

STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

NOTICE OF PROPOSED RULES CHANGES

The Rules Committee has submitted a Supplement to its One Hundred Seventy-Sixth Report to the Court of Appeals, transmitting thereby proposed new Rule 20-504 (Agreement with Vendors) and alternative Rules 20-101, 20-102, 20-104, 20-106, 20-201, 20-203, and 20-402. The Supplement addresses comments to the One Hundred Seventy-Sixth Report that the Committee found to be of merit and two new issues that arose after the Report was transmitted to the Court.

The Committee's Supplement to the One Hundred Seventy-Sixth Report and the proposed new rule and alternative rules are set forth below.

Interested persons are asked to consider the Committee's Supplemental Report and proposed rules changes and to forward on or before 4:30 p.m. on Tuesday, April 16, 2013 any written comments they may wish to make concerning proposed new Rule 20-504 and alternative Rules 20-101, 20-102, 20-104, 20-106, 20-201, 20-203, and 20-402 to:

Sandra F. Haines, Esq.

Reporter, Rules Committee

2011-D Commerce Park Drive

Annapolis, Maryland 21401

BESSIE M. DECKER
Clerk
Court of Appeals of Maryland

April 5, 2013

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

Your Honors:

The Rules Committee submits this Supplement No. 1 to its One Hundred Seventy-Sixth Report (MDEC) and recommends that the Court adopt, as part of a new Title 20 of the Maryland Rules, the alternative Rules 20-101, 20-102, 20-104, 20-106, 20-201, 20-203, and Rule 20-402 and new Rule 20-504, all as transmitted with this Supplement. Notice of this Supplement will be posted for comment on the Judiciary website on April 8, 2013.

The alternatives to Rules 20-101, 20-102, 20-104, 20-106, 20-201, and 20-203 are in response to Comments received to the Report and are explained in the Rules Committee's written responses to those Comments. They are largely clarifying in nature and adjust cross-references in light of those clarifications.

The alternative to Rule 20-402 and proposed new Rule 20-504 arise from two items of information received from the Administrative Office of the Courts (AOC) after the One Hundred Seventy-Sixth Report had been transmitted to the Court. The alternative to Rule 20-402 deals with the electronic transmission of the electronic portion of the trial court record to the appellate court. Proposed new Rule 20-504 concerns constraints on third party vendors who may desire to provide remote access to

case records that would not be allowed under proposed Rule 20-109 or the access Rules now in Title 16, Chapter 1000.

It had been the Rules Committee's understanding, from the beginning of its consideration of MDEC Rules, that the appellate courts, with respect to appeals emanating from trial courts that are part of MDEC, would be included in the MDEC System, and that the electronic part of the trial court record, except for transcripts of court proceedings, would be transmitted electronically to the appellate court. That was clear from the April 2011 *Court Rules Assessment* that was prepared by the Case Management System Advisory Committee and approved by the Technology Oversight Board, and it was confirmed by the Court's policy decision in September 2012 that the electronic version of electronically filed documents would constitute the official record of those documents. In its One Hundred Seventy-Sixth Report, the Rules Committee proposed to implement that policy through Rules 20-102(b) and 20-402.

The Rules Committee has since been advised by AOC that there will be a significant delay in the ability of MDEC to transmit the electronic version of the trial court record to the appellate courts - that the system will not be able to effect such a transmission as part of MDEC in time for the inauguration of MDEC in Anne Arundel County, now scheduled for January-April 2014, or for the scheduled inauguration of MDEC in the Eastern Shore counties commencing six months thereafter.

Discussions with AOC produced two possible solutions to the problem. One was to require either the clerk of the trial court or the clerk of the appellate court convert to paper form the entire electronic record assembled in the trial court. The Rules Committee rejected that approach as (1) placing an inordinate burden on the clerk, (2) being inconsistent with the policy decisions made by the Technology Oversight Board and the Court, and (3) negating the most fundamental objective of MDEC of eliminating paper records to the extent possible.

The approach recommended by the Rules Committee in face of the new reality, and agreed to by AOC, is embodied in the alternative Rule 20-402. It would leave the electronic record as assembled, indexed, and certified by the trial court clerk, but would (1) give the appellate court judges, law clerks, staff attorneys, and clerks full remote access to it, and (2) require a docketed notice declaring that, from and after the date of the notice, the record so certified is in the custody and jurisdiction of the appellate court. At the conclusion of the appeal, the appellate court would add to that record any opinion, order, or mandate of the appellate court disposing of the appeal and a notice declaring that, subject to any further order of the

appellate court, the record is returned to the custody and jurisdiction of the circuit court.

Under this approach, which is anticipated to be a temporary alternative, the appellate courts, as they do now, would create their own record of filings in the appellate proceeding, either in paper form or, if they are able, in an electronic format. Briefs, record extracts, petitions, motions, applications, and other papers would be filed in electronic format as e-mail attachments, along with a reduced number of paper copies, but those electronic filings, the Rules Committee is advised, would not be compatible with MDEC. Submissions filed with the trial court while the appeal is pending would become part of the trial court record but would not be part of the appellate court record unless made so by order of the appellate court.

The second matter concerns third-party vendors who may offer file-and-serve services to attorneys and self-represented litigants and may also desire to offer access services to them and others. The Rules Committee was apprized that, under the proposed MDEC System, Tyler Technologies, Inc., through a contract with AOC, will "host" the electronic file-and-serve system. Attorneys or litigants who use that system will file submissions with Tyler, which will transmit the submissions to the MDEC computer. Only judges, judicial appointees, clerks, and judicial personnel may file directly into MDEC.

Through a certification process of some kind, AOC also will permit entities other than Tyler to provide file-and-serve services. Attorneys or litigants who contract with such an entity will file submissions through that entity which, in turn, will transmit the submission through Tyler. Both Tyler and the other entities could thus accumulate their own databases of such filings. The Rules Committee is advised that Tyler will not sell access to its database to persons other than attorneys and litigants who file through it (and will limit the access by those attorneys and litigants to case records in cases to which they are attorneys of record or parties), but other vendors may do so, and it therefore becomes important to assure that those other vendors are not providing remote electronic access to documents or parts of documents that are not subject to public inspection under proposed Rule 20-109 or the Court's access Rules.

Proposed Rule 20-504 provides a method for imposing that constraint. It requires, as a condition of providing file-and-serve services, that a vendor must enter into a written agreement with AOC that (1) requires the vendor to comply with the Rules in Title 20 and in Title 16, Chapter 1000, other applicable law, and the policies and procedures adopted by the State Court Administrator, (2) requires the vendor to include notice of those restrictions in agreements with its customers, (3) requires the

vendor to allow free remote access to its database by a designee of the State Court Administrator in order to conduct random audits, and (4) provides appropriate sanctions for material violations of the agreement.

Respectfully submitted,

Alan M. Wilner
Chair

AMW:cdc

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 - GENERAL PROVISIONS

Rule 20-101. DEFINITIONS

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

(a) Affected Action

"Affected action" means an action to which this Title is made applicable by Rule 20-102.

Cross reference: For the definition of an "action" see Rule 1-202.

(b) Appellate Court

"Appellate court" means the Court of Appeals or the Court of Special Appeals, whichever the context requires.

(c) Applicable County

"Applicable county" means a county listed in Rule 20-102 (a).

(d) Applicable Date

"Applicable date" for an applicable county means the date stated in Rule 20-102 (a) pertaining to that county.

(e) Business Day

"Business day" means a day that the clerk's office is open for the transaction of business. For the purpose of the Rules in this Title, a "business day" begins at 12:00.00 a.m. and ends at

11:59.59 p.m.

(f) Clerk

"Clerk" means the Clerk of the Court of Appeals, the Court of Special Appeals, or a circuit court, an administrative clerk of the District Court, and ~~the deputy authorized assistant~~ clerks in those offices.

(g) Concluded

An action is "concluded" when

- (1) there are no pending issues, requests for relief, charges, or outstanding motions in the action or the jurisdiction of the court has ended;
- (2) no future events are scheduled; and
- (3) the time for appeal has expired or, if an appeal or an application for leave to appeal was filed, all appellate proceedings have ended.

Committee note: This definition applies only to the Rules in Title 20 and is not to be confused with the term "closed" that is used for other administrative purposes.

(h) Digital Signature

"Digital signature" means a secure electronic signature inserted using a process approved by the State Court Administrator that uniquely identifies the signer and ensures authenticity of the signature and that the signed document has not been altered or repudiated.

(i) Facsimile Signature

"Facsimile signature" means a scanned image or other visual representation of the signer's handwritten signature, other than

a digital signature.

(j) Filer

"Filer" means a person who is accessing the MDEC system for the purpose of filing a submission.

Committee note: The internal processing of documents filed by registered users, on the one hand, and those transmitted by judges, judicial appointees, clerks, and judicial personnel, on the other, is different. The latter are entered directly into the MDEC System, whereas the former are subject to clerk review under Rule 20-203. For purposes of these Rules, however, the term "filer" encompasses both groups.

(k) Hand-Signed or Handwritten Signature

"Hand-signed or handwritten signature" means the signer's original genuine signature on a paper document.

(l) Hyperlink

"Hyperlink" means an electronic link embedded in an electronic document that enables a reader to view the linked document.

(m) Judge

"Judge" means a judge of the Court of Appeals, Court of Special Appeals, a circuit court, or the District Court of Maryland and includes a former judge of any of those courts recalled pursuant to Code, Courts Article, §1-302 and designated to sit in one of those courts.

(n) Judicial Appointee

"Judicial appointee" means a judicial appointee, as defined in Rule 16-814.

(o) Judicial Personnel

"Judicial personnel" means an employee of the Maryland

Judiciary, even if paid by a county, who is employed in a category approved for access to the MDEC system by the State Court Administrator;

(p) MDEC or MDEC System

"MDEC" or "MDEC system" means the system of electronic filing and case management established by the Maryland Court of Appeals.

Committee note: "MDEC" is an acronym for Maryland Electronic Courts.

(q) Redact

"Redact" means to exclude information from a document accessible to the public.

(r) Registered User

"Registered user" means an individual authorized to use the MDEC system by the State Court Administrator pursuant to Rule 20-104.

(s) Restricted Information

"Restricted information" means information (1) prohibited by Rule or other law from being included in a court record, (2) required by Rule or other law to be redacted from a court record, (3) placed under seal by a court order, or (4) otherwise required to be excluded from the court record by court order.

Cross reference: See Rule 1-322.1 (Exclusion of Personal Identifier Information in Court Filings) and the Rules in Title 16, Chapter 1000 (Access to Court Records).

(t) Scan

"Scan" means to convert printed text or images to an

electronic format compatible with MDEC.

(u) Submission

"Submission" means a pleading or other document filed in an action. "Submission" does not include an item offered or admitted into evidence in open court.

Cross reference: See Rule 20-402.

(v) Tangible Item

"Tangible item" means an item that is not required to be filed electronically. A tangible item by itself is not a submission; it may either accompany a submission or be offered in open court.

Cross reference: See Rule 20-106 (c)(2) for items not required to be filed electronically.

Committee note: Examples of tangible items include an item of physical evidence, an oversize document, and a document that cannot be legibly scanned or would otherwise be incomprehensible if converted to electronic form.

(w) Trial Court

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

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

(x) Typographical Signature

"Typographical signature" means the symbol "/s/" affixed to the signature line of a submission above the typed name, address, e-mail address, and telephone number of the signer.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 - GENERAL PROVISIONS

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

(a) Trial Courts

(1) Applicable Counties and Dates

(A) Anne Arundel County is an applicable county from and after _____.

(B) There are no other applicable counties.

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

(2) Actions, Submissions, and Filings

(A) New Actions and Submissions

On and after the applicable date, this Title applies to

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

(B) Existing Documents; Pending and Reopened Cases

With the approval of the State Court Administrator, (i)
the County Administrative Judge of the circuit court for an

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

(b) Appellate Courts

This Title applies to appeals and other proceedings in the Court of Special Appeals or Court of Appeals seeking the review of a judgment or order entered in any action to which section (a) of this Rule applies. If so ordered by the Court of Appeals in a particular matter or action, the Title also applies to (1) a question certified to the Court of Appeals pursuant to the Maryland Uniform Certification of Questions of Law Act, Code, Courts Article, §§12-601 - 12-613; and (2) an original action in the Court of Appeals allowed by law.

(c) Applicability of Other Rules

Except to the extent of any inconsistency with the Rules in this Title, all of the other applicable Maryland Rules continue to apply. To the extent there is any inconsistency, the Rules in

this Title prevail.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 - GENERAL PROVISIONS

Rule 20-104. USER REGISTRATION

(a) Eligibility

Any individual may apply to become a registered user in accordance with this Rule.

(b) On-line Application

An individual seeking to become a registered user shall complete an on-line application in the form prescribed by the State Court Administrator. The form shall include an agreement by the applicant to comply with MDEC policies and procedures and the Rules in this Title and a statement as to whether the applicant is an attorney and, if so, is a member of the Maryland Bar in good standing.

(c) Identification Number, Username, and Password

Upon successful completion of the registration process in accordance with section (b) of this Rule and any verification that the State Court Administrator may require, the individual becomes a registered user. The State Court Administrator shall issue to the registered user a unique user identification number, a username, and a password, which together shall entitle the registered user to file submissions electronically in an affected action to which the registered user is a party or is otherwise

entitled to file the submission and have the access provided by Rule 20-109. The registered user may not change the unique identification number issued by the State Court Administrator but may change the assigned username and password in conformance with the policies and procedures published by the State Court Administrator.

(d) Effect of Registration

By registering with the State Court Administrator as a registered user, an individual agrees to comply with the Rules in this Title and the MDEC policies and procedures established and published by the State Court Administrator.

(e) Multiple User Identification Numbers Prohibited

(1) Cancellation of User Registration

A registered user may not have more than one user identification number at a time. If the State Court Administrator believes that an individual has more than one user identification number, the State Court Administrator shall notify the individual, at the individual's most recent e-mail address provided to the State Court Administrator, that all of the individual's identification numbers will be cancelled unless the individual shows good cause to the contrary within 30 days after the date of the notice. If the individual fails to make that showing, the State Court Administrator shall cancel all of the individual's identification numbers and revoke the user's registration. The individual may seek review of the State Court Administrator's action pursuant to the Rules in Title 7, Chapter

200 of the Maryland Rules.

(2) Re-application for User Registration

An individual whose user registration has been cancelled may reapply for user registration, but the State Court Administrator may reject the application unless reasonably satisfied that the individual will comply with the Rules in this Title and with all policies and procedures adopted by the State Court Administrator.

(f) Revocation, Suspension, Reinstatement of Attorney User Registration

(1) Duty of Clerk of Court of Appeals

The Clerk of the Court of Appeals shall promptly notify the State Court Administrator of each attorney (A) who, by order of the Court, becomes disbarred, suspended, placed on inactive status, or decertified or who has resigned from the Maryland Bar or (B) who, following a disbarment, suspension, placement on inactive status, decertification, or resignation, has been reinstated to the practice of law in Maryland.

(2) Duty of State Court Administrator

Promptly upon receipt of such notice, the State Court Administrator shall (A) revoke the user registration of each attorney who has been disbarred or placed in inactive status or who has resigned, (B) suspend the user registration of each attorney who has been suspended or decertified, (C) reinstate the user registration of an attorney who has been reinstated, and (D) take any necessary steps to be reasonably satisfied that the MDEC

system does not accept any electronic filings from an attorney whose user registration has been revoked or suspended and not reinstated.

(3) Withdrawal of Appearance Further Submissions

An attorney whose registration has been suspended or revoked under this section shall file any submissions required by the Rules of Professional Conduct in paper form.

(4) Application for User Registration as a Non-attorney

An attorney whose user registration has been suspended or revoked under this section may apply for user registration as a non-attorney. The State Court Administrator may reject the application unless reasonably satisfied that the individual will comply with the Rules in this Title and with all policies and procedures adopted by the State Court Administrator.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 - GENERAL PROVISIONS

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 affected action shall file electronically the attorney's entry of appearance and all subsequent submissions in the affected 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 affected action.

(3) Self-represented Litigants

(A) Except as otherwise provided in section (b) of this Rule, a self-represented litigant in an affected action who is a registered user shall file electronically all submissions in the affected action.

(B) A self-represented litigant in an affected 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 affected 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 affected 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 affected 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 affected 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.

(c) Submissions

(1) Generally

Except as otherwise provided in subsection (c)(2) of this Rule, the requirement of electronic filing in section (a) applies to all submissions that are capable of being converted into electronic format and that, in electronic form, may be converted into a legible paper document.

(2) Exceptions

Except with court approval, the following submissions shall not be filed electronically:

(A) A single document comprising more than 300 pages;

Committee note: A single document comprising more than 300 pages may be submitted electronically by dividing the document into shorter segments.

- (B) Oversized documents, such as blueprints, maps, and plats;
- (C) Documents offered as evidence in open court at a trial or other judicial proceeding pursuant to Rule 20-402;
- (D) An item that is impracticable to be filed electronically because of the item's physical characteristics; and
- (E) Any other category of submissions that the State Court Administrator exempts from the requirement of electronic filing.

(3) Required Retention of Certain Original Documents

Original wills and codicils, property instruments that have been or are subject to being recorded, and original public records, such as birth certificates, that contain an official seal may be scanned and filed electronically so long as the original document is maintained by the filer pursuant to Rule 20-302.

Cross reference: See Rule 20-204, which requires a registered user to file a "Notice of Filing Tangible Item" under certain circumstances.

(d) Paper Submissions

(1) Compliance with MDEC Rules

A paper submission shall comply with Rule 20-201 (f) and (i). If applicable, a paper submission also shall comply with Rule 20-201 (g).

(1) (2) Review by Clerk; Scanning

(A) Except as provided in subsection ~~(d) (1) (B)~~ (d) (2) (B) of this Rule, upon receipt of a submission in paper form, the clerk

shall review the submission for compliance with Rule 20-201 (c), (d), (e) (1) (B), and (h) (d), (e), (f) (1) (B), and (i). If the submission is in compliance, the clerk shall scan it into the MDEC system, verify that the electronic version of the submission is legible, and docket the submission. If the submission is not in compliance, the clerk shall decline to scan it and promptly notify the filer in person or by first class mail that the submission was rejected and the reason for the rejection.

Committee note: The clerk's pre-scanning review is a ministerial function, limited to ascertaining whether any required fee has been paid (Rule 20-201 ~~(h) (i)~~) and the presence of the filer's signature (Rule 20-201 ~~(e) (d)~~); a certificate of service if one is required (Rule 20-201 ~~(d) (e)~~); and a certificate as to the absence or redaction of restricted information (Rule 20-201 ~~(e) (1) (B) (f) (1) (B)~~).

(B) Upon receipt of a submission in paper form that is required by the Rules in this Title to be filed electronically, the clerk shall (i) decline to scan the submission, (ii) notify the filer electronically that the submission was rejected because it was required to be filed electronically, and (iii) enter on the docket that the submission was received and that it was not entered into the MDEC system because of non-compliance with Rule 20-106. The filer may seek review of the clerk's action by filing a motion with the administrative judge having direct administrative supervision over the court.

Committee note: Subsection ~~(d) (1) (B) (d) (2) (B)~~ of this Rule is necessary to enforce the electronic filing requirement of Rule 20-106. It is intended to be used only when it is clear that the filer is a registered user who is required to file submissions electronically and that none of the exceptions in sections (b) or (c) of this Rule appear to be applicable.

~~(2)~~ (3) Destruction of Paper Submission

Subject to subsections ~~(d) (3)~~ (d) (4) and (e) (2) of this Rule, the clerk may destroy a paper submission after scanning it and verifying the legibility of the electronic version of it.

~~(3)~~ (4) Optional Return of Paper Document

The State Court Administrator may approve procedures for identifying and, where feasible, returning paper documents that must be preserved in their original form.

~~(4)~~ (5) Public Notice

Prior to the date specified in Rule 20-102 (a) (1) (A), the State Court Administrator shall provide public notice alerting the public to the procedure set forth in subsections ~~(d) (1), (2), and (3)~~ (d) (2), (3), and (4) of this Rule.

Committee note: If submissions properly filed in paper form are to be destroyed by the clerk following their being scanned into MDEC, the public must be given reasonable notice of that policy. Notice may be given in a variety of ways, including on the Judiciary website, on on-line and pre-printed forms prepared by the Judiciary, on summonses or other notices issued by the clerks, and by postings in the clerks' offices.

(e) Exhibits and Other Documents Offered in Open Court

(1) Generally

Unless otherwise approved by the court, a document offered into evidence or otherwise for inclusion in the record in open court shall be offered in paper form. If the document is offered as an exhibit, it shall be appropriately marked.

Committee note: Examples of documents other than exhibits offered for inclusion in the record are written motions made in open court, proposed voir dire questions, proposed jury instructions, communications from a jury, and special verdict sheets.

(2) Scanning and Return of Document

As soon as practicable, the clerk shall scan the document into the MDEC system and, ~~unless the court orders otherwise,~~ return the document to the party who offered it at the conclusion of the proceeding, unless the court orders otherwise. If immediate scanning is not feasible, the clerk shall scan the document as soon as practicable and notify the person who offered it when and where the document may be retrieved.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 200 - FILING AND SERVICE

Rule 20-201. REQUIREMENTS FOR ELECTRONIC FILING

(a) Scope

Sections (b) and (c) of this Rule apply to all filers.

Sections (d), (e), (f), (g), (h), and (i) of this Rule do not apply to judges, judicial appointees, clerks, and judicial personnel.

(a) (b) Authorization to File

A person may not file a submission in an affected action unless authorized by law to do so.

(b) (c) Policies of State Court Administrator

A filer shall comply with all published policies and procedures adopted by the State Court Administrator pursuant to Rule 20-103.

(c) (d) Signature

If, under Rule 1-311, the signature of the filer is required, the submission shall be signed in accordance with Rule 20-107.

(d) (e) Certificate of Service

(1) Generally

Other than an original pleading that is served by original process, each submission that is required to be served

pursuant to Rule 20-205 (d) shall contain a certificate of service signed by the filer.

(2) Non-electronic Service

If service is not to be made electronically on one or more persons entitled to service, service on such persons shall be made in accordance with the applicable procedures established by other Titles of the Maryland Rules, and the submission shall include a certificate of service that complies with Rule 1-323 as to those persons and states that all other persons, if any, entitled to service were served by the MDEC system.

(3) Electronic Service

If service is made electronically by the MDEC system on all persons entitled to service, the certificate shall so state.

~~(e)~~ (f) Restricted Information

(1) Generally

Except as provided in subsection ~~(e)(2)~~ (f)(2) of this Rule, a submission filed by a ~~registered user~~ filer (A) shall not contain any restricted information, and (B) shall contain a certificate by the filer that the submission does not contain any restricted information or, if it does contain restricted information, a redacted submission has been filed contemporaneously pursuant to subsection ~~(e)(2)~~ (f)(2) of this Rule.

(2) Where Restricted Information is Necessary

If the filer believes that restricted information is necessary to be included, the filer shall (A) state the reason

and a legal basis for including the restricted information, and (B) file both an unredacted version of the document, noting prominently in the caption that the document is unredacted, and a redacted version of the document that excludes the restricted information, noting prominently in the caption that the document is redacted.

(f) (g) Sealed Submissions

If the filer desires the submission to be under court seal, the submission shall (1) state prominently in the caption that the document is to be under seal, and (2) state whether there is already in effect a court order to seal the document and, if so, identify that order. If there is no such order, the submission shall include a motion and proposed order to seal the document.

(g) (h) Proposed Orders

A proposed order to be signed by a judge or judicial appointee shall be in an editable text form specified by the State Court Administrator.

(h) (i) Fee

(1) Generally

A submission shall be accompanied, in a manner allowed by the published policies and procedures adopted by the State Court Administrator, by any fee required to be paid in connection with the filing.

(2) Waiver

(A) A filer who (i) desires to file electronically a

submission that requires a prepaid fee, (ii) has not previously obtained and had docketed a waiver of prepayment of the fee, and (iii) seeks a waiver of such prepayment, shall file a request for a waiver pursuant to Rule 1-325.

(B) The request shall be accompanied by (i) the documents required by Rule 1-325, (ii) the submission for which a waiver of the prepaid fee is requested, and (iii) a proposed order granting the request.

(C) No fee shall be charged for the filing of the waiver request.

(D) The clerk shall docket the request for waiver but not the submission requiring a prepaid fee and shall transmit the request, with the accompanying documents, to a judge.

(E) If the judge waives prepayment in full, the clerk shall docket the submission.

(F) If the judge denies the waiver in whole or in part, the clerk shall notify the filer but shall not docket the submission until the fee or non-waived part of the fee, is paid.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 200 - FILING AND SERVICE

Rule 20-203. REVIEW BY CLERK; STRIKING OF SUBMISSION; DELINQUENCY NOTICE; CORRECTION; ENFORCEMENT

(a) Time and Scope of Review

As soon as practicable, the clerk shall review a submission, other than a submission filed by a judge or judicial appointee, for compliance with Rule 20-201 ~~(c), (d), (e)(1)(B), and (h)~~ (d), (e), (f)(1)(B), and (i) and the published policies and procedures for acceptance established by the State Court Administrator. Until the submission is accepted by the clerk, it remains in the clerk's queue and shall not be docketed.

(b) Docketing

(1) Generally

The clerk shall promptly correct errors of non-compliance that apply to the form and language of the proposed docket entry for the submission. The docket entry as described by the filer and corrected by the clerk shall become the official docket entry for the submission.

(2) Submission Signed by Judge or Judicial Appointee

The clerk shall enter on the docket each judgment, order, or other submission signed by a judge or judicial appointee.

(3) Submission Generated by Clerk

The clerk shall enter each writ, notice, or other submission generated by the clerk into the MDEC system for docketing in the manner required by Rule 16-305.

(c) Striking of Certain Non-compliant Submissions

If, upon review pursuant to section (a) of this Rule, the clerk determines that a submission, other than a submission filed by a judge or judicial appointee, fails to comply with the requirements of Rule 20-201 ~~(e), (d), or (e)(1)(B)~~ (d), (e), or (f)(1)(B), the clerk shall (1) strike the submission, (2) notify the filer and all other parties of the striking and the reason for it, and (3) enter on the docket that the submission was received, that it was stricken for non-compliance with the applicable section of Rule 20-201 ~~(e), (d), or (e)(1)(B)~~ (d), (e), or (f)(1)(B), and that notice pursuant to this section was sent. The filer may seek review of the clerk's action by filing a motion with the administrative judge having direct administrative supervision over the court.

(d) Deficiency Notice

(1) Issuance of Notice

If, upon review, the clerk concludes that a submission is not subject to striking under section (c) of this Rule but materially violates a provision of the Rules in Title 20 or an applicable published policy or procedure established by the State Court Administrator, the clerk shall send to the filer with a copy to the other parties a deficiency notice describing the nature of the violation.

(2) Correction; Enforcement

If the deficiency is not corrected within two business days after the date of the notice, any party may move to strike the submission.

(e) Restricted Information

(1) Shielding Upon Issuance of Deficiency Notice

If, after filing, a submission is found to contain restricted information, the clerk shall issue a deficiency notice pursuant to section (d) of this Rule and shall shield the submission from public access until the deficiency is corrected.

(2) Shielding of Unredacted Version of Submission

If, pursuant to Rule 20-201 ~~(e)(2)~~ (f)(2), a filer has filed electronically a redacted and an unreadacted submission, the clerk shall docket both submissions and shield the unredacted submission from public access. Any party and any person who is the subject of the restricted information contained in the unredacted submission may file a motion to strike the unredacted submission. Upon the filing of a motion and any timely answer, the court shall enter an appropriate order.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 400 - APPELLATE REVIEW

Rule 20-402. TRANSMITTAL OF RECORD

(a) Preference

If possible under MDEC, the clerk of the trial court shall transmit in an electronic format that portion of the record filed electronically that is in electronic format.

(b) Alternative

(1) This section applies only if it is not possible under MDEC for the clerk of the trial court to transmit the electronic part of the record to the clerk of the appellate court in an electronic format.

(2) Upon the filing of a notice of appeal, notice that the Court of Special Appeals has granted an application for leave to appeal, or notice that the Court of Appeals has issued a writ of certiorari directed to the trial court, the clerk of the trial court shall comply with the requirements of Title 8 of the Maryland Rules and assemble, index, and prepare a certification of the record. The clerk shall transmit that part of the record not in electronic format to the clerk of the appellate court as required under Title 8 and shall enter on the docket a notice that

- (A) the non-electronic part of the record was so transmitted, and
- (B) from and after the date of the notice, the entire record so certified is in the custody and jurisdiction of the appellate

court.

(3) Upon the docketing of the notice provided for in subsection (b) (2) of this Rule, the record of all submissions filed prior to the date of the notice shall be deemed to be in the custody and jurisdiction of the appellate court. Subject to order of the appellate court, any submissions filed in the trial court after the date of the notice shall not be part of the appellate record but shall be within the custody and jurisdiction of the trial court.

(4) Subject to subsection (b) (6) of this Rule, submissions filed with or by the appellate court shall during the pendency of the appeal not be made part of the record certified by the clerk of the trial court but shall be part of the appellate court record.

(5) During the pendency of the appeal, the judges, law clerks, clerks, and staff attorneys of the appellate court shall have free remote access to the certified record.

(6) Upon completion of the appeal, the clerk of the appellate court shall add to the record certified by the clerk of the trial court any opinion, order, or mandate of the appellate court disposing of the appeal, and a notice that, subject to any further order of the appellate court, from and after the date of the notice, the record is returned to the custody and jurisdiction of the trial court.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 - GENERAL PROVISIONS

Rule 20-504. AGREEMENTS WITH VENDORS

(a) Definition

In this Rule, "vendor" means a person who provides or offers to provide to registered users or others services that include the filing or service of submissions pursuant to the Rules in this Title or remote access to electronic case records maintained by Maryland courts.

(b) Agreement with Administrative Office of the Courts

As a condition of having the access to MDEC necessary for a person to become a vendor, the person must enter into a written agreement with the Administrative Office of the Courts that, in addition to any other provisions, (1) requires the vendor to abide by all Maryland Rules and other applicable law that limit or preclude access to information contained in case records, whether or not that information is also stored in the vendor's database, (2) permits the vendor to share information contained in a case record only with a party or attorney of record in that case who is a customer of the vendor, (3) provides that any material violation of that agreement may result in the immediate cessation of remote electronic access to case records by the vendor, and (4) requires the vendor to include notice of the agreement with the

Administrative Office of the Courts in all agreements between the vendor and its customers.

Cross reference: See Maryland Rules 20-109 and 16-1001 through 16-1011.

Source: This Rule is new.