
9:30 a.m.

Maryland Judicial Center
Rooms 131-132
187 Harry S. Truman Parkway
Annapolis, MD 21401

Item 1.	Consideration of proposed new Rule 9-202.1 (Child Support Modification)	Judge Bryant
Item 2.	Consideration of proposed amendments to Rule 9-205.3 (Custody and Visitation-Related Assessments)	Judge Bryant
Item 3.	Consideration of proposed amendments to Rule 17-105 (Mediation Confidentiality)	Mr. Kane
Item 4.	Reconsideration of proposed amendments to Rule 1-332 (Accommodations for Persons with Disabilities)	Judge Nazarian
Item 5.	Consideration of proposed amendments to Rule 1-325 (Waiver of Costs Due to Indigence – Generally)	Judge Nazarian
Item 6.	Consideration of proposed Rules changes pertaining to MDEC—amendments to: Rule 20-106 (When Electronic Filing Required; Exceptions) Rule 20-205 (Service)	Judge Nazarian
Item 7.	Consideration of proposed amendments to Rule 5-606 (Competency of Juror as Witness)	Mr. Marcus
Item 8.	Consideration of a policy question regarding the burden of proof for a violation of probation in criminal actions	Mr. Marcus

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

Rule 4-213.1 (Appointment, Appearance, or Waiver of Attorney at Initial Appearance)

Rule 4-271 (Trial Date)

Information Item: Update on *Rouse v. Moore, et al.*, 724 F.Supp.3d 410 (D.Md. 2024), *appeal filed* (4th Cir. Dec. 24, 2024)

Information Item: Postconviction Proceedings

AGENDA ITEM 1

THE SUPREME COURT OF MARYLAND
STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

Hon. YVETTE M. BRYANT, Chair
Hon. DOUGLAS R.M. NAZARIAN, Vice Chair
SANDRA F. HAINES, Reporter
COLBY L. SCHMIDT, Deputy Reporter
HEATHER COBUN, Assistant Reporter
MEREDITH A. DRUMMOND, Assistant Reporter

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MEMORANDUM

TO : Members of the Rules Committee

FROM : Heather Cobun, Assistant Reporter

DATE : December 26, 2024

RE : Modification of Child Support (Proposed New Rule 9-202.1)

The Equal Justice Committee Rules Review Subcommittee Report and Recommendations, referred to the Rules Committee in March 2023 by the Judicial Council, suggested that the Committee, "in collaboration with the Child Support Workgroup of the Domestic Law Committee, may wish to review the service provisions under Rule 1-321 to determine if the procedural process creates potential unfairness for low-income litigants in child custody cases" (see attached excerpt from the Report). The Child Support Workgroup ("the workgroup") submitted a proposal in May 2023 outlining recommended Rules changes to streamline the process for modifying support orders (see attached memorandum).

After discussion, the Family/Domestic Subcommittee of the Rules Committee requested additional drafting, which was underway in late 2023. As part of the drafting process, Rules Committee staff identified overarching due process and procedural fairness issues that merited further research and discussion. Staff communicated to the workgroup that there were larger concerns with the workgroup's proposal.

To address those concerns, Rules Committee staff submitted an alternate proposal to the workgroup in spring 2024. After discussions, the workgroup expressed a desire to move forward with its original recommendation. Judge Bryant, as a member of the workgroup and Chair of the Family/Domestic Subcommittee, requested that both proposals be presented to the Subcommittee for discussion at its September 13, 2024 meeting. Present at the meeting were key members and staff of the workgroup, Domestic Law Committee Chair Judge Cathy H. Serrette,

representatives from the Maryland Child Support Administration, and attorneys from the Maryland Court Help Center. The Subcommittee considered both approaches, balancing the very real procedural barriers faced by *pro se* litigants who struggle with service with the due process owed to the respondent to have notice of the proceeding and an opportunity to be heard. The Subcommittee voted to recommend to the Rules Committee the alternate proposal prepared by staff.

On October 16, 2024, Rules Committee staff (1) communicated to Domestic Law Committee staff that the proposed new Rule as recommended by the Subcommittee would be considered by the Rules Committee at its January 10, 2025 meeting and (2) offered the workgroup an opportunity to provide feedback on the proposed draft to identify any serious areas of concern that could be addressed prior to January. To date, the workgroup has raised only two concerns with the proposed draft, which will be discussed further below.

Existing Laws and Rules

Child Support Modification

Maryland law permits a court to modify a child support award after a motion and showing of a material change in circumstances (see Code, Family Law Article, § 12-104[1]). The law prohibits retroactive modification of an award prior to the date a motion to modify was filed. The issue identified by the workgroup is that obligors seeking to reduce their support payment due to a change in circumstances struggle to obtain service on the custodial parent and face dismissal of the motion. If a case is dismissed and the obligor must re-file, the date back to which an award can be retroactively modified becomes tied to the date the new motion is filed.

Service of Motion to Modify Judgment in Civil Action

A point of contention with the workgroup is the requirement that a motion to modify child support in an existing case requires the same service as an original pleading if it is filed more than 30 days after judgment is entered. The workgroup has expressed frustration with this provision and a wish to revisit it.[2]

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[1] "(a) The court may modify a child support award subsequent to the filing of a motion for modification and upon a showing of a material change of circumstance.
(b) The court may not retroactively modify a child support award prior to the date of the filing of the motion for modification.
(c) If a party becomes incarcerated, the court may determine that a material change of circumstance warranting a modification of child support has occurred, provided that the party's ability to pay child support is sufficiently reduced due to incarceration.

[2] "Not only does requiring personal service lead to additional challenges for the obligor, but it is also unnecessary: modification is not a new action, rather the reopening of an existing case of which the parties are well aware of." See Domestic Law Committee memorandum at p. 2.

Rule 1-321 was amended in 2018 to add new section (e), which states:

> (e) Proceedings to Modify Judgment in a Civil Action
>
> If a motion, petition, or other paper that initiates proceedings to modify a judgment in a civil action is filed more than 30 days after entry of the judgment, it shall be served, together with a summons issued pursuant to Rule 2-114 or 3-114, as applicable, in accordance with the rules for service of an original pleading.

Rule 2-121 (a) governs service of an original pleading in circuit court.[3] Rule 1-321 (e) was added in 2018 to address a lack of uniformity among jurisdictions pertaining to service of motions to modify child support. According to the Reporter's note to the Rule, individual courts had instituted local rules for this issue, with some requiring "fresh" service pursuant to Rule 2-121 and others permitting mailing pursuant to Rule 1-321 (a).

In its 195th Report, the Rules Committee recommended adding new section (e), requiring Rule 2-121 (a) service. The Report explained that there is a risk to allowing a motion to be mailed, possibly years after a case had been closed, to an attorney whose appearance had been terminated by operation of Rule 2-132 (d) or to a party who may have relocated. There were no comments, questions, or concerns raised at the Court's open meeting.[4] Rule 1-321 (e) went into effect on July 1, 2018.

Modification and Contempt Proceedings

Additionally, the workgroup identified a concern in situations where a child support obligor is facing a contempt proceeding, usually initiated by the Child Support Administration, and wishes to argue that the nonpayment is due to a material change in circumstances that would support a reduction in the award. Currently, a motion to modify child support is not permitted to be filed as a counterclaim in the contempt proceeding.

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[3] "Service of process may be made within this State or, when authorized by the law of this State, outside of this State (1) by delivering to the person to be served a copy of the summons, complaint, and all other papers filed with it; (2) if the person to be served is an individual, by leaving a copy of the summons, complaint, and all other papers filed with it at the individual's dwelling house or usual place of abode with a resident of suitable age and discretion; or (3) by mailing to the person to be served a copy of the summons, complaint, and all other papers filed with it by certified mail requesting: 'Restricted Delivery--show to whom, date, address of delivery.' Service by certified mail under this Rule is complete upon delivery. Service outside of the State may also be made in the manner prescribed by the court or prescribed by the foreign jurisdiction if reasonably calculated to give actual notice."

[4] Staff reviewed comments submitted to the Court and the audio recording of the open meeting.

Default Procedures and Servicemembers Civil Relief Act Compliance

Finally, the workgroup stated that courts requiring entry of an order of default before scheduling a hearing on the motion to modify when no response is filed "[delay] the matter for several weeks." Rule 2-613 applies to civil proceedings in the circuit court where the time for pleading has expired and a defendant has failed to plead. The Rule permits the court, on written request of the plaintiff, to enter an order of default. When an order of default is entered, the defendant receives notice from the clerk. After 30 days, if the defendant does not respond, the court may enter a judgment. In the child support context, the court's judgment can be retroactive to the date that the motion was filed.

Related to the issue of default judgment is compliance with § 3931 of the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq*. ("the Act"). The statute prohibits a court from entering an order of default against a defendant who does not appear without first ascertaining, through an affidavit filed by the plaintiff, whether the defendant is in the military. The workgroup proposed requiring the affidavit to be filed with the motion.

Generally, the Rules require a military service affidavit to be filed contemporaneously with the request for default. The Committee has recommended amendments to the Rules in recent years to ensure that Maryland courts comply with the Act. A 2023 amendment to Rule 3-113 required that an affidavit filed contemporaneously with a demand for affidavit judgment pursuant to Rule 3-306 should be "refreshed" if the filer must request a renewal of summons.

Workgroup Proposal

The proposed new Rule 9-202.1 from the workgroup has three main features:

- If the moving party can confirm the non-moving party's address using a declaration of address verification form, service may be made pursuant to Rule 1-321 (a).

- After a motion to modify child support or a petition for contempt is filed, the non-moving party may file a motion to modify as a counterclaim.

- After service and time to respond, the court shall schedule a hearing.

The address verification proposal was modeled after California Family Code § 215 (b), which applies to custody and visitation orders, in addition to child support

(see attached "Declaration Regarding Address Verification" form).[5] Additionally, the workgroup proposed that parties be given advice in writing of the procedures for modification at the time that the court establishes, modifies, or denies a request to modify a child support award. An amendment proposed to Rule 2-507 required that, prior to the court entering a dismissal for lack of prosecution, the court conduct a status conference to ascertain why service has not been made.

The May 9, 2023 memorandum from the Domestic Law Committee (attached) contains additional rationale for the recommendation and the original proposed drafts. Also attached are Rules 9-202.1 and 2-507 as most recently amended following consideration by the Subcommittee in September 2023.

Alternate Proposal

Due to concerns about permitting a lower standard of service when the address of the non-moving party is known to the filer and the open issue of how to assist filers who do not have a good address for service, staff prepared an alternate proposal which was ultimately recommended by the Subcommittee. Bolded language in the draft reflects additional drafting by staff following the Subcommittee meeting, which has not been reviewed by the Subcommittee.

The alternate proposal focuses on helping a moving party obtain service likely to result in actual notice by emphasizing alternate service options. Rule 2-121 (b) permits the serving party, on proof of evasion of service, to mail papers to the last known address and deliver a copy to the individual's place of business. Rule 2-121 (c) permits the court to order "any other means of service that it deems appropriate in the circumstances and reasonably calculated to give actual notice," if there have been good faith efforts to serve and section (b) is not appropriate or impracticable.

Electronic Service

Alternate service methods ordered pursuant to Rule 2-121 (c) could include modern options, such as emailing, texting, and transmittal via social media. However, Maryland's form motion for alternate service does not prompt the filer to suggest electronic service options to the court (see attached Form CC-DR-070). The form concludes: "FOR THESE REASONS, I request that the court order service by posting, or in the alternative by publication, or by any other means of notice that the court may deem appropriate." Posting and publication are unlikely to be effective

[5] "(b) A postjudgment motion to modify a custody, visitation, or child support order may be served on the other party or parties by first-class mail or airmail, postage prepaid, to the persons to be served. For any party served by mail, the proof of service shall include an address verification."

methods of providing actual notice to the respondent, but electronic service would be permitted as "any other means of notice."

Because child support modification cases are frequently filed *pro se* and carry significant consequences for the filer if not promptly served and litigated, a pathway to request alternate service and suggest modern options could provide actual notice to the non-moving party. A companion new alternate service form could be developed with simplified language and more robust electronic service options (see, e.g., the attached District of Columbia Family Court Motion for Alternate Service).

The court may hold a hearing on a request for alternate service, and the court is instructed to permit remote participation to avoid requiring the moving party to come to court for what should be a relatively short proceeding to establish the alternate service method.

Once the non-moving party receives notice of the motion, the party will be instructed to provide the court and the moving party with an address for receiving copies of future papers. A Committee note emphasizes that the address provided can be any place where the party is willing and able to receive papers. A cross reference to the Address Confidentiality Program follows.

Service by Child Support Administration

In addition to electronic service, the proposed Rule contemplates permitting the court to order the Child Support Administration ("CSA"), if charged with collecting support, to serve the initial motion. The order generally would be limited to one-time electronic service of the initial motion.

CSA expressed several concerns with conducting service on the custodial parent via first-class mail: the address on file may not be valid, following up with the court on returned mail could be burdensome, and it is unclear when the filing should be deemed "served." Without knowing how frequently this option would be used, CSA cannot estimate the cost or hours that could be required to comply. However, the same concerns are not present if CSA can only be ordered to conduct service electronically. Therefore, service by mail has not been included in subsections (e)(2)(C) and (e)(3)(C) of the alternate proposal. CSA reports that it has had great success contacting individuals via email or text and while not every individual has that information on file, many do.

One of the concerns expressed by the workgroup is a reluctance to advance this proposal without further review by CSA, which recently experienced a leadership transition. Executive Director Jarnice Johnson, at the time acting as interim director, was present at the Subcommittee meeting on September 13, 2024 along with the Assistant Attorney General for CSA. Ms. Johnson and the CSA attorney did

not express any concern at that time. Rules Committee staff contacted both individuals in preparation of these materials and invited them to attend the meeting or submit any comments.

Counterclaim

The alternate proposal carries forward the workgroup's suggestion that a party served with a contempt petition in connection with a failure to pay child support may file a motion to modify as a counterclaim. Service must be accomplished in accordance with the provisions in the Rule.

Status Conference

Once all parties are served, the alternate proposal requires the court to hold a prompt status conference (the suggested time is no later than 15 days after the filing of a response to expiration of time for filing a response, subject to any counterclaims). One of the problems that the workgroup identified is that even after *pro se* parties obtain service, they do not know what the next step should be to litigate their motion. If the motion is contested, one or both parties may need discovery or to subpoena witnesses. If the non-moving party did not respond, the moving party can move for entry of a default.

The workgroup's draft proposed that the court set a modification motion in for a prompt hearing, but it is unclear if a matter involving *pro se* litigants will be able to be resolved at that point. The alternate draft proposes setting the matter for a status conference, which the parties can waive. The potential benefits of a status conference are that one or both parties can attend a remote proceeding, if desired, to establish what the next steps should be while avoiding a hearing where a party is not prepared. The idea is that a short, remote status conference early in the process will save court time later when the matter is adjudicated. The workgroup is concerned that the required status conferences will significantly impact circuit court dockets. Staff has contacted Research and Analysis for the Administrative Office of the Courts to attempt to identify the volume of child support modification motions filed.

Attached are:

- New Rule 9-202.1 approved by the Family/Domestic Subcommittee (with bolded clarifying/revised language added subsequent to Subcommittee review)
- Petition to Modify Child Support Form (CC-DR-006)
- Motion for Alternate Service Form (CC-DR-070)

- District of Columbia Family Court Motion for Alternate Service Form and Affidavit of Service

- Excerpt from the Equal Justice Committee Rules Review Subcommittee Report and Recommendations

- May 9, 2023 memorandum from the Domestic Law Committee

- California Declaration Regarding Address Verification Form

- Rules 9-202.1 and 2-507 (workgroup proposal as modified by the Subcommittee as of September 2023)

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

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

ADD new Rule 9-202.1, as follows:

Rule 9-202.1. CHILD SUPPORT MODIFICATION

(a) Applicability

This Rule applies to a motion to modify child support pursuant to Code, Family Law Article, § 12-104 that is filed more than 30 days after entry of an order by a Maryland court establishing or modifying child support. It does not apply to modification of a support order or income withholding order issued in another state or a foreign support order registered in this State.

Cross reference: See Code, Family Law Article, Title 10, Subtitle 3, Part IV.

(b) Form of Motion

The motion shall be substantially in the form approved by the State Court Administrator, posted on the Judiciary website, and available in the clerks' offices.

(c) Issuance of Summons

Pursuant to Rule 1-321 (e), the clerk shall issue a summons to be served with the motion.

(d) Service

(1) On Non-Moving Party

Except as otherwise provided in section (e) of this Rule, the summons and the motion shall be served on the non-moving party in accordance with Rule 2-121 (a).

(2) On Child Support Administration

If the Child Support Administration is charged with collecting child support in the action, in addition to the service required by subsection (d)(1) of this Rule, the moving party shall serve a copy of the summons and the motion on the local office of child support by first-class mail.

(e) Alternative Methods of Service

(1) Request

If (A) the current address of the non-moving party is not known to the moving party, (B) the moving party is unable to serve the non-moving party after having made reasonable good faith efforts to do so, or (C) the moving party alleges facts supporting that personal service on the non-moving party is impracticable, the moving party may file a request to permit an alternate method of service pursuant to Rule 2-121 (b) or (c), as appropriate, together with an affidavit in support of the request. The request and affidavit shall be substantially in the form approved by the State Court Administrator, posted on the Judiciary website, and available in the clerks' offices. If the Child Support Administration is charged with collecting child support in the action, the

moving party shall mail a copy of the request and affidavit to the local office of child support by first-class mail.

(2) Determination of Request

The court promptly shall consider a request filed pursuant to section (e) of this Rule and may hold a hearing to determine an appropriate method of service, except that if the Child Support Administration is charged with collecting child support in the action, the court shall hold a hearing if the Child Support Administration requests a hearing within 15 days of being served pursuant to subsection (d)(2) of this Rule. If a hearing is held, the court shall permit participation by means of remote electronic participation pursuant to Rule 21-201. If the court grants the request, it shall enter an order permitting an alternate method of service reasonably calculated to give actual notice of the action to the non-moving party, which may include:

(A) authorizing service pursuant to Rule 2-121 (b);

(B) permitting the moving party to send a copy of the summons and the motion to the non-moving party by electronic means, including email, text message, or social media; or

(C) if the Child Support Administration is charged with collecting child support and has an email address or cell phone number for the non-moving party in its records, ordering the Child Support Administration to make prompt electronic service by email, text message, or both.

(3) Order Permitting Alternative Service

An order permitting an alternative method of service shall:

(A) set forth the authorized method or methods of alternate service;

(B) set forth a method for demonstrating proof of service;

(C) if the Child Support Administration is ordered to serve the non-moving party electronically, instructions for providing the court with the email address or cell phone number used for service confidentially; and

(D) include a directive to the non-moving party to provide **to the court, in writing, within the time allowed for filing a response to the motion, an address to which pleadings, papers, and notices are to be sent**.

Committee note: The non-moving party may provide any street address or post office box at which the party is willing and able to receive pleadings. Papers**, and notices, including any documents** that may require prompt action on the part of the non-moving party. **The address may be provided as part of a response to the motion.**

Cross reference: See Code, State Government Article, §§ 7-301 to 7-313 and Rule 1-205 concerning participation in the Address Confidentiality Program. See Rule 1-311 (a) concerning information to be provided when filing a pleading or paper with the court.

(4) Failure to Provide Address

If a non-moving party who is served pursuant to section (e) of this Rule fails to provide the court with an address as required by subsection (e)(3)(D) of this Rule within the time allowed for responding to the motion, the court shall enter an order stating a method by which pleadings and papers may be served and notices may be sent, which may be the method of alternate service used for service of the initial motion.

(f) Motion to Modify Child Support as Counterclaim

A non-moving party who is served with a summons and motion to modify child support or a petition for contempt in an action involving child support may file a motion to modify child support as a counterclaim and serve it on the moving party in accordance with Rule 1-321 (a). If the Child Support Administration is charged with collecting child support in the action and is not the moving party, the party filing the counterclaim shall serve a copy of it on the local office of child support by first-class mail. If the Child Support Administration is the moving party, the party filing the counterclaim shall serve each other party named in the child support order sought to be modified in accordance with the procedure set forth in subsection (d)(1) of this Rule.

(g) Status Conference

(1) When Held; Method of Participation]

The court shall hold a status conference no later than 15 days after the later of the filing of a response or, if no response is filed, the time for filing a response pursuant to Rule 2-321 has expired. If a counterclaim is filed, the status conference shall not be held until after a response to the counterclaim is filed or, if no response is filed, the time for filing a response to the counterclaim has expired. The status conference may be held by means of remote electronic participation. If the Child Support Administration received notice of the motion, it may appear at the status conference but is not required to attend.

(2) Waiver

By consent, the parties may waive the status conference and request that the matter be set in for a hearing.

Source: This Rule is new.

AGENDA ITEM 2

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

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

AMEND Rule 9-205.3 by adding clarifying language to subsection (c)(2); by creating new subsection (d)(1)(A) using the language of current subsection (d)(1); by adding new subsection (d)(1)(B) regarding continuing education and licensing requirements; by creating new subsection (d)(2)(A) addressing mandatory training using language from current subsection (d)(2), with modifications; by creating new subsection (d)(2)(B) concerning required experience using language from current subsection (d)(2), with modifications; by updating the topics of required knowledge and experience in subsection (d)(2)(B); by modifying the court's ability to waive licensing requirements in subsection (d)(3); and by making stylistic changes, as follows:

Rule 9-205.3. CUSTODY AND VISITATION-RELATED ASSESSMENTS

(a) Applicability

This Rule applies to the appointment or approval by a court of a person to ~~perform~~ conduct an assessment in an action

under this Chapter in which child custody or visitation is at issue.

Committee note: In this Rule, when an assessor is selected by the court, the term "appointment" is used. When the assessor is selected by the parties and the selection is incorporated into a court order, the term "approval" is used.

(b) Definitions

In this Rule, the following definitions apply:

(1) Assessment

"Assessment" includes a custody evaluation, a home study, a mental health evaluation, and a specific issue evaluation.

(2) Assessor

"Assessor" means an individual who ~~performs~~ conducts an assessment.

(3) Custody Evaluation

"Custody evaluation" means a study and analysis of the needs and development of a child who is the subject of an action or proceeding under this Chapter and of the abilities of the parties to care for the child and meet the child's needs.

(4) Custody Evaluator

"Custody evaluator" means an individual appointed or approved by the court to ~~perform~~ conduct a custody evaluation.

(5) Home Study

"Home study" means an inspection of a party's home that focuses upon the safety and suitability of the physical surroundings and living environment for the child.

(6) Mental Health Evaluation

"Mental health evaluation" means an evaluation of an individual's mental health ~~performed~~ conducted by a psychiatrist or psychologist who has the qualifications set forth in subsection ~~(d)(1)(A) or (B)~~ (d)(1)(A)(i) or (ii) of this Rule. A mental health evaluation may include psychological testing.

(7) Specific Issue Evaluation

"Specific issue evaluation" means a focused investigation into a specific issue raised by a party, the child's attorney, or the court affecting the safety, health, or welfare of the child as may affect the child's best interests.

Committee note: A specific issue evaluation is not a "mini" custody evaluation. A custody evaluation is a comprehensive study of the general functioning of a family and of the parties' parenting capacities. A specific issue evaluation is an inquiry, narrow in scope, into a particular issue or issues that predominate in a case. The issue or issues are defined by questions posed by the court to the assessor in an order. The evaluation primarily is fact-finding, but the court may opt to receive a recommendation. Examples of questions that could be the subject of specific issue evaluations are questions concerning the appropriate school for a child with special needs and how best to arrange physical custody and visitation for a child when one parent is relocating.

(8) State

"State" includes the District of Columbia.

(c) Authority

(1) Generally

On motion of a party or child's counsel, or on its own initiative, the court may order an assessment to aid the court in evaluating the health, safety, welfare, or best interests of a child in a contested custody or visitation case.

(2) Appointment or Approval

The court may appoint or approve any person deemed competent by the court to ~~perform~~ conduct a home study. The court may not appoint or approve a person to ~~perform~~ conduct a custody evaluation or specific issue evaluation unless (A) the assessor has the qualifications set forth in subsections (d)(1) and (d)(2) of this Rule, or (B) the qualifications set forth in subsection (d)(1) of this Rule have been waived for the assessor pursuant to subsection (d)(3) of this Rule.

(3) Cost

The court may not order the cost of an assessment to be paid, in whole or in part, by a party without giving the parties notice and an opportunity to object.

Committee note: Nothing in this Rule precludes the court from ordering preliminary screening or testing for alcohol and substance use.

(d) Qualifications of Custody Evaluator

(1) Education and Licensing

(A) Required Education and Licensure

A custody evaluator shall be:

~~(A)~~ (i) a physician licensed in any State who is board-certified in psychiatry or has completed a psychiatry residency accredited by the Accreditation Council for Graduate Medical Education or a successor to that Council;

~~(B)~~ (ii) a Maryland-licensed psychologist or a psychologist with an equivalent level of licensure in any other state;

~~(C)~~ (iii) a Maryland-licensed clinical marriage and family therapist or a clinical marriage and family therapist with an equivalent level of licensure in any other state;

~~(D)~~ (iv) a Maryland-licensed certified social worker-clinical or a clinical social worker with an equivalent level of licensure in any other state;

~~(E)~~ (v) ~~(i)~~ (a) a Maryland-licensed graduate or master social worker with at least two years of experience in ~~(a)~~ (1) one or more of the areas listed in subsection ~~(d)(2)~~ (d)(2)(B) of this Rule, ~~(b) performing~~ (2) conducting custody evaluations, or ~~(c)~~ (3) any combination of subsections ~~(a))~~ (d)(1)(A)(v)(a)(1) and ~~(b))~~ (d)(1)(A)(v)(a)(2); or ~~(ii)~~ (b) a graduate or master social worker with an equivalent level of licensure and experience in any other state; or

~~(F)~~ (vi) a Maryland-licensed clinical professional counselor or a clinical professional counselor with an equivalent level of licensure in any other state.

(B) Continuing Education and Licensure Requirements

A custody evaluator shall comply with all conditions necessary to maintain professional licensure, including completing all mandatory continuing education requirements.

(2) Training and Experience

(A) Mandatory Training

~~Unless waived by the court, a~~ A custody evaluator shall have completed~~, or commit to completing, the next available~~ a training program that conforms ~~with~~ to guidelines established by the Administrative Office of the Courts. ~~The current guidelines~~ Current training guidelines shall be posted on the Judiciary's website.

(B) Required Experience

~~In addition to complying with the continuing requirements of the custody evaluator's field, a~~ A custody evaluator shall have ~~training or~~ experience in conducting or observing ~~or performing~~ custody evaluations, and shall have ~~current~~ demonstrated knowledge ~~in the following areas~~ of and experience in applying best practices pertinent to the following topics:

~~(A)~~ (i) domestic and family violence;

~~(B)~~ (ii) child neglect and abuse;

(iii) child and adult development;

(iv) trauma and its impact on children and adults;

~~(C)~~ (v) family ~~conflict and~~ dynamics and conflict resolution;

~~(D) child and adult development;~~ and

~~(E)~~ (vi) the impact of divorce and separation on children and adults.

(3) Waiver of Licensing Requirements

If a court employee, or an individual under contract with the court, has ~~been performing~~ regularly conducted custody evaluations ~~on a regular basis as an employee of, or under contract with, the court~~ for at least ~~five~~ fourteen years prior to January 1, ~~2016~~ 2025, the court may waive any of the requirements set forth in subsection (d)(1) of this Rule, provided that the individual ~~participates in~~ completes a training program required by subsection (d)(2)(A) of this Rule and completes at least 20 hours per year of continuing education relevant to ~~the performance of~~ conducting custody evaluations~~, including course work in one or more of the areas listed in subsection (d)(2) of this Rule~~.

(e) Custody Evaluator Lists and Selection

(1) Custody Evaluator Lists

If the circuit court for a county appoints custody evaluators who are not court employees, the family support services coordinator for the court shall maintain a list of qualified custody evaluators. An individual, other than a court

employee, who seeks appointment by a circuit court as a custody evaluator shall submit an application to the family support services coordinator for that court. If the applicant has the qualifications set forth in section (d) of this Rule, the applicant's name shall be placed on a list of qualified individuals. The family support services coordinator, upon request, shall make the list and the information submitted by each individual on the list available to the public.

(2) Selection of Custody Evaluator

(A) By the Parties

By agreement, the parties may employ a custody evaluator of their own choosing who may, but need not, be on the court's list. The parties may, but need not, request the court to enter a consent order approving the agreement and selection. The court shall enter the order if one is requested and the court finds that the custody evaluator has the qualifications set forth in section (d) and that the agreement contains the relevant information set forth in section (g) of this Rule.

(B) By the Court

An appointment of an individual, other than a court employee, as a custody evaluator by the court shall be made from the list maintained by the family support services coordinator. In appointing a custody evaluator from a list, the court is not required to choose at random or in any particular order from

among the qualified evaluators on the list. The court should endeavor to use the services of as many qualified individuals as practicable, but the court may consider, in light of the issues and circumstances presented by the action or the parties, any special training, background, experience, expertise, or temperament of the available prospective appointees. An individual appointed by the court to serve as a custody evaluator shall have the qualifications set forth in section (d) of this Rule.

(3) Selection of Assessor to ~~Perform~~ Conduct Specific Issue Evaluation

Selection of an assessor to ~~perform~~ conduct a specific issue evaluation shall be made from the same list and by the same process as pertains to the selection of a custody evaluator.

(f) Description of Custody Evaluation

(1) Mandatory Elements

Subject to any protective order of the court, a custody evaluation shall include:

(A) a review of the relevant court records pertaining to the litigation;

(B) an interview of each party and any adult who performs a caretaking role for the child or lives in a household with the child

cannot be located despite best efforts by the custody evaluator, documentation or a description of the custody evaluator's efforts to locate the adult and any information gained about the adult;

(C) an interview of the child, unless the custody evaluator determines and explains that by reason of age, disability, or lack of maturity, the child lacks capacity to be interviewed;

(D) a review of any relevant educational, medical, and legal records pertaining to the child;

(E) if feasible, observations of the child with each party, whenever possible in that party's household;

(F) contact with any high neutrality/low affiliation collateral sources of information, as determined by the assessor;

Committee note: "High neutrality/low affiliation" is a term of art that refers to impartial, objective collateral sources of information. For example, in a custody contest in which the parties are taking opposing positions about whether the child needs to continue taking a certain medication, the child's treating doctor would be a high neutrality/low affiliation source, especially if the doctor had dealt with both parties.

(G) screening for intimate partner violence;

(H) factual findings about the needs of the child and the capacity of each party to meet the child's needs; and

(I) a custody and visitation recommendation based upon an analysis of the facts found or, if such a recommendation cannot be made, an explanation of why.

(2) Optional Elements – Generally

Subject to subsection (f)(4) of this Rule, at the discretion of the custody evaluator, a custody evaluation also may include:

(A) contact with collateral sources of information that are not high neutrality/low affiliation;

(B) a review of additional records;

(C) employment verification;

(D) a mental health evaluation;

(E) consultation with other experts to develop information that is beyond the scope of the evaluator's practice or area of expertise; and

(F) an investigation into any other relevant information about the child's needs.

(3) Elements of Specific Issue Evaluation

Subject to any protective order of the court, a specific issue evaluation may include any of the elements listed in subsections (f)(1)(A) through (G) and (f)(2) of this Rule. The specific issue evaluation shall include fact-finding pertaining to each issue identified by the court and, if requested by the court, a recommendation as to each.

(4) Optional Elements Requiring Court Approval

The custody evaluator or specific issue evaluation assessor may not include an optional element listed in subsection (f)(2)(D), (E), or (F) if any additional cost is to be assessed for the element unless, after notice to the parties and an opportunity to object, the court approved inclusion of the element.

(g) Order of Appointment

An order appointing or approving a person to ~~perform~~ conduct an assessment shall include:

(1) the name, business address, and telephone number of the person being appointed or approved;

(2) any provisions the court deems necessary to address the safety and protection of the parties, all children of the parties, any other children residing in the home of a party, and the person being appointed or approved;

(3) a description of the task or tasks the person being appointed or approved is to undertake;

(4) a provision concerning payment of any fee, expense, or charge, including a statement of any hourly rate that will be charged which, as to a court appointment, may not exceed the maximum rate established under section (n) of this Rule and, if applicable, a time estimate for the assessment;

(5) the term of the appointment or approval and any deadlines pertaining to the submission of reports to the parties and the court, including the dates of any pretrial or settlement conferences associated with the furnishing of reports;

(6) any restrictions upon the copying and distribution of reports, whether pursuant to this Rule, agreement of the parties, or entry of a separate protective order;

(7) as to a custody evaluation, whether a written report pursuant to subsection (i)(1)(B) of this Rule or an oral report on the record pursuant to subsection (i)(1)(A) of this Rule is required;

(8) as to a specific issue evaluation, each issue to be evaluated and whether a recommendation is requested as to each; and

(9) any other provisions the court deems necessary.

(h) Removal or Resignation of Person Appointed or Approved to ~~Perform~~ Conduct an Assessment

(1) Removal

The court may remove a person appointed or approved to ~~perform~~ conduct an assessment upon a showing of good cause.

(2) Resignation

A person appointed or approved to ~~perform~~ conduct an assessment may resign prior to completing the assessment and preparing a report pursuant to section (i) of this Rule only

upon a showing of good cause, notice to the parties, an opportunity to be heard, and approval of the court.

(i) Report of Assessor

(1) Custody Evaluation Report

A custody evaluator shall prepare a report and provide the parties access to the report in accordance with subsection (i)(1)(A) or (i)(1)(B) of this Rule.

(A) Oral Report on the Record

If the court orders a pretrial or settlement conference to be held at least 45 days before the scheduled trial date or hearing at which the evaluation may be offered or considered, and the order appointing or approving the custody evaluator does not require a written report, the custody evaluator may present the custody evaluation report orally to the parties and the court on the record at the conference. The custody evaluator shall produce and provide to the court and parties at the conference a written list containing an adequate description of all documents reviewed in connection with the custody evaluation. If custody and access are not resolved at the conference, and no written report has been provided, the court shall (i) provide a transcript of the oral report to the parties free of charge and, if a copy of the transcript is prepared for the court's file, maintain that copy under seal, or (ii) direct the custody evaluator to prepare a written report

and furnish it to the parties and the court in accordance with subsection (i)(1)(B) of this Rule. Absent the consent of the parties, the judge or magistrate who presides over a settlement conference at which an oral report is presented shall not preside over a hearing or trial on the merits of the custody dispute.

(B) Written Report Prepared by the Custody Evaluator

If an oral report is not prepared and presented pursuant to subsection (i)(1)(A) of this Rule, the custody evaluator shall prepare a written report of the custody evaluation and shall include in the report a list containing an adequate description of all documents reviewed in connection with the custody evaluation. The report shall be furnished to the parties and to the court under seal at least 45 days before the scheduled trial date or hearing at which the evaluation may be offered or considered. The court may shorten or extend the time for good cause shown but the report shall be furnished to the parties no later than 15 days before the scheduled trial or hearing.

(2) Report of Specific Issue Evaluation

An assessor who ~~performed~~ conducted a specific issue evaluation shall prepare a written report that addresses each issue identified by the court in its order of appointment or approval and, if requested by the court, make a recommendation.

The report shall be furnished to the parties and to the court, under seal, as soon as practicable after completion of the evaluation and, if a date is specified in the order of appointment or approval, by that date. The report shall include a list containing an adequate description of all documents reviewed in connection with the specific issue evaluation.

(3) Report of Home Study

Unless preparation of a written report is waived by the parties, an assessor who ~~performed~~ conducted a home study shall prepare a written report of the home study and furnish it to the parties and to the court under seal. The report shall be furnished as soon as practicable after completion of the home study and, if a date is specified in the order of appointment or approval, by that date.

(4) Report of Mental Health Evaluation

An assessor who ~~performed~~ conducted a mental health evaluation shall prepare a written report. The report shall be made available to the parties solely for use in the case and shall be furnished to the court under seal. The report shall be made available and furnished as soon as practicable after completion of the evaluation and, if a date is specified in the order of appointment or approval, by that date.

Committee note: An assessor's written report submitted to the court in accordance with section (i) of this Rule shall be kept by the court under seal. The only access to these reports by a

judge or magistrate shall be in accordance with subsections (k)(2) and (k)(3) of this Rule. Each circuit court, through MDEC, shall devise the means for keeping these reports under seal.

(j) Copying and Dissemination of Report

A party may copy a written report of an assessment or the transcript of an oral report prepared pursuant to subsection (i)(1)(A) of this Rule but, except as permitted by the court, shall not disseminate the report or transcript other than to individuals intended to be called as experts by the party.

Cross reference: See subsection (g)(6) of this Rule concerning the inclusion of restrictions on copying and distribution of reports in an order of appointment or approval of an assessor. See the Rules in Title 15, Chapter 200, concerning proceedings for contempt of court for violation of a court order.

(k) Court Access to Written Report

(1) Generally

Except as otherwise provided by this Rule, the court may receive access to a report by an individual appointed or approved by the court to ~~perform~~ conduct an assessment only if the report has been admitted into evidence at a hearing or trial in the case.

(2) Advance Access to Report by Stipulation of the Parties

Upon consent of the parties, the court may receive and read the assessor's report in advance of the hearing or trial.

(3) Access to Report by Settlement Judge or Magistrate

A judge or magistrate conducting a settlement conference shall have access to the assessor's report.

(l) Discovery

(1) Generally

Except as provided in this section, an individual who ~~performs~~ conducts an assessment under this Rule is subject to the Maryland Rules applicable to discovery in civil actions.

(2) Deposition of Court-Paid Assessor

Unless leave of court is obtained, any deposition of an assessor who is a court employee or is working under contract for the court and paid by the court shall: (A) be held at the courthouse where the action is pending or other court-approved location; (B) take place after the date on which an oral or written report is presented to the parties; and (C) not exceed two hours, with the time to be divided equally between the parties.

(m) Testimony and Report of Assessor at Hearing or Trial

(1) Subpoena for Assessor

A party requesting the presence of the assessor at a hearing or trial shall subpoena the assessor no less than ten days before the hearing or trial.

(2) Admission of Report Into Evidence Without Presence of Assessor

The court may admit an assessor's report into evidence without the presence of the assessor, subject to objections based other than on the presence or absence of the assessor. If

the assessor is present, a party may call the assessor for cross-examination.

Committee note: The admissibility of an assessor's report pursuant to subsection (m)(2) of this Rule does not preclude the court or a party from calling the assessor to testify as a witness at a hearing or trial.

(n) Fees

(1) Applicability

Section (n) of this Rule does not apply to a circuit court for a county in which all custody evaluations are ~~performed~~ conducted by court employees, free of charge to the litigants.

(2) Fee Schedules

Subject to the approval of the Chief Justice of the Supreme Court, the county administrative judge of each circuit court shall develop and adopt maximum fee schedules for custody evaluations. In developing the fee schedules, the county administrative judge shall take into account the availability of qualified individuals willing to provide custody evaluation services and the ability of litigants to pay for those services. A custody evaluator appointed by the court may not charge or accept a fee for custody evaluation services in that action in excess of the fee allowed by the applicable schedule. Violation of this subsection shall be cause for removal of the individual

from all lists maintained pursuant to subsection (e)(1) of this Rule.

(3) Allocation of Fees and Expenses

As permitted by law, the court may order the parties or a party to pay the reasonable and necessary fees and expenses incurred by an individual appointed by the court to ~~perform~~ conduct an assessment in the case. The court may fairly allocate the reasonable and necessary fees of the assessment between or among the parties. In the event of the removal or resignation of an assessor, the court may consider the extent to which any fees already paid to the assessor should be returned.

Source: This Rule is new.

REPORTER'S NOTE

Rule 9-205.3 sets forth the requirements for and procedures associated with the appointment of a custody evaluator in a family law action. The Rules Committee recently received proposed amendments to Rule 9-205.3 from the Domestic Law Committee.

In the 2024 Regular Session of the Maryland legislature, SB 365/HB 405 were introduced. The bills addressed the required qualifications and training for custody evaluators appointed by a court and discussed requirements for the introduction of expert evidence related to alleged abuse by a parent. The Judiciary opposed the bills. After the bills failed, Delegate Charlotte Crutchfield, Chair of the House Judiciary Committee's Family and Juvenile Law Subcommittee, facilitated discussions with the bill sponsors and the Domestic Law Committee's Custody Evaluator Standards & Training Workgroup.

The key issues identified by the bill sponsors included ensuring that custody evaluators receive appropriate training, including training on intimate partner violence, child abuse, and related issues. As a result of the discussions, Delegate Crutchfield's group agreed on proposed amendments to Rule 9-205.3 which were submitted to the Rules Committee by the Domestic Law Committee for consideration.

The proposed amendments were circulated by email to the Family/Domestic Subcommittee of the Rules Committee. After receiving comments concerned that the proposed language was vague, some changes to the proposal were drafted. Overall, the proposed amendments now before the Rules Committee aim to maintain the substance of the amendments submitted by the Domestic Law Committee, while re-working certain language and organization of the Rule for clarity. After reviewing the Rule in its entirety, additional stylistic amendments are also proposed.

A proposed amendment to subsection (c)(2) clarifies that a waiver pursuant to subsection (d)(3) relates solely to the qualifications set forth in subsection (d)(1). In other words, a waiver of qualifications does not include a waiver of the training required by subsection (d)(2).

Amendments are proposed to reorganize subsection (d)(1) for clarity. First, new subsection (d)(1)(A) is created with the language of current subsection (d)(1). The new tagline clarifies that the subsection sets forth the required education and licensing requirements of a custody evaluator. Current subsections (d)(1)(A) through (d)(1)(F) are accordingly re-lettered as subsections (d)(1)(A)(i) through (d)(1)(A)(vi).

A proposed new subsection (d)(1)(B) sets forth the requirement that a custody evaluator comply with all conditions necessary to maintain the evaluator's licensure. This requirement is currently contained in subsection (d)(2) of the Rule, which sets forth the training and experience required "in addition to complying with the continuing requirements of the custody evaluator's field." Because this requirement concerns education and licensing, it has been moved to section (d)(1).

Changes regarding the training of custody evaluators are proposed in subsection (d)(2). First, the current language of subsection (d)(2), with some modifications, is divided into two subsections.

New subsection (d)(2)(A) sets forth the mandatory training requirement for all custody evaluators. A proposed deletion to the current language eliminates the ability of the court to waive the completion of a training program. An additional deletion in the same subsection requires that certain training be completed instead of accepting a commitment to complete the training.

New subsection (d)(2)(B), using modified language from current subsection (d)(2), addresses the experience required to conduct custody evaluations. The current relevant areas of experience are updated with some additions and modifications to language, as well as re-ordering of the topics. For example, "domestic violence" is changed to "domestic and family violence," while "family conflict and dynamics" is changed to "family dynamics and conflict resolution." In addition, new subsection (d)(2)(B)(iv) now requires a custody evaluator to have demonstrated knowledge of trauma and its impact on children and adults. Overall, the listed topics in which an evaluator is required to have knowledge of and experience in applying the best practices are reorganized and the subsections are re-lettered accordingly.

The Domestic Law Committee has advised that meeting the training requirements should not be difficult for those who wish to become qualified to conduct custody evaluations. The Association of Family and Conciliation Courts' program, "Fundamentals of Conducting Parenting Plan Evaluations," conforms with the training guidelines referenced in (d)(2) and is offered online and live for a fee. To help ensure cost is not a barrier, Juvenile & Family Services within the Administrative Office of the Courts will offer free training programs. One program was held in May of 2023, and another will be offered in 2025.

Proposed amendments to subsection (d)(3) modify the ability of a court to waive licensing requirements. The current waiver remains a possibility for court employees and contractors who have been conducting custody evaluations for at least fourteen years prior to January 1, 2025. This provision protects the jobs of and only applies to two Anne Arundel Circuit Court employees who have been conducting custody evaluations for over twenty years. These employees are not exempt from the training requirements, and both attended the May 2023 program hosted by Juvenile & Family Services.

Several stylistic changes are also made throughout the Rule. In subsection (d)(1)(A), a hyphen is added to the phrase "Maryland-licensed." Internal references are also updated in subsections (b)(6) and (d)(1)(A)(v).

The term "perform" is replaced with "conduct" throughout the Rule. Although both terms have been used in model standards relating to custody evaluations, "conduct" appears more frequently. Therefore, proposed amendments update Rule 9-205.3 to use "conduct" in relation to the completion of an assessment or evaluation.

AGENDA ITEM 3

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 100 – GENERAL PROVISION

AMEND Rule 17-105 by adding new section (f), as follows:

Rule 17-105. MEDIATION CONFIDENTIALITY

(a) Mediator

Except as provided in sections (c) and (d) of this Rule, a mediator and any person present or otherwise participating in the mediation at the request of the mediator shall maintain the confidentiality of all mediation communications and may not disclose or be compelled to disclose mediation communications in any judicial, administrative, or other proceeding.

(b) Parties

Except as provided in sections (c) and (d) of this Rule:

(1) a party to a mediation and any person present or who otherwise participates in a mediation at the request of a party may not disclose or be compelled to disclose a mediation communication in any judicial, administrative, or other proceeding; and

(2) the parties may enter into a written agreement to maintain the confidentiality of mediation communications and to require all persons who are present or who otherwise participate in a mediation to join in that agreement.

Cross reference: See Rule 5-408 (a)(3).

(c) Signed Document

A document signed by the parties that records points of agreement expressed and adopted by the parties or that constitutes an agreement reached by the parties as a result of mediation is not confidential, unless the parties agree otherwise in writing.

Cross reference: See Rule 9-205 (h) concerning the submission of a document embodying the points of agreement to the court in a child access case.

(d) Permitted Disclosures

In addition to any disclosures required by law, a mediator, a party, and a person who was present or who otherwise participated in a mediation may disclose or report mediation communications:

(1) to a potential victim or to the appropriate authorities to the extent they reasonably believe necessary to help prevent serious bodily harm or death to the potential victim;

(2) when relevant to the assertion of or defense against allegations of mediator misconduct or negligence; or

(3) when relevant to a claim or defense that an agreement arising out of a mediation should be rescinded because of fraud, duress, or misrepresentation.

Cross reference: For the legal requirement to report suspected acts of child abuse, see Code, Family Law Article, § 5-705.

(e) Discovery; Admissibility of Information

Mediation communications that are confidential under this Rule are not subject to discovery, but information that is otherwise admissible or subject to

discovery does not become inadmissible or protected from disclosure solely by reason of its use in mediation.

Cross reference: See Rule 5-408 (b). See also Code, Courts Article, Title 3, Subtitle 18, which does not apply to mediations to which the Rules in Title 17 apply.

(f) Screening; Confidentiality

Except as provided in section (d) of this Rule and subject to the provisions of section (b) of this Rule pertaining to parties, all documents, records, and statements containing mediation communication made by, for, or at the request of the court to assist with a determination of whether to order or refer a matter to mediation shall be confidential, and any person privy to the mediation communications shall maintain the confidentiality of all mediation communications and may not disclose or be compelled to disclose the mediation communication in any judicial, administrative, or other proceeding.

Source: This Rule is derived from former Rule 17-109 (2012). Section (f) is new.

REPORTER'S NOTE

Juvenile & Family Services in the Administrative Office of the Courts referred to the Rules Committee recently a request for clarification in the Rules regarding the confidentiality of screening tools and processes used by courts to determine if certain matters should be referred to mediation.

The issue arose in the context of Rule 9-205, which requires the court to "determine whether mediation of the dispute… is appropriate and likely would be beneficial to the parties or the child." Subsection (b)(2) states that a court "may not" order mediation in a child custody and visitation matter "if a party or a child represents to the court in good faith that there is a genuine issue of

abuse of the party or child or coercive control of a party and that, as a result, mediation would be inappropriate."

The Alternative Dispute Resolution (ADR) Subcommittee was informed that screening for abuse or coercive control is handled differently in each jurisdiction. Some courts conduct an interview, others do a "paper screening" that looks for past protective orders between the parties. While the screening process is not new, there is a pilot program currently expanding to utilize a standardized screening tool, the Mediator's Assessment of Safety Issues and Concerns-Short ("MASIC-S"). The screener asks a series of questions of the party and inputs the answers into the MASIC-S tool. At the conclusion of the screening, a recommendation form is uploaded into MDEC indicating whether the case is appropriate for mediation, is not appropriate, or may be appropriate.

The ADR Subcommittee was informed that when courts begin using the MASIC-S tool, the screening process looks different from the perspective of parties and their attorneys. As a result, some attorneys have asked questions about confidentiality and the screening process. Juvenile & Family Services, in consultation with the Judicial Council's ADR Committee, proposed clarifying in the Rules that screening communications are confidential.

Rule 17-102 (h) defines "mediation communication" to include "a communication made for the purpose of considering, initiating, continuing, reconvening, or evaluating a mediation or a mediator." The definition was proposed in substantially the form it exists today following a 1999 report by the Maryland Alternative Dispute Resolution Commission. The report recommended the definition in tandem with a proposed confidentiality Rule intended to make all mediation communications confidential, subject to some exceptions. The circumstances of the proposal of the definition and its inclusion of "communication made for the purpose of considering [or] initiating … a mediation" strongly indicate that mediation screening conversations have always been intended to be subject to the same confidentiality provisions as statements made during the mediation itself.

Rule 17-105, made applicable to custody and visitation mediation by Rule 9-205 (f), generally governs mediation confidentiality and imposes broad confidentiality requirements on mediators, individuals present or participating in the mediation at the mediator's request, and the parties. Though Rule 17-105 does not explicitly address confidentiality of mediation screening tools, the inclusion of "communication made for the purpose of considering... a mediation" in the definition of "mediation communication" suggests that these

communications should be subject to the same confidentiality policy. Juvenile & Family Services reports that there is confusion in at least one jurisdiction regarding the confidentiality of screening tools and conversations used solely for the purpose of screening cases for mediation.

A proposed amendment to Rule 17-105 adds new section (f), which generally states that documents, records, and statements used to screen cases for mediation that contain mediation communication are confidential and no person can be compelled to disclose the mediation communication. This provision is subject to the provisions of section (b) governing parties, which are slightly less strict because they only restrict parties' ability to disclose details of a mediation in court, not in their personal lives generally.

AGENDA ITEM 4

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 300 – GENERAL PROVISIONS

AMEND Rule 1-332 by retitling the Rule "Reasonable Accommodations for Persons with Disabilities"; by re-titling section (a) as "Application" and adding a statement of applicability; by adding new section letter (b) before "Definitions"; by adding new subsection (b)(2) defining "Person with a Disability" with a cross reference; by adding new subsection (b)(3) defining "Reasonable Accommodation"; by re-numbering current subsection (a)(2) as (b)(4); by re-lettering current section (b) as section (c) and by changing the title to "Request for Reasonable Accommodation"; by deleting the title of current subsection (b)(1) and replacing it with "Generally"; by clarifying in re-lettered subsection (c)(1) who may request a reasonable accommodation; by adding a Committee note following re-lettered subsection (c)(1); by adding new subsection (c)(2) containing provisions from current subsection (b)(1), with amendments; by adding a Committee note after new subsection (c)(2); by adding new section (d) governing the procedure when a reasonable accommodation is requested; by adding new subsection (d)(1) and a Committee note pertaining to the authority to make an accommodation determination; by adding new subsection (d)(2) and a Committee note pertaining to the interactive process; by adding new subsection (d)(3) and a Committee note pertaining to the factors for consideration; by re-lettering current subsection (b)(2) as new

subsection (d)(4); by modifying the tagline of new subsection (d)(4); by adding a provision to new subsection (d)(4) referring to compliance with Rule 1-333 (d); by deleting current subsection (b)(3); by adding new subsection (d)(5) pertaining to notice of the court's determination; by adding new section (e) requiring publication of data on accommodation requests; and by making stylistic changes, as follows:

Rule 1-332. ~~ACCOMMODATION UNDER THE AMERICANS WITH DISABILITIES ACT~~ REASONABLE ACCOMMODATIONS FOR PERSONS WITH DISABILITIES

(a) Application

This Rule applies to accommodations for persons with disabilities.

(b) Definitions

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

(1) ADA

"ADA" means the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.*

(2) Person with a Disability

"Person with a disability" means an individual with a disability who meets the essential eligibility requirements for the receipt of services or the participation in court services, programs, or activities, with or without

reasonable modifications to policies, practices, or procedures, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services.

Cross reference: See 42 U.S.C. § 12131.

(3) Reasonable Accommodation

"Reasonable accommodation" means a measure necessary to provide a person with a disability the opportunity to access a court service, program, or activity in a manner consistent with State and federal law. A reasonable accommodation may include:

(A) a reasonable modification in policy, practice, or procedure;

(B) a reasonable modification to a deadline or time limit that Rule 1-204 permits to be modified but that does not alter a statutory deadline or a statute of limitations;

(C) remote participation by a party or witness in accordance with Title 21 of these Rules;

(D) an auxiliary aid or service other than personal device, including equipment, that is made available without charge; and

Committee note: An auxiliary aid or service may include a qualified interpreter or other effective method of making aurally delivered materials available to an individual who is deaf or hard of hearing; a qualified reader, taped text, or another effective method of making visually delivered materials available to an individual who is blind or has low vision; acquisition or modification of equipment or devices; and other similar services and actions. See 42 U.S.C. § 12103, 28 C.F.R. § 35.104, and 28 C.F.R. § 35.160.

(E) recognizing a supported decision-making arrangement entered pursuant to Code, Estates and Trusts Article, Title 18.

~~(2)~~(4) Victim

"Victim" includes a victim's representative as defined in Code, Criminal Procedure Article, § 11-104.

~~(b)~~(c) ~~Accommodation Under the ADA~~ Request for Reasonable Accommodation

(1) ~~Notification of Need for Accommodation~~ Generally

~~A person~~ An attorney, party, witness, victim, juror, prospective juror, or member of the public requesting ~~an~~ a reasonable accommodation under the ADA or other applicable Maryland or federal law ~~for an attorney, a party, a witness, a victim, a juror, or a prospective juror~~ promptly shall notify the court of the request.

Committee note: An individual authorized to act on behalf of the person with a disability or with the permission of the person with a disability may request an accommodation.

(2) Submission

To the extent practicable, a request for ~~an~~ a reasonable accommodation shall be ~~(1)~~(A) presented on a form approved by ~~administrative order of the Supreme Court~~ the State Court Administrator, posted on the Judiciary website, and available from the clerk of the court ~~and on the Judiciary website~~ and ~~(2)~~(B) submitted to the court not less than 30 days before the proceeding for which the accommodation is requested. The request should include a case

number, if applicable, but need not be filed in a particular action or served on any other party.

Committee note: The Rule does not impose a strict 30-day filing deadline and recognizes that advance notice is not always practicable for all requests for accommodation. Reasonable advance notice is required to the extent feasible so that a court or staff can implement reasonable accommodations. Insufficient advance notice may prevent the provision of a reasonable accommodation.

(d) Determination of Request

(1) Authority to Determine

The court shall consider a reasonable accommodation request that pertains to a motion before the court, the rescheduling of a case, or any other matter that involves the administration of court proceedings or the substantive rights of litigants. The court may approve the requested accommodation, deny the requested accommodation, or offer an alternative accommodation. The court may designate the ADA coordinator to consider and determine other requests.

Committee note: Accommodation requests that may be considered and determined administratively include requests that involve facilities, furniture, and other accommodations that can be provided that do not involve substantive issues or affect court procedure.

(2) Interactive Process

The court or designated ADA coordinator shall review the request and, if appropriate, engage the requestor in an interactive process to determine a reasonable accommodation.

Cross reference: See *In the Matter of Chavis*, 486 Md. 247 (2023), pertaining to procedures and standards for evaluating a request for reasonable accommodations under the ADA.

(3) Factors – Generally

In determining what, if any, accommodation to grant, the court or the ADR coordinator shall:

(A) consider (i) the provisions of the ADA and applicable Federal regulations adopted under the ADA; (ii) Code, State Government Article, §§ 20-304 and 20-901; (iii) Code, Courts Article, § 9-114; (iv) Code, Criminal Procedure Article, §§ 1-202 and 3-103; and (v) other applicable Maryland and federal law;

(B) give primary consideration to the accommodation requested;

(C) consider whether an accommodation would result in (i) a fundamental alteration of the nature of a court service, program, or activity or (ii) an undue financial and administrative burden; and

(D) make the determination on an individual and case-specific basis, with due regard to the nature of the disability and the feasibility of the requested accommodation.

Committee note: In considering reasonable accommodations for a person with a disability, the primary focus is on providing accommodations that enable the individual to participate in or qualify for a program, service, or activity. The focus must not be on the extent of the individual's impairment.

~~(2)~~(4) Request for Sign Language Interpreter

~~The~~ If the accommodation requested is the provision of a sign language interpreter, the court shall determine whether a sign language interpreter is needed in accordance with the requirements of the ADA; Code, Courts Article, §

9-114; and Code, Criminal Procedure Article, §§ 1-202 and 3-103. If the request is granted, the court shall appoint a sign language interpreter in accordance with Rule 1-333 (c).

~~(3) Provision of Accommodation~~

~~The court shall provide an accommodation if one is required under the ADA. If the accommodation is the provision of a sign language interpreter, the court shall appoint one in accordance with Rule 1-333 (c).~~

(5) Notification of Determination

The court or ADA coordinator promptly shall notify the requestor of its accommodation determination. If a requested accommodation is denied, the court or ADR coordinator shall specify the reason for the denial.

(e) Publication of Data on Accommodation Requests

Each court shall submit an annual report to the State Court Administrator, without identifying information and in a manner that protects the identities of those requesting accommodations, containing (1) data on the number and types of reasonable accommodation requests submitted, (2) the types of accommodations granted, and (3) the number of reasonable accommodation requests denied. The State Court Administrator shall publish a compilation of the data on the Judiciary website.

Source: This Rule is new.

REPORTER'S NOTE

Proposed amendments to Rule 1-332 update and clarify the procedures for requesting, considering, and providing reasonable accommodations to individuals with disabilities seeking to access Maryland courts. The Supreme Court considered proposed amendments to Rule 1-332 at an open meeting on the 221st Report on March 19, 2024. After discussion, the Court remanded the Rule to the Committee for further study. The Court instructed the Committee to ensure that the language in the proposed Rule is consistent with the Americans with Disabilities Act ("the ADA") and provides at least the same minimum protections.

The General Court Administration Subcommittee discussed a proposed draft in response to the remand at its June 14, 2024 meeting. After considering the comments made by consultants, the Subcommittee referred the Rule to an informal drafting group consisting of local and national ADA experts and representatives from the Maryland Judicial Council Court Access Committee. Committee staff worked with subject matter experts over the summer and the resulting draft generally reflects the consensus among these experts as well as internal stakeholders. The General Court Administration Subcommittee met again on December 18, 2024 and considered proposed amendments recommended by the drafting group.

The Rule is proposed to be renamed to address accommodations more broadly for persons with disabilities instead of only accommodations under the ADA. New section (a) addresses the broader application.

Several definitions are added to new section (b). "Person with a disability" is defined in new subsection (b)(2). The reworked definition is derived from the ADA (42 U.S.C. § 12131). The ADA uses the term "qualified person with a disability," but the drafting group suggested avoiding using the term "qualified" as it may lead to confusion. The Subcommittee discussed the necessity and clarity of the definition, concluding that it is helpful to set forth to whom the Rule applies. The Subcommittee was informed that an individual may have a disability but not require any accommodation to access the courts. Conversely, there may be individuals who cannot be accommodated due to the various provisions of the ADA that rule out accommodations that would impose a substantial burden on the court. The definition narrows the applicability of the Rule to individuals who require accommodations and who can be accommodated.

The proposed definition for "reasonable accommodation" in new subsection (b)(3) is similar to the definition of "accommodation" proposed in the 221st Report, with some changes. "Reasonable accommodation" is a term used throughout the ADA and more accurately reflects the Act's requirements as an entity is only required to make accommodations that are reasonable, meaning consistent with State and federal law. The drafting group suggested the expansion of the Committee note following the subsection on auxiliary aids and

services to provide guidance on types of auxiliary aids and services, derived in part from 42 U.S.C. § 12103. Statutory references are included in the Committee note. A new subsection (b)(3)(E) pertaining to supported decision-making arrangements was also suggested by the drafting group.

Section (c) governs the request for a reasonable accommodation. The drafting group discussed how to permit a third party to make a request on behalf of a person with a disability without encouraging unwanted intervention, which undercuts the autonomy of the person with the disability. The group ultimately recommended the addition of a provision that notice may come from another individual authorized to act on that individual's behalf. This is reflected in the Committee note. The drafting group also suggested clarifying that the request does not have to be filed in an action or served on any party. The Committee note following subsection (c)(2) is rephrased from the way it was presented in the 221st Report to clarify that an accommodation request is allowed to be made less than 30 days before the proceeding but cautions that insufficient notice may prevent the accommodation being provided.

Section (d) is significantly restructured from its 221st Report version. Subsection (d)(1) sets forth the accommodation requests that must be considered by a judge in contrast to accommodations that may be determined by the designated ADA coordinator. Subsection (d)(2) adds the concept of an interactive process. The drafting group advised that the prior proposed language implied that the person with a disability made an accommodation request and the court or ADA coordinator granted or denied that request. In practice, if the request for accommodation cannot be granted, the court should engage in a dialogue with the requester to consider alternatives. A cross reference to a recent case on the procedures and standards for evaluating a request for reasonable accommodations provides additional guidance. The factors in subsection (d)(3) are modified from the 221st version to correct citations and make stylistic changes. They are derived from State and federal laws and regulations.

New section (e) establishes certain reporting requirements regarding requests for reasonable accommodations and the accommodations granted and denied.

AGENDA ITEM 5

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 300 – GENERAL PROVISIONS

AMEND Rule 1-325 by adding "Request for Court Waiver of Open Costs" to the tagline of section (d); by adding new subsection (d)(1) containing the existing provisions of section (d); by re-lettering current subsections (d)(1) and (d)(2) as (d)(1)(A) and (d)(2)(B), respectively; by re-lettering current subsections (d)(1)(A) and (d)(1)(B) as (d)(1)(A)(i) and (d)(1)(A)(ii), respectively; by re-lettering current subsections (d)(1)(A)(i) through (d)(1)(A)(iii) as (d)(1)(A)(i)(a) through (d)(1)(A)(i)(c), respectively; by adding new subsection (d)(2) governing a request for waiver of open costs; by adding a reference to new subsection (d)(2) to subsections (f)(2)(A) and (f)(2)(B); by updating the affidavit requirement in subsection (f)(2)(B); and by making stylistic changes, as follows:

Rule 1-325. WAIVER OF COSTS DUE TO INDIGENCE – GENERALLY

(a) Scope

This Rule applies only to (1) original civil actions in a circuit court or the District Court and (2) requests for relief that are civil in nature filed in a criminal action.

Committee note: Original civil actions in a circuit court include actions governed by the Rules in Title 7, Chapter 200, 300, and 400. Requests for relief that are civil in nature filed in a criminal action include petitions for expungement and requests to shield all or part of a record.

(b) Definition

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

Committee note: "Prepaid costs" may include a fee to file an initial complaint or a motion to reopen a case, a fee for entry of the appearance of an attorney, and any prepaid compensation, fee, or expense of a magistrate or examiner. See Rules 1-501, 2-541, 2-542, 2-603, and 9-208.

(c) No Fee for Filing Request

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

(d) Waiver of Prepaid Costs by Clerk; Request for Court Waiver of Open Costs

(1) Prepaid Costs

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

~~(1)~~(A) the party is an individual who is represented ~~(A)~~(i) by an attorney retained through a pro bono or legal services program on a list of programs serving low income individuals that is submitted by the Maryland Legal Services Corporation to the State Court Administrator and posted on the Judiciary website, provided that an authorized agent of the program provides the clerk with a statement that ~~(i)~~(a) names the program, attorney, and party; ~~(ii)~~(b) states that the attorney is associated with the program and the party meets the financial eligibility criteria of the Corporation; and ~~(iii)~~(c) attests that

the payment of filing fees is not subject to Code, Courts Article, § 5-1002 (the Prisoner Litigation Act), or ~~(B)~~(ii) by an attorney provided by the Maryland Legal Aid Bureau, Inc. or the Office of the Public Defender, and

~~(2)~~(B) except for an attorney employed or appointed by the Office of the Public Defender in a civil action in which that Office is required by statute to represent the party, the attorney certifies that, to the best of the attorney's knowledge, information, and belief, there is good ground to support the claim, application, or request for process and it is not interposed for any improper purpose or delay.

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

Cross reference: See Rule 1-311 (b) and Rule 19-303.1 (3.1) of the Maryland Attorneys' Rules of Professional Conduct.

(2) Request for Waiver of Open Costs at Conclusion of Action

A request under subsection (d)(1) of this Rule may include a request for final waiver of open costs by the court at the conclusion of the action. The request for final waiver of open costs shall include the attorney's certification that the attorney's client signed an affidavit stating that the client does not anticipate a material change in the financial information contained in the client's application for representation. The court shall consider the request at the conclusion of the action in accordance with section (f) of this Rule.

(e) Waiver of Costs by Court

(1) Prepaid Costs

(A) Request for Waiver

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

Cross reference: See Rule 1-311 (b) and Rule 19-303.1 (3.1) of the Maryland Attorneys' Rules of Professional Conduct.

(B) Review by Court; Factors to be Considered

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

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

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

(C) Order; Payment of Unwaived Prepaid Costs

If the court finds that the party is unable by reason of poverty to pay the prepaid cost and that the pleading or paper sought to be filed does not appear, on its face, to be frivolous, it shall enter an order waiving prepayment of the prepaid cost. In its order, the court shall state the basis for granting or denying the request for waiver. If the court denies, in whole or in part, a request for the waiver of its prepaid costs, it shall permit the party, within 10 days, to pay the unwaived prepaid cost. If, within that time, the party pays the full amount of the unwaived prepaid costs, the pleading or paper shall be deemed to have been filed on the date the request for waiver was filed. If the unwaived prepaid costs are not paid in full within the time allowed, the pleading or paper shall be deemed to have been withdrawn.

(2) Request for Waiver of Open Costs at Conclusion of Action

A request under subsection (e)(1) of this Rule may include a request for final waiver of open costs at the conclusion of the action. The request shall indicate in the affidavit required by subsection (e)(1) of this Rule that the individual does not anticipate a material change in the information provided in the affidavit. The court shall consider the request at the conclusion of the action in accordance with section (f) of this Rule.

(f) Award of Costs at Conclusion of Action

(1) Generally

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

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

(2) Waiver

(A) Request

At the conclusion of an action, a party who otherwise did not request a final waiver of open costs pursuant to subsection (d)(2) or (e)(2) of this Rule may seek a final waiver of open costs, including any unpaid appearance fee, by filing a request for the waiver, together with (i) an affidavit substantially in the form prescribed by subsection (e)(1)(B) of this Rule, or (ii) if the party was granted a waiver of prepayment of prepaid costs by court order pursuant to section (e) of this Rule and remains unable to pay the costs, an affidavit that recites the existence of the prior waiver and the party's continued inability to pay by reason of poverty.

(B) Determination by Court

In an action under Title 9, Chapter 200 of these Rules or Title 10 of these Rules, the court shall grant a final waiver of open costs if the requirements of Rules 2-603 (e) or 10-107 (b), as applicable, are met. In all other civil matters, the court may grant a final waiver of open costs if the party against whom the costs are assessed is unable to pay them by reason of poverty. The court may require a party who requested a final waiver of open costs pursuant to subsection (d)(2) or (e)(2) of this Rule to file ~~the supplemental affidavit required by subsection (f)(2)(A)(ii) of this Rule~~ an affidavit stating that

the party (i) was granted a prior waiver of prepaid costs in the action pursuant to this Rule and (ii) remains unable to pay the costs by reason of poverty.

Source: This Rule is new.

REPORTER'S NOTE

The Supreme Court considered proposed amendments to Rule 1-325 at an open meeting on the 223rd Report on October 9, 2024. After discussion, the Court adopted the proposed amendments, which generally allow for a self-represented litigant to file one request for both a waiver of prepaid costs and final waiver of open costs.

The Court received a supportive comment on the amendments from Maryland Legal Aid (see attached) but the comment also requested that the proposed change be expanded to apply to waiver requests from parties represented by qualified legal services organizations, such as Legal Aid. The Court chose to enact the proposed amendments to Rule 1-325 as presented and referred to the Committee the matter of expanding the applicability of the new provisions.

Proposed amendments to Rule 1-325 extend the "one waiver request" process to parties who are represented by qualified attorneys or legal service organizations.

New subsection (d)(1) contains the current provisions of section (d) governing waiver of prepaid costs. Subsections within new subsection (d)(1) are adjusted.

New subsection (d)(2) permits a request for a waiver of prepaid costs to include a request for final waiver of open costs. The request must include a certification by the attorney that the client has averred that the client does not anticipate a material change in the financial information provided to qualify for representation by a Maryland Legal Services Corporation program. Subsection (d)(2) instructs the court to consider the request for final waiver of open costs at the conclusion of the action in accordance with section (f).

Subsection (f)(2) is amended to add references to a waiver requested pursuant to subsection (d)(2). Subsection (f)(2)(B) is amended to delete reference to the supplemental affidavit required by subsection (f)(2)(A)(ii) and instead restates the required substance of the affidavit ("that the party (i) was granted a prior waiver of prepaid costs in the action pursuant to this Rule and (ii) remains unable to pay the costs by reason of poverty"). The Subcommittee

was informed that service providers like Legal Aid conduct a detailed review of the income and assets of potential clients to determine their eligibility. These reviews are done periodically during representation to ensure that clients maintain their eligibility. Legal Aid requested that the supplemental affidavit provision in subsection (f)(2) be stricken in light of the review process. The Subcommittee acknowledged that judges are likely going to defer to the legal service provider's presence in the case as affirmation of indigency but determined that judges should retain discretion.

AGENDA ITEM 6

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-106 by deleting a portion of current subsection (a)(3)(A) and replacing it with a statement pertaining to filing by a self-represented litigant; by creating new subsection (a)(3)(B) containing a portion of current subsection (a)(3)(A), with amendments; by adding new subsection (a)(3)(C) pertaining to the administrative judge's authority to permit a self-represented litigant to change how the litigant files; by re-lettering current subsection (a)(3)(B) as (a)(3)(D); and by making stylistic changes, as follows:

RULE 20-106. WHEN ELECTRONIC FILING REQUIRED; EXCEPTIONS

(a) Filers – Generally

(1) Attorneys

Except as otherwise provided in section (b) of this Rule, an attorney who enters an appearance in an action shall file electronically the attorney's entry of appearance and all subsequent submissions in the action.

(2) Judges, Judicial Appointees, Clerks, and Judicial Personnel

Except as otherwise provided in section (b) of this Rule, judges, judicial appointees, clerks, and judicial personnel, shall file electronically all submissions in an action.

(3) Self-represented Litigants

(A) ~~Except as otherwise provided in section (b) of this Rule,~~ A self-represented litigant who is a registered user may elect to file electronically or in paper form.

(B) Subject to section (b) of this Rule, a self-represented litigant in an action who is a registered user and who files an initial pleading or paper electronically shall file electronically all subsequent submissions in the action. A self-represented litigant who files an initial pleading or paper in paper form shall file in paper form all subsequent submissions in the action.

(C) For good cause shown, the administrative judge having direct administrative supervision over the court in which an action is pending may permit a self-represented litigant to change how the litigant files in the action.

~~(B)~~ (D) A self-represented litigant in an action who is not a registered user may not file submissions electronically.

(4) Other Persons

Except as otherwise provided in the Rules in this Title, a registered user who is required or permitted to file a submission in an action shall file the submission electronically. A person who is not a registered user shall file a submission in paper form.

Committee note: Examples of persons included under subsection (a)(4) of this Rule are government agencies or other persons who are not parties to the action but are required or permitted by law or court order to file a record, report, or other submission with the court in the action and a person filing a motion to intervene in an action.

(b) Exceptions

(1) MDEC System Outage

Registered users, judges, judicial appointees, clerks, and judicial personnel are excused from the requirement of filing submissions electronically during an MDEC system outage in accordance with Rule 20-501.

(2) Other Unexpected Event

If an unexpected event other than an MDEC system outage prevents a registered user, judge, judicial appointee, clerk, or judicial personnel from filing submissions electronically, the registered user, judge, judicial appointee, clerk, or judicial personnel may file submissions in paper form until the ability to file electronically is restored. With each submission filed in paper form, a registered user shall submit to the clerk an affidavit describing the event that prevents the registered user from filing the submission electronically and when, to the registered user's best knowledge, information, and belief, the ability to file electronically will be restored.

Committee note: This subsection is intended to apply to events such as an unexpected loss of power, a computer failure, or other unexpected event that prevents the filer from using the equipment necessary to effect an electronic filing.

(3) Other Good Cause

For other good cause shown, the administrative judge having direct administrative supervision over the court in which an action is pending may permit a registered user, on a temporary basis, to file submissions in paper form. Satisfactory proof that, due to circumstances beyond the registered

user's control, the registered user is temporarily unable to file submissions electronically shall constitute good cause.

. . .

REPORTER'S NOTE

Proposed amendments to Rule 20-106 were recommended by the Major Projects Committee (MPC) to clarify requirements for self-represented litigants (SRLs) who register to use MDEC. Rule 20-106 requires attorneys as well as judges, judicial appointees, and judicial personnel to file electronically, with limited exceptions for an MDEC outage or another unexpected event. SRLs are the only filers still permitted to file in paper form, but they may also register for MDEC and file electronically.

Rule 20-106 currently provides that an SRL who is a registered MDEC user must file all submissions in an action electronically. The MPC was alerted to a situation where an SRL who is a registered user wished to file a case in paper form. The Rule does not include a provision for a registered user to "unregister" or opt out of being a registered user. The MPC recommended to the General Court Administration Subcommittee permitting an SRL to file either electronically or in paper form in each action, but requiring the SRL to continue to use the same filing method in each action.

Proposed amendments to Rule 20-106 (a)(3) implement the MPC recommendation. Subsection (a)(3)(A) is amended to state that an SRL who is a registered user may file either electronically or in paper. New subsection (a)(3)(B) modifies the current provisions of the Rule to require the SRL to continue filing in the chosen format for all subsequent submissions. New subsection (a)(3)(C) permits the administrative judge, for good cause shown, to allow the SRL to change how the SRL files in an action.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 200 – FILING AND SERVICE

AMEND Rule 20-205 by adding to subsection (d)(1) a requirement that the filer cause MDEC to electronically serve submissions not served by the clerk, by adding a cross reference to Rules pertaining to service requirements in the event of an MDEC system outage, and by making stylistic changes, as follows:

Rule 20-205. SERVICE

(a) Original Process

Service of original process shall be made in accordance with the applicable procedures established by the other Titles of the Maryland Rules.

(b) Subpoenas

Service of a subpoena shall be made in accordance with the applicable procedures established by the other Titles of the Maryland Rules.

(c) Court Orders and Communications

The clerk is responsible for serving writs, notices, official communications, court orders, and other dispositions, in the manner set forth in Rule 1-321, on ~~persons~~ each person entitled to receive service of the submission who (A) ~~are~~ is a registered ~~users~~ user, (B) ~~are~~ is a registered ~~users~~ user but ~~have~~ has not entered an appearance in the MDEC action, and (C) ~~are~~

~~persons~~ is a person otherwise entitled to receive service of copies of tangible items that are in paper form.

(d) Other Electronically Filed Submissions

(1) Except as provided by subsection (d)(2) of this Rule, (A) the filer is responsible for causing the MDEC system to electronically serve all other submissions, and (B) ~~On~~ on the effective date of filing, the MDEC system shall electronically serve ~~on~~ each registered ~~users~~ user entitled to service ~~all other submissions filed electronically~~.

Cross reference: For the effective date of filing, see Rule 20-202.

(2) The filer is responsible for serving, in the manner set forth in Rule 1-321, ~~persons~~ each person entitled to receive service of the submission who (A) ~~are~~ is a registered ~~users~~ user, (B) ~~are~~ is a registered ~~users~~ user but ~~have~~ has not entered an appearance in the MDEC action, and (C) ~~are persons~~ is a person otherwise entitled to receive service of copies of tangible items that are in paper form.

Committee note: Rule 1-203 (c), which adds three days to certain prescribed periods after service by mail, does not apply when service is made by the MDEC system.

Cross reference: See Rule 20-106 (b)(1) and Rule 20-501 concerning service requirements in the event of an MDEC system outage.

Source: This Rule is new.

REPORTER'S NOTE

Proposed amendments to Rule 20-205 clarify electronic service requirements in MDEC. The General Court Administration Subcommittee discussed an apparent gap in the MDEC Rules regarding service of electronic submissions.

Rule 20-205 (d) sets forth that "the MDEC system shall electronically serve" registered users entitled to service with all electronically filed submissions that are not court orders and communications served by the clerk pursuant to section (c). The Subcommittee was informed that some users neglect to properly electronically serve submissions and the Rules do not expressly require the filer to instruct MDEC to conduct electronic service. This has the possibility to be a point of confusion, particularly with self-represented litigants using MDEC. The Subcommittee recommends a clarifying amendment to subsection (d)(1) stating that the filer is responsible for causing MDEC to electronically serve submissions.

Stylistic amendments to sections (c) and (d) change "persons" and "users" to the singular "person" and "user."

AGENDA ITEM 7

MARYLAND RULES OF PROCEDURE

TITLE 5 – EVIDENCE

CHAPTER 600 – WITNESSES

AMEND Rule 5-606 by adding new subsection (b)(2) concerning a *Peña-Rodriguez* exception, by adding a cross reference after new subsection (b)(2), and by renumbering subsequent subsections, as follows:

Rule 5-606. COMPETENCY OF JUROR AS WITNESS

(a) At the Trial

A member of a jury may not testify as a witness before that jury in the trial of the case in which the sworn juror is sitting. If the sworn juror is called to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.

(b) Inquiry Into Validity of Verdict

(1) In any inquiry into the validity of a verdict, a sworn juror may not testify as to (A) any matter or statement occurring during the course of the jury's deliberations, (B) the effect of anything upon that or any other sworn juror's mind or emotions as influencing the sworn juror to assent or dissent from the verdict, or (C) the sworn juror's mental processes in connection with the verdict.

(2) In any inquiry into the validity of a verdict, a sworn juror may testify as to a clear statement made by a juror indicating that the juror relied on a

stereotype or animus based on race**[**, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation**]** to convict a criminal defendant.

Cross reference: See *Peña–Rodriguez v. Colorado*, 580 U.S. 206 (2017).

~~(2)~~(3) A sworn juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying may not be received for these purposes.

~~(3)~~(4) Notes made under Rule 2-521 (a) or Rule 4-326 (a) may not be used to impeach a verdict.

(c) "Verdict" Defined

For purposes of this Rule, "verdict" means a verdict returned by a trial jury.

Committee note: This Rule does not address or affect the secrecy of grand jury proceedings.

Source: This Rule is derived in part from F.R.Ev. 606.

REPORTER'S NOTE

In March 2023, the Judicial Council approved for dissemination the Report and Recommendations of the Committee on Equal Justice Rules Review Subcommittee (hereinafter "the EJC Report"). The Criminal Rules Subcommittee recently reviewed a recommendation from the EJC Report concerning *Peña–Rodriguez v. Colorado*, 580 U.S. 206, 225 (2017) and the impact of racial biases on verdicts.

Current Rule 5-606 addresses the competency of a juror as a witness. Subsection (b)(1) states, "In any inquiry into the validity of a verdict, a sworn juror may not testify as to (A) any matter or statement occurring during the course of the jury's deliberations, (B) the effect of anything upon that or any

other sworn juror's mind or emotions as influencing the sworn juror to assent or dissent from the verdict, or (C) the sworn juror's mental processes in connection with the verdict." Rule 5-606 (b)(3) further provides that "[n]otes made under Rule 2-521 (a) or Rule 4-326 (a) may not be used to impeach a verdict." Rule 2-521 (a) requires the prompt destruction of a juror's notes after a civil trial.

Despite the prohibition against revealing certain aspects of a jury's deliberation, the Supreme Court of the United States has held that this prohibition may yield to the Sixth Amendment right of a defendant to a fair trial. In *Peña-Rodriguez v. Colorado*, 580 U.S. 206 (2017), the defendant was convicted by a jury of unlawful sexual contact and harassment. After the trial, two jurors spoke with defendant's counsel and indicated that "another juror had expressed anti-Hispanic bias toward [the defendant] and [the defendant's alibi witness]" by making a number of biased statements in the presence of other jurors. *Id.* at 212. After the Colorado Supreme Court affirmed the defendant's conviction, finding no basis to permit impeachment of the verdicts, the United States Supreme Court reversed and remanded, holding:

> [W]here a juror makes a clear statement that indicates he or she relied on racial stereotypes or animus to convict a criminal defendant, the Sixth Amendment requires that the no-impeachment rule give way in order to permit the trial court to consider the evidence of the juror's statement and any resulting denial of the jury trial guarantee. *Id.* at 225.

Maryland has acknowledged the *Peña-Rodriguez* holding in subsequent opinions. In *Williams v. State*, 478 Md. 99 (2022), the defendant argued that the trial court permitted legally inconsistent verdicts. *Id.* at 114. Upon a juror's request, Defendant's counsel met with the juror after trial and submitted an affidavit to the court indicating that the jury instructions were misinterpreted by the jury. *Id.* On appeal, the Supreme Court of Maryland held:

> [W]e conclude that the circuit court correctly granted the motion to strike statements by jurors referenced in the motion for a new trial and that the circuit court did not abuse its discretion in denying the motion for a new trial. The information obtained from jurors after the verdict that Williams's counsel proffered on the last day of the trial and the averments in the affidavit accompanying the motion for a new trial purported to be statements by jurors about discussions that occurred during the jury's deliberations and the jurors' thought processes during deliberations. None of the information attributed to the jurors involved allegations of racial bias or discrimination or the existence of external influences on the jury. *Id.* at 137.

The Court further explained, "To date, Maryland appellate courts have not deviated from the no-impeachment rule — *i.e.*, neither this Court nor the [former] Court of Special Appeals has recognized an exception to the no impeachment rule under Maryland law." *Id.* at 138. In this manner, the Supreme Court of Maryland recently declined to extend the *Peña-Rodriguez* exception.

Although the *Peña-Rodriguez* exception has been recognized by the U.S. Supreme Court as an appropriate reason to invade the province of the jury, locating clear evidence of the racial animus of a juror may prove challenging. The EJC Report highlights a proposal to retain jurors' notes to assist defendants in determining whether racial bias impacted the verdict in their trial. The EJC Report discusses this proposal, but refrains from recommending or declining the proposed change. The EJC Report acknowledges that "[t]he rare, but not non-existent, chance of finding a 'clear statement' of racial animus in a juror's notebook should be weighed against the chilling effects of making such notes a public record."

In summary, the EJC Report included the following recommendation for the Committee: "The Rules Committee may wish to examine the benefits and drawbacks of adding a *Peña-Rodriguez* exception to Rules 4-326 and 5-606." To address this recommendation of the EJC Report, the Criminal Rules Subcommittee considered two possible changes: (1) permitting inspection of jurors' notes in certain circumstances and (2) adding a *Peña–Rodriguez* exception to the Rules.

In regard to permitting inspection of jurors' notes, the petitioners in *Peña-Rodriguez* and *Williams* sought to introduce statements of jurors through testimony or affidavits. The cited cases did not concern requests to view a juror's notes or allegations that a juror's notes would reveal bias.

The American Bar Association has published Principles for Juries and Jury Trials, revised in 2016. In regard to notetaking, Principle 13 states that jurors should be permitted to take notes and provides: "Jurors should be instructed at the beginning of the trial that they are permitted, but not required, to take notes… Jurors should also be instructed that after they have reached their verdict, all juror notes will be collected and destroyed." Current Maryland Rules also provide for the destruction of a juror's notes, consistent with the ABA Principles.

Overall, the Criminal Rules Subcommittee declined to recommend amending the Rules concerning the destruction of a juror's notes. However, the Subcommittee recommended adding an exception to Rule 5-606 permitting inquiry into the validity of a verdict as set forth in *Peña–Rodriguez*.

Accordingly, a proposed amendment to Rule 5-606 adds new subsection (b)(2). The language is derived from the holding in *Peña–Rodriguez* permitting a sworn juror to testify as to a clear statement made by a juror indicating that the juror relied on a stereotype or animus based on race to convict a defendant.

The Criminal Rules Subcommittee discussed whether the amendment to Rule 5-606 should go beyond the limited holding in *Peña–Rodriguez* to permit inquiry after clear statements that a juror relied on other stereotypes or animus in reaching a conviction. In proposed new subsection (b)(2), bracketed language expands the exception to include additional biases not addressed in *Peña–Rodriguez*. The bracketed language is derived from drafts of new *voir dire* Rules that address impermissible biases in the context of peremptory strikes. The Subcommittee has referred this bracketed language to the Rules Committee for consideration.

AGENDA ITEM 8

THE SUPREME COURT OF MARYLAND
STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

Hon. YVETTE M. BRYANT, Chair
Hon. DOUGLAS R.M. NAZARIAN, Vice Chair
SANDRA F. HAINES, Reporter
COLBY L. SCHMIDT, Deputy Reporter
HEATHER COBUN, Assistant Reporter
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MEMORANDUM

TO : Members of the Rules Committee

FROM : Meredith Drummond, Esq., Assistant Reporter

DATE : December 12, 2024

SUBJECT : Burden of Proof in Violation of Probation Proceedings

The Criminal Rules Subcommittee recently considered several recommendations of the Report and Recommendations of the Committee on Equal Justice Rules Review Subcommittee (hereinafter "the EJC Report"), including a suggestion concerning the burden of proof for a violation of probation in criminal actions.

Recommendation of the EJC Report

The EJC Report discusses recommendations of The Disparate Impact of the Maryland Rules on Black and Brown Individuals, a report completed by the Criminal Defense Clinic and the Youth, Education, and Justice Clinic of the University of Maryland Francis Carey School of Law (hereinafter "the U. of Md. Report"). The U. of Md. Report notes that a revocation of probation hearing is a civil, not criminal, proceeding. Accordingly, a preponderance of the evidence is the applicable standard of proof. Criminal cases, in contrast, must be proven beyond a reasonable doubt.

The U. of Md. Report notes, "[A] 2014 study of four jurisdictions across the country revealed that Black and Latinx probationers face substantially higher probation revocation rates in each jurisdiction." To address this disparity, the U. of Md. Report suggests, "Where the alleged violation of probation is a criminal offense, prosecutors at violation of probation hearings should be required to prove beyond a reasonable doubt that the offense has been committed, and Rule 4-347 should be altered to reflect this." The U. of Md. Report highlights a statute in Colorado that uses the higher standard of

"beyond a reasonable doubt" if the alleged violation of probation is based on a new criminal charge. *See* Colorado Rev. Stat. § 16-11-206.

The EJC Report acknowledges the recommendation of the U. of Md. Report and provides further analysis. The EJC Report highlights that the evidentiary standards of a violation proceeding differ from a criminal proceeding. In addition, the EJC Report explains:

> Probationers already received the full panoply of rights, protections, and procedures afforded to criminal defendants when they were convicted and sentenced for the underlying crime. They are not being sentenced for crimes not proven beyond a reasonable doubt (or admitted to in a guilty plea). They are losing the benefit of a special consideration that held some portion of that sentence in abeyance.

Furthermore, the EJC Report suggests that a higher standard of proof in violation of probation hearings may make judges less likely to offer suspended sentences. State's Attorneys may also be less inclined to include suspended sentences in plea negotiations.

Both the U. of Md. Report and the EJC Report cite *Gibson v. State*, 328 Md. 687 (1992). *Gibson* held that a violation of probation may still be found even if the defendant is acquitted of the criminal charge that served as the basis for the violation. Accordingly, it appears that the burden of proof for violation of probation proceedings is currently established by case law, not by Rule. Although the U. of Md. Report argues that, "Gibson allows evasion of the reasonable doubt standard of proof that is so integral to [Maryland's] criminal legal system," there is no assertion that the case law has been overturned. Defining the burden of proof as "beyond a reasonable doubt" in the Rules would overrule current case law.

Overall, the EJC Report did not endorse or dismiss the recommendation of the U. of Md. Report. Instead, the EJC Report concluded: "The Rules Committee may wish to consider whether or not it is necessary to change the standard of proof for violations of probation."

Action of the Criminal Rules Subcommittee

The recommendation of the EJC Report was considered by the Criminal Rules Subcommittee at its October 16, 2024 meeting.

Concerns about altering the burden of proof by Rule were raised during discussion. Some members of the Subcommittee expressed concern that the recommendation in the EJC Report may not fully account for the relatively recent changes made by the legislature through the Justice Reinvestment Act

of 2016, specifically concerning how courts deal with alleged technical violations of probation. Other members noted that case law has always addressed this issue. Some members of the Subcommittee, however, expressed support for the proposition in the EJC Report, noting the apparent unfairness that an alleged criminal offense need only be proven by a preponderance of the evidence in a violation of probation proceeding.

After discussion, a motion was considered to amend Rule 4-347 to recognize that a violation of probation grounded entirely in an alleged failure to obey all laws must be proven beyond a reasonable doubt. The motion did not carry. Instead, the Subcommittee voted to refer the proposed amendments to the Rules Committee for consideration.

National Trends

As noted in the EJC Report, at least one state has adopted a higher standard of proof when an alleged violation of probation is based on the commission of a criminal offense. Colorado Rev. Stat. § 16-11-206 provides:

> At the [revocation] hearing, the prosecution has the burden of establishing by a preponderance of the evidence the violation of a condition of probation; except that the commission of a criminal offense must be established beyond a reasonable doubt unless the probationer has been convicted thereof in a criminal proceeding… The court may, when it appears that the alleged violation of conditions of probation consists of an offense with which the probationer is charged in a criminal proceeding then pending, continue the probation revocation hearing until the termination of the criminal proceeding.

Staff has surveyed the rules, statutes, and case law of other states to determine if any other state applies a "beyond a reasonable doubt" standard in revocation of probation proceedings. Research suggests that Colorado is unique in applying this burden.

A total of 32 states, including Maryland, and the District of Columbia explicitly require by either rule, case law, or statute that a violation of probation be proven by a "preponderance of the evidence." Of the remaining states, 17 adopt burdens lesser than "beyond a reasonable doubt," but do not use the "preponderance of the evidence" language.

Despite not altering the burden of proof for violations based on alleged new crimes, some states encourage the resolution of new criminal actions before considering revocation. For example, Haw. Rev. Stat. § 706-626 (3) states, "The court, if there is probable cause to believe that the defendant has committed another crime or has been held to answer therefor, may commit the

defendant without bail, pending a determination of the charge by the court having jurisdiction thereof." Statutory commentary to § 706-626 explains:

> Subsection (3) is addressed to the problem presented by a defendant who is on probation or under suspended sentence and who is accused or charged with commission of another crime. The commission of a crime while on probation or under suspension of sentence would, in most cases, constitute a violation of a condition of probation or suspension. The question thus presented is whether the issue of guilt, with respect to the most recent crime, should be tried informally as a violation of a condition of suspension or probation or whether the issue should be tried independently. The Code resolves this question by providing that the defendant may be held pending an independent or formal determination by the court having jurisdiction over the charge, thus preserving for the defendant all procedural rights.

The American Bar Association ("ABA") has also published standards for criminal proceedings. The ABA Criminal Justice Standards address the burden the proof for probation violations. Section (g) of Standard 18-7.4 states, "The rules should provide that, with respect to the final hearing:… (ii) the prosecution must establish a violation by a preponderance of the evidence…"

In addition to setting forth a standard of proof, Standard 18-7.4 provides, "When an alleged violation is based solely on the alleged commission of another offense, the rules should provide that the final hearing on the alleged violation ordinarily should be held after disposition of the new criminal charge."

Summary

In summary, the Criminal Rules Subcommittee has referred the recommendation of the EJC Report to the full Rules Committee for further discussion and consideration. The following materials are enclosed for reference:

- Excerpts from the EJC Report
- Colorado Rev. Stat. § 16-11-206
- *Gibson v. State*, 328 Md. 687 (1992)
- Draft amendments to Rule 4-347

What, if any, action would the Rules Committee like to take regarding the burden of proof in violation of probation cases where the alleged violation concerns a new criminal offense?

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 300 – TRIAL AND SENTENCING

AMEND Rule 4-347 by specifying a burden of proof of "beyond a reasonable doubt" in subsection (e)(2) for an alleged failure to obey all laws, as follows:

Rule 4-347. PROCEEDINGS FOR REVOCATION OF PROBATION

(a) How Initiated

Proceedings for revocation of probation shall be initiated by an order directing the issuance of a summons or warrant. The order may be issued by the court on its own initiative or on a verified petition of the State's Attorney or the Division of Parole and Probation. The petition, or order if issued on the court's initiative, shall state each condition of probation that the defendant is charged with having violated and the nature of the violation.

Cross reference: See Code, Criminal Procedure Article, § 6-223.

(b) Notice

A copy of the petition, if any, and the order shall be served on the defendant with the summons or warrant.

Cross reference: For victim notification procedures, see Code, Criminal Procedure Article, §§ 11-104, 11-503, and 11-507.

(c) Release Pending Revocation Hearing

Unless the judge who issues the warrant sets conditions of release or expressly denies bail, a defendant arrested upon a warrant shall be taken before a judicial officer of the District Court or before a judge of the circuit court without unnecessary delay or, if the warrant so specifies, before a judge of the District Court or circuit court for the purpose of determining the defendant's eligibility for release.

(d) Waiver of Counsel

The provisions of Rule 4-215 apply to proceedings for revocation of probation.

(e) Hearing

(1) Generally

The court shall hold a hearing to determine whether a violation has occurred and, if so, whether the probation should be revoked. The hearing shall be scheduled so as to afford the defendant a reasonable opportunity to prepare a defense to the charges. Whenever practicable, the hearing shall be held before the sentencing judge or, if the sentence was imposed by a Review Panel pursuant to Rule 4-344, before one of the judges who was on the panel. With the consent of the parties and the sentencing judge, the hearing may be held before any other judge. The provisions of Rule 4-242 do not apply to an admission of violation of conditions of probation.

Cross reference: See *State v. Peterson*, 315 Md. 73 (1989), construing the third sentence of this subsection. For procedures to be followed by the court when a defendant may be incompetent to stand trial in a violation of probation proceeding, see Code, Criminal Procedure Article, § 3-104.

(2) Conduct of Hearing

The court may conduct the revocation hearing in an informal manner and, in the interest of justice, may decline to require strict application of the rules in Title 5, except those relating to the competency of witnesses. A violation of probation based solely on an alleged failure to obey all laws must be proven beyond a reasonable doubt. The defendant shall be given the opportunity to admit or deny the alleged violations, to testify, to present witnesses, and to cross-examine the witnesses testifying against the defendant. If the defendant is found to be in violation of any condition of probation, the court shall (A) specify the condition violated and (B) afford the defendant the opportunity, personally and through counsel, to make a statement and to present information in mitigation of punishment.

Cross reference: See *Hersch and Cleary v. State*, 317 Md. 200 (1989), setting forth certain requirements with respect to admissions of probation violations, and *State v. Fuller*, 308 Md. 547 (1987), regarding the application of the right to confrontation in probation revocation proceedings. For factors related to drug and alcohol abuse treatment to be considered by the court in determining an appropriate sentence, see Code, Criminal Procedure Article, § 6-231.

Source: This Rule is new.

AGENDA ITEM 9

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-213.1 by correcting a typographical error in subsection (g)(1) and by adding clarifying language to subsections (g)(1) and (g)(2), as follows:

Rule 4-213.1. APPOINTMENT, APPEARANCE, OR WAIVER OF ATTORNEY AT INITIAL APPEARANCE

…

(g) Provisional and Limited Appearance

(1) Provisional Representation by Public Defender

Unless a District Court commissioner has made a final determination of indigence and the Public Defender has entered a general appearance pursuant to Rule 4-214, any appearance entered by the Public Defender at an initial appearance shall be provisional**, shall terminate automatically upon the conclusion of that stage of the criminal action, and does not commence the time for setting a trial date pursuant to Rule 4-271**. For purposes of this section, eligibility for provisional representation shall be determined by a District Court ~~**commission**~~ **commissioner** prior to or at the time of the proceeding.

(2) Limited Appearance

Unless a general appearance has been entered pursuant to Rule 4-214, an appearance by a court-appointed or privately retained attorney shall be limited to the initial appearance before the judicial officer, ~~and~~ shall terminate automatically upon the conclusion of that stage of the criminal action, and does not commence the time for setting a trial date pursuant to Rule 4-271.

(3) Inconsistency with Rule 4-214

Section (g) of this Rule prevails over any inconsistent provision in Rule 4-214.

Committee note: The entry of a provisional or limited appearance in accordance with this Rule does not constitute the entry of an appearance for the purpose of bringing, prosecuting, or defending an action and does not require the payment of a fee under Code, Courts Article, § 7-204.

Source: This Rule is new but is derived, in part, from amendments proposed to Rule 4-216 in the 181st Report of the Standing Committee on Rules of Practice and Procedure.

REPORTER'S NOTE

Proposed amendments to Rules 4-213.1 and 4-271 clarify the impact of limited appearances in criminal cases on the "*Hicks* Rule." A trial court judge brought the question to the Rules Committee of whether an attorney entering a limited appearance in a criminal action pursuant to Rule 4-213.1 starts the *Hicks* timeline.

Code, Criminal Procedure Article, § 6-103 and Rule 4-271 both provide that a trial date must be set within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the circuit court. However, neither the Rule, the Code, nor case law directly address whether the

"appearance of counsel" includes the entry of a limited appearance as permitted by Rule 4-213.1 for an initial appearance.

A limited appearance pursuant to Rule 4-213.1 terminates automatically upon conclusion of the relevant stage of the criminal action. The Committee note following section (g) explains, at least for purposes of collecting fees, "The entry of a provisional or limited appearance in accordance with this Rule does not constitute the entry of an appearance for the purpose of bringing, prosecuting, or defending an action…" Accordingly, the limited appearance contemplated by Rule 4-213 is distinguished from an "appearance of counsel" otherwise referenced in other Rules.

Considering that a limited appearance pursuant to Rule 4-213.1 is only for the purposes of a proceeding and not for the action, amendments to subsections (g)(1) and (g)(2) are proposed to clarify that the entry of a limited appearance pursuant to the Rules does not commence the time for setting a trial date.

An additional amendment is proposed in subsection (g)(1) to clarify that provisional representation by the Office of the Public Defender automatically terminates, parallel to the automatic termination contemplated in subsection (g)(2). A review of the Rules history suggests that a provision about automatic termination was inadvertently removed from an earlier version of subsection (g)(1).

The provisions in current Rule 4-213.1 (g) were initially proposed as new subsection (e)(2) of Rule 4-216 in the 181st Report to implement the holding of *DeWolfe v. Richmond*. The language proposed in the 181st Report and adopted by Rules Order provided: "Provisional representation by the Public Defender or representation by a court-appointed attorney shall be limited to the initial appearance before the judicial officer and *shall terminate automatically* upon the conclusion of that stage of the criminal action, unless representation by the Public Defender is extended or renewed pursuant to Rule 4-216.1." (emphasis added).

In the 183rd Report, the provisions in Rule 4-216 (e)(2) were moved to new Rule 4-213.1 (g), where they are still found. The 183rd Report explained that there was no intent to change the content of this section when moving it to the new Rule: "Sections (e), (f), and (g), dealing, respectively, with waiver of the right to an attorney, participation of attorneys by electronic means or telecommunication, and provisional or limited appearances, were included in the 181st Report and were approved in that context by the Court." Similarly, the Reporter's note for Rule 4-213.1 in the 183rd Report confirms that no

major changes were intended, stating: "Section (g), pertaining to provisional and limited appearances, carries forward the provisions of Rule 4-216 (e)(2)." Despite noting that no major changes were intended, the language providing that a provisional or limited appearance would automatically terminate appeared only in the subsection concerning court-appointed or privately retained attorneys.

Code provisions suggest that the language regarding automatic termination is applicable to provisional representation by the Office of the Public Defender. Code, Criminal Procedure Article, § 16-210 (d)(3) states:

> (i) For the purpose of an initial appearance proceeding or bail review, a District Court commissioner shall make a preliminary determination as to whether an individual qualifies as indigent.
> …
> (iii) Representation at the initial appearance shall terminate at the conclusion of the proceeding, unless the commissioner has made a final determination that the individual qualifies as indigent and the Office has entered a general appearance.

In light of the Rules history and § 16-210, it appears that the language regarding automatic termination was inadvertently removed from subsection (g)(1) when the provisions were moved to new Rule 4-213.1 in the 183rd Report. Accordingly, proposed amendments to Rule 4-213.1 (g)(1) add language clarifying that provisional representation by the Office of the Public Defender terminates unless a final determination is made by the District Court commissioner or a general appearance is entered pursuant to Rule 4-214.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-271 by adding clarifying language to section (a), as follows:

Rule 4-271. TRIAL DATE

(a) Trial Date in Circuit Court

(1) The date for trial in the circuit court shall be set within 30 days after the earlier of the appearance of counsel pursuant to Rule 4-214 or the first appearance of the defendant before the circuit court pursuant to Rule 4-213, and shall be not later than 180 days after the earlier of those events. When a case has been transferred from the District Court because of a demand for jury trial, and an appearance of counsel entered in the District Court was automatically entered in the circuit court pursuant to Rule 4-214 (a), the date of the appearance of counsel for purposes of this Rule is the date the case was docketed in the circuit court. On motion of a party, or on the court's initiative, and for good cause shown, the county administrative judge or that judge's designee may grant a change of a circuit court trial date. If a circuit court trial date is changed, any subsequent changes of the trial date may be made only by the county administrative judge or that judge's designee for good cause shown.

Cross reference: See Code, Criminal Procedure Article, § 6-103; see also *Jackson v. State*, 485 Md. 1 (2023).

(2) Upon a finding by the Chief Justice of the Supreme Court that the number of demands for jury trial filed in the District Court for a county is having a critical impact on the efficient operation of the circuit court for that county, the Chief Justice, by Administrative Order, may exempt from this section cases transferred to that circuit court from the District Court because of a demand for jury trial.

(b) Change of Trial Date in District Court

The date for trial in the District Court may be changed on motion of a party, or on the court's initiative, and for good cause shown.

Committee note: Subsection (a)(1) of this Rule is intended to incorporate and continue the provisions of Rule 746 from which it is derived. Stylistic changes have been made.

Source: This Rule is derived as follows:
Section (a) is in part derived from former Rule 746 a and b, and is in part new.
Section (b) is derived from former M.D.R. 746.

REPORTER'S NOTE

Proposed amendments to Rules 4-213.1 and 4-271 clarify the impact of limited appearances in criminal cases on the "*Hicks* Rule." For further discussion, see the Reporter's note to Rule 4-213.1.

Rule 4-271 (a) provides that a trial date must be set within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the circuit court pursuant to Rule 4-213. A proposed amendment to Rule 4-271 (a)(1) notes that the subsection refers to an appearance of counsel entered pursuant to Rule 4-214, addressing the entry of appearance of defense counsel. The added language makes clear that the

beginning of the 30-day period is not triggered by a provisional or limited appearance entered pursuant to Rule 4-213.1.

INFORMATION ITEM 1

THE SUPREME COURT OF MARYLAND
STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

Hon. YVETTE M. BRYANT, Chair
Hon. DOUGLAS R.M. NAZARIAN, Vice Chair
SANDRA F. HAINES, Reporter
COLBY L. SCHMIDT, Deputy Reporter
HEATHER COBUN, Assistant Reporter
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MEMORANDUM

TO : Members of the Rules Committee

FROM : Heather Cobun, Assistant Reporter

DATE : December 30, 2024

RE : Judgments Subcommittee update on *Rouse v. Moore, et al.*, 724 F.Supp.3d 410 (D.Md. 2024), *appeal filed* (4th Cir. Dec. 24, 2024)

In a memorandum opinion issued on March 20, 2024, the U.S. District Court for the District of Maryland ruled that certain collection activities, such as issuance of a subpoena to a financial institution or a writ of garnishment, constitute "judgments" for the purposes of the Servicemembers Civil Relief Act (50 U.S.C. § 3910 *et. seq.*) ("the SCRA"). Chief Justice Fader, on behalf of the Supreme Court, requested on March 22, 2024 that the Rules Committee consider and propose changes to the Rules potentially impacted by the decision.

The SCRA provides various protections to military servicemembers and applies to certain contracts, agreements, and civil judicial proceedings. Before entering judgment in "any civil action or proceeding," a court must require the plaintiff to file an affidavit "stating whether or not the defendant is in military service and showing necessary facts to support the affidavit" or that the plaintiff is unable to determine whether the defendant is in military service (see 50 U.S.C. § 3931 (b)(1)). If the defendant appears to be in military service, the court may not enter a judgment until after the court appoints an attorney to represent the servicemember. The SCRA contains provisions for staying or vacating execution of a judgment if the servicemember "is materially affected by reason of military service in complying with a court judgment or order" (see 50 U.S.C. § 3934 (a)).

The plaintiffs in the case were three military couples with one spouse on active military duty at all relevant times. The couples did not have any ties to Maryland, but judgments issued against them in other states were enrolled in Maryland by a creditor using the Uniform Enforcement of Foreign Judgments Act (Code, Courts

Article, § 11-801 through 11-807). The judgments from the other states allegedly were invalid. The couples settled their claims against the creditor, who originally was named in the lawsuit. To enforce the judgments, the creditor had requested writs of garnishment and, in one case, requested and served on financial institutions multiple subpoenas seeking information about financial accounts.

The March 20, 2024 opinion held that:

1) The SCRA is implicated when a judgment creditor seeks to utilize subpoena and garnishment procedures under the Maryland Rules, and
2) Prior to issuing a subpoena or writ of garnishment, the court must require the creditor to submit an affidavit regarding the debtor's military status and, if the debtor is a servicemember, appoint counsel for the debtor.

The Judgments Subcommittee considered and recommended a series of proposed amendments and new Rules to the Rules Committee, which were approved at the Committee's May 15, 2024 meeting. The Rules were transmitted to the Supreme Court in the 223rd Report and considered at an Open Meeting on September 12, 2024. The Court ultimately remanded the matter to the Committee, in part based on concerns about the appropriateness of acting in response to an interlocutory order before final judgment in the underlying case.

Following the March 20, 2024 ruling, the sole remaining cause of action in the litigation was a single claim against each of the Supreme Court justices in their official capacities for violating the SCRA. On November 26, 2024, the U.S. District Court entered an order granting the justices' motion for summary judgment, finding that the justices had absolute legislative and judicial immunity from suit, and closing the case. The plaintiffs filed a notice of appeal to the Fourth U.S. Circuit Court of Appeals on December 24, 2024. Staff will continue to monitor the case for any developments while staying further action on potential changes to Rules that may have been impacted by the case.

INFORMATION ITEM 2

THE SUPREME COURT OF MARYLAND
STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

Hon. YVETTE M. BRYANT, Chair
Hon. DOUGLAS R.M. NAZARIAN, Vice Chair
SANDRA F. HAINES, Reporter
COLBY L. SCHMIDT, Deputy Reporter
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MEMORANDUM

TO : Members of the Rules Committee

FROM : Meredith Drummond, Esq., Assistant Reporter

DATE : December 12, 2024

SUBJECT : Information Item: Update on Committee on Equal Justice Rules Review Subcommittee's Recommendation Regarding Postconviction Proceedings

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

Recommendations made by the EJC Report were forwarded to various Rules Committee subcommittees for preliminary review, discussion, and possible action. The Criminal Rules Subcommittee has discussed several recommendations of the EJC Report over the course of several meetings.

In October 2024, the Criminal Rules Subcommittee considered a recommendation concerning Rules governing postconviction proceedings. The EJC Report highlighted that many different postconviction remedies are available in Maryland, including the Uniform Postconviction Procedure Act, the DNA Postconviction Act, Petitions for Writ of Actual Innocence, and other filings. The Rules concerning these procedures often contain vastly different filing times, response times, etc. The EJC Report encouraged restructuring the Rules concerning postconviction proceedings, but acknowledged that certain factors, such as a right to public defender representation in only some proceedings, may complicate attempts to streamline.

The EJC Report contained two recommendations on this topic:

The Rules Committee may wish to consider coalescing the provisions on postconviction petitions by doing the following:

> Giving similar time requirements for filings and deadlines. Encouraging petitioners, to the extent authorizing statutes allow, to raise all potential, legitimate claims in the same filing and allowing them to be heard upon application without regard to whether they have chosen the legally correct form of pleading.

In preparation for the Subcommittee meeting, staff prepared an outline of the postconviction remedies available pursuant to Maryland law. A copy of that outline is attached for reference.

Upon review of the many different remedies available pursuant to Maryland law, the Subcommittee determined that streamlining provisions as suggested by the EJC Report was not practical at this time. However, the Subcommittee appreciated the impetuses for the recommendations and discussed methods of promoting awareness of available remedies to the public. The Subcommittee concluded that the outline of Maryland law prepared for discussion may prove a useful tool.

In summary, after consideration of the EJC Report's recommendation and review of relevant Maryland law, no amendments to the Rules regarding postconviction proceedings are being pursued at this time. However, per the direction of the Subcommittee, staff will explore whether other entities are interested in utilizing and maintaining the outline of Maryland law as a resource.

MARYLAND LAW

The Maryland Rules and Code currently provide a myriad of potential remedies to defendants after conviction. Each specific remedy, however, often has distinct timing and content requirements, making it crucial for litigants to understand the deadlines and purposes of each form of relief. Currently, the different forms of relief can be found in several different parts of the Rules. In an effort to clarify the different avenues to relief and to streamline the process, the Rules have been reviewed to see if streamlining or combining is feasible.

To aid the discussion of the Subcommittee, the following provides an overview of the different Maryland postconviction remedies available:[1]

(1) Motions Concerning Underlying Conviction

a. Motion for New Trial[2]

i. Rule 4-331 (a) – 10-day motion
   1. Time to file: Within 10 days of verdict
   2. State response time: Not specified
   3. Other: The court may order a new trial "in the interest of justice."

ii. Rule 4-331 (b) – 90-day revisory power
   1. Time to file: Within 90 days of imposition of sentence
   2. State response time: Not specified
   3. Other: Court may "set aside an unjust or improper verdict" and permit a new trial.

iii. Rule 4-331 (b) – Fraud, mistake, or irregularity
   1. Time to file: Any time, after time to file a motion to set aside an unjust or improper verdict or to grant a new trial has expired
   2. State response time: Not specified
   3. Other: Court has revisory power based on fraud, mistake or irregularity.

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[1] In addition to the forms of relief enumerated in this memorandum, defendants may have the right to a direct appeal, an application for leave to appeal, or a petition for writ of certiorari, including from the District Court to a circuit court. These modes of appeal, governed by Titles 7 and 8 of the Rules, are not detailed in this memorandum.

[2] In addition to Rule 4-331, discussed below, see Code, Crim. Pro. Art., § 6-105.

iv. Rule 4-331 (c)(1) - New trial or appropriate relief based on newly discovered evidence
    1. Time to file: Within 1 year after the sentence was imposed or 1 year after the date the court received a final appellate mandate
    2. State response: Not specified
    3. Other: The newly discovered evidence could not have been discovered by due diligence in time to move for a new trial within 10 days of the verdict.

v. Rule 4-331 (c)(2) - New trial or appropriate relief based on newly discovered evidence based on DNA identification
    1. Time to file: Any time
    2. State response: Not specified
    3. Other: Motion must be based on DNA identification testing not subject to § 8-201 or other generally accepted scientific techniques the results of which, if proved, would show that the defendant is innocent of the crime of which the defendant was convicted.

b. Requests to Vacate Judgment

i. Rule 4-332/Code, Crim. Pro. Article, § 8-301 – Writ of Actual Innocence
    1. Time to file: Any time
    2. State response: 90 days after receipt of petition and attachments
    3. Other: A petition must be based on newly discovered evidence that could not have been discovered in time to move for a new trial pursuant to Rule 4-331. The new evidence must create a substantial or significant possibility that the result may have been different. The petitioner must also allege that the petitioner did not commit the offense. The Code section provides that the court may set aside the verdict, resentence, grant a new trial, or correct the sentence.

ii. Rule 4-333/Code, Crim. Proc. Article, § 8-301.1 – State's Motion to Vacate
   1. Time to file: Any time after entry of conviction or probation before judgment
   2. State response: N/A (30 days for defendant response)
   3. Other: The motion must include a particularized statement of grounds upon which the motion is based, including any newly discovered evidence, if applicable, that creates a substantial or significant probability that the result would have been different. The motion must also allege that the new evidence or new information requires vacating the conviction or PBJ in the interest of justice and fairness.

iii. Rule 4-333.1/Code, Crim. Proc. Article, § 8-302 – Motion to Vacate Conviction of Human Trafficking Victim
   1. Time to file: "Within a reasonable period of time after the conviction"
   2. State response: Not specified
   3. Other: A person convicted of a qualifying offense may file a motion to vacate the judgment if the person's participation in the offense was a direct result of being a victim of human trafficking.

(2) Motion to Revise Sentence and/or Probation

a. Rule 4-344/Code, Courts Article, § 8-101 *et seq.* – Three judge panel sentence review
   1. Time to file: Within 30 days after the imposition of sentence or at a later time permitted by the Act
   2. State response: Not specified
   3. Other: To qualify, the sentence must exceed two years. Except as provided in Code, Courts Article, § 8-110, a defendant is entitled only to one sentence review. A panel of judges will review the application.

b. Rule 4-345 (a) - Motion to correct illegal sentence
   i. Time to file: Any time
   ii. State response: Not specified
   iii. Other: The court may correct an illegal sentence.

c. Rule 4-345 (b) - Motion to revise based on fraud, mistake, or irregularity
    i. Time to file: Any time
    ii. State response: Not specified
    iii. Other: A sentence may be revised based on fraud, mistake, or irregularity.

d. Rule 4-345 (c) – Correction of mistake in announcement
    i. Time to file: N/A – correction may occur before the defendant leaves the courtroom following the sentencing proceeding
    ii. State response: N/A
    iii. Other: An evident mistake in the announcement of a sentence may be made on the record.

e. Rule 4-345 (d) - Modifying sentence in desertion and non-support cases
    i. Time to file: Any time before expiration of the sentence in a case involving desertion and non-support
    ii. State response: Not specified
    iii. Other: The court may modify, reduce, or vacate the sentence or place the defendant on probation under the terms and conditions the court imposes.

f. Rule 4-345 (e) – Motion to modify
    i. Time to file: Within 90 days after imposition of a sentence (A) in the District Court, if an appeal has not been perfected or has been dismissed, and (B) in a circuit court, whether or not an appeal has been filed
    ii. State response: Not specified
    iii. Other: The court has revisory power over the sentence except that it may not revise the sentence after the expiration of five years from the date the sentence originally was imposed on the defendant and it may not increase the sentence.

g. Code, Health - General Article, § 8-507 – Commitment for treatment
    i. Time to file: Any time in a criminal case or during a term of probation, except that a defendant serving a sentence for a crime of

violence may not be ordered to treatment until the defendant is eligible for parole

ii. State response: Not specified

iii. Other: The court at any time may commit a defendant who is found to have a drug or alcohol dependency to a treatment program in the Maryland Department of Health if the defendant voluntarily agrees to participate in the treatment, even if the defendant did not timely file a motion for modification or timely filed a motion for modification that was denied.

h. Code, Crim. Law Art. § 5-609.1 – Modification of mandatory minimum sentence imposed on or before September 30, 2017

i. Time to file: On or before September 30, 2018, or later only for good cause shown

ii. State response: Not specified

iii. Other: A person serving a term of confinement including a mandatory minimum sentence imposed on or before September 30, 2017, for a violation of §§ 5-602 through 5-606 of the Criminal Law Article may apply to modify or reduce the mandatory minimum sentence as provided in Rule 4-345, regardless of whether the defendant filed a timely motion for reconsideration or a motion for reconsideration was denied by the court.

i. Rule 4-346 – Modification of probation

i. Time to file: During the period of probation

ii. State response: Not specified

iii. Other: On motion, the court may modify, clarify, or terminate any condition of probation, change its duration, or impose additional conditions.

j. Rule 4-347/Code, Crim. Proc. § 6-223 - Revocation of probation

i. Time to file: During the period of probation, initiated by court or on verified petition of the State or Division of Parole and Probation

ii. State response: N/A

iii. Other: A circuit court or the District Court may end the period of probation at any time. The court shall hold a hearing to determine whether a violation has occurred and, if so, whether the probation should be revoked.

(3) Other Relief

a. Rule 4-352/Md. Const. Art. IV § 22 – In banc review
   i. Time to file: Within 10 days after entry of judgment or as otherwise provided by Rule
   ii. State response: 15 days after memorandum of party seeking review is filed
   iii. Other: In banc review is governed by Rule 2-551, except that the right does not apply to criminal cases exempted under the state Constitution

b. Rule 4-401, *et seq.*/Code, Crim. Pro. Art., Title 7 – Uniform Postconviction Procedure Act
   i. Time to file: No more than 10 years after imposition of sentence, unless extraordinary cause is shown
   ii. State response: 15 days after notice of filing or within such further time as the court orders
   iii. Other: For each trial or sentence, a defendant may file on one petition under the Act. If the petition alleges indigency, the clerk notifies the Collateral Review Division of the Office of the Public Defender.

c. Rule 4-621 – Correction of clerical mistakes
   i. Time to file: Any time
   ii. State response: Not specified

   iii. Other: On motion of any party or on the courts own initiative, clerical mistakes in judgments, orders, or other parts of the record may be corrected.

d. Rule 4-701 *et seq.*/Code, Crim. Pro. Art., § 8-201 – Post conviction DNA testing
   i. Time to file: Any time
   ii. State response: Within 15 days after notice of filing or within time allowed by court
   iii. Other: A defendant may move for a new trial on the grounds that the conviction was based on unreliable scientific identification evidence and a substantial possibility exists that the defendant would not have been convicted without the evidence.

e. Rule 15-301 *et seq.*/Court, Courts Article, § 3-701 *et seq.* – Petition for writ of habeas corpus[3]
   i. Time to file: During confinement
   ii. State response: As specified in show cause order
   iii. Other: Habeas corpus challenges the legality of the confinement or restraint of an individual. Rule 15-304 provides that, on consent of the defendant, the judge may order that the petition be treated as a petition under the Post Conviction Procedure Act if the judge is satisfied that such proceeding is adequate to test the legality of the confinement.

f. Rule 15-1201 *et seq.*/Code, Crim. Pro. Art. § 8-401 – Petition for writ of coram nobis
   i. Time to file: Any time after conviction
   ii. State response: Within 30 days after notice of filing or within time allowed by court
   iii. Other: A petition for a writ of error coram nobis filed in the court where the conviction took place and, if practicable, in the criminal action.

g. Rule 15-701/Code, Courts Article, § 3-8B-01 *et seq.* – Writ of Mandamus
   i. Time to file: Any time
   ii. State response: As provided in Rule 2-322 or 2-323
   iii. Other: Rule 15-701 applies to actions other than administrative mandamus. The action proceeds similar to an ordinary civil proceeding.

[3] A defendant may also seek federal habeas corpus relief. See 28 U.S.C. § 2254.